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# The Application Risks and Administrative Regulation of Generative Artificial Intelligence in The Construction of Digital Government

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## Abstract
*With the rapid development of artificial intelligence (AI) technology and the continuous advancement of digital government construction, the application of AI in public administration has become increasingly widespread, significantly enhancing administrative efficiency and quality. However, alongside the extensive adoption of this technology, a series of application risks have also emerged. To address these issues, AI can be regarded as an administrative assistant in the digital era, and the privatization of public tasks can be leveraged to balance conflicts among public law values.This paper provides an overview of the operational principles of generative AI, discusses its legal status in digital government construction, analyzes potential legal issues associated with generative AI under digital government frameworks, and further examines how these characteristics give rise to specific governance challenges. Finally, it explores how to establish an effective administrative law governance mechanism to ensure the healthy development of generative AI under regulatory frameworks.*

## Keywords
*Generative AI; Digital Government; Administrative Regulation*

## 1. Introduction

Artificial intelligence (AI) represents a new frontier in human societal development. At present, the AI sector is experiencing an explosive surge driven by the rapid advancement of generative AI models, accelerating the arrival of the intelligent era. On June 20, 2024, the World Intelligence Industry Expo opened in Tianjin, China. In a congratulatory letter, Chinese President Xi Jinping emphasized that "AI is a key driving force behind the new round of scientific and technological revolution and industrial transformation, which will profoundly impact global economic and social development as well as human civilization." AI is primarily applied in three core areas of administrative law enforcement: administrative licensing, regulation, and administrative penalties. In the administrative licensing process, in accordance with the principles and provisions of the Administrative Licensing Law of the People's Republic of China, AI technology is employed in the review process by embedding legal regulations and standards to simulate human review and provide decision-making

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recommendations. The focus lies in reviewing application materials, analyzing application content, and offering suggestions on whether to approve the request. In terms of regulation, AI plays a crucial role in both traditional fields such as public security and market regulation, as well as emerging sectors like cyberspace governance. Intelligent regulatory and early-warning systems analyze data to automatically identify the behavior of regulated entities, issue automated alerts, and conduct tracking, serving functions such as information collection, behavior analysis, risk assessment, and regulatory notifications, thereby providing data support for administrative penalties and enforcement measures. In the realm of administrative penalties, AI is applied in investigation and evidence collection, such as the use of traffic surveillance technology to automatically document violations; penalty decision-making, where certain regions have implemented automated penalty determination systems that generate sanction recommendations based on case severity; and penalty enforcement, utilizing technology to monitor and supervise compliance, assess the effectiveness of legal enforcement, and evaluate the risk of recidivism.

Generative AI's practical applications have triggered governance challenges across multiple domains, including data rights, personal information protection, algorithmic bias, abuse, and intellectual property, while also raising widespread concerns about technological ethics, human capability degradation, and unemployment. As nations progressively adopt legal measures to regulate generative AI, a governance framework has emerged that integrates civil law, criminal law, and administrative law. Within the administrative governance framework, administrative law, with its dual functions of safeguarding individual freedoms and balancing interests, has become a cornerstone of generative AI governance. New regulatory rules have been introduced, such as the Interim Measures for the Management of Generative AI Services (hereinafter referred to as the "Interim Measures"), the Provisions on the Administration of Deep Synthesis in Internet Information Services, and the Provisions on the Administration of Algorithmic Recommendations in Internet Information Services. These regulations govern generative AI from multiple dimensions, including technological development, service standards, supervision and inspection, and legal liability. However, in practical application, legal practice still falls short in terms of regulatory framework construction, regulatory tool innovation, and rule implementation. Take the Interim Measures as an example—its relatively low legal hierarchy makes it insufficient to meet the regulatory and institutional needs of administrative law in governing generative AI, and its scope of regulation is limited, with certain provisions conflicting with the Administrative Penalty Law of the People's Republic of China. In response to these issues, scholars have proposed diverse perspectives on the administrative regulation of generative AI. In addressing the challenges posed by new technologies, administrative authorities should adhere to the principle of inclusive and prudent regulation, maintain a restrained approach, and ground their actions in practical realities when regulating generative AI applications. Under this guiding principle, this paper will explore the unique legal status of generative AI technology and, from the perspective of sectoral law, propose recommendations for improving China's existing administrative regulation of generative AI technology.

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## 2.Discussion on the Legal Status of Generative AI Applications

th the increasing demand for building a digital rule-of-law government, the operation and application of generative AI have gradually penetrated government office functions and become inseparable from the law enforcement and judicial activities of administrative agencies. Its legal status in administrative law is profound and complex, involving the interpretation and application of the Administrative Licensing Law of the People's Republic of China, which determines the necessity of administrative "quasi-legislative" actions. To clarify whether AI bears legal responsibility under administrative law and what type of responsibility it assumes, the first question to address is whether generative AI can be recognized as an administrative counterpart in the legal sense.In the field of administrative penalties, a typical example of AI-based administrative law enforcement is the use of electronic surveillance equipment. The 2021 revision of the Administrative Penalty Law of the People's Republic of China stipulates the standards, installation requirements, identification, usage rules, and review procedures for such equipment. Both law and practice emphasize that the application of AI in administrative law enforcement must follow due procedures. For instance, the installation locations of surveillance equipment must be publicly disclosed. If these procedural requirements are not met, the application of AI may be deemed unlawful.The question of whether AI can be considered a legal subject is primarily based on its gradually emerging characteristics of subjectivity. With technological advancements, particularly the rise of generative AI, artificial intelligence is no longer merely a tool or a passive executor but has developed autonomous decision-making and creative capabilities. Consequently, strong AI functionally approximates traditional legal subjects, enabling it to assume legal responsibilities and participate in legal relationships, thereby supporting its recognition as a legal subject. This trend is increasingly acknowledged in public law discussions, particularly in the field of administrative law.

### *2.1. The Administrative Delegation Theory*

The Administrative Delegation Theory advocates explaining the relationship between digital platforms and administrative entities based on the theory of administrative delegation while clarifying the division of authority and responsibility between the government and digital platforms. Under this perspective, AI is regarded as an auxiliary tool engaged in automated administrative activities based on a delegation relationship, but the command authority and liability still rest with administrative agencies.The Administrative Delegation Theory recognizes the subjectivity of AI but emphasizes its subordinate status relative to administrative entities and civil servants. This theory originated in the era of e-government and gained prominence in the digitalization era. However, it faces certain difficulties in providing a theoretical explanation for the application of AI in Digital Government.

### *2.2. The Administrative Assistant Theory*

The Administrative Assistant Theory views artificial intelligence as a digital administrative assistant to the government, emphasizing the autonomy of AI. It argues that AI is not only a form of private participation in public tasks but can also be seen as a means of societal self-regulation. This theory advocates for a proactive stance toward the application of AI in Digital Government, avoiding general prohibitions, and focusing instead on how to ensure that public law values are not undermined.

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In summary, the Administrative Delegation Theory emphasizes the auxiliary and subordinate nature of AI, while the Administrative Assistant Theory further highlights the autonomy of AI. The Administrative Delegation Theory is more oriented toward the present, whereas the Administrative Assistant Theory looks toward the future. Currently, AI continues to be positioned as an auxiliary tool in administrative law enforcement, with efforts focused on improving procedural requirements for AI in the administrative domain. However, with the development of AI technology and industries, the application of Strong AI in Digital Government is a growing trend, and the Administrative Assistant Theory is likely to gain increasing relevance in the market.

## 3. Risks of Generative AI in the Administrative Domain

As can be inferred from the preceding text, artificial intelligence currently does not possess the qualification as an administrative law enforcement entity. However, it is capable of proposing law enforcement suggestions and has certain decision-making abilitis.However, due to issues such as data update delays, equipment aging, or algorithmic flaws, AI may generate computational errors that impact the accuracy and legality of enforcement actions. For example, in administrative penalties, the administrative counterpart may challenge the penalty decision made using new technological methods, particularly when the relationship between the administrative entity and the counterpart is strained. Based on this, we will explore the potential risks posed by Generative AI in the domains of administrative law enforcement and judicial affairs.

### *3.1. Risks of Bias and Discrimination*

AI systems, especially Generative AI, are fundamentally trained on large datasets, which often contain historical, social, and cultural biases. As a result, when Generative AI generates content, makes decisions, or provides recommendations, it may unconsciously replicate or even amplify these biases and discriminations. The so-called "Chinese Room" experiment raises a central issue: AI-generated outputs, in certain contexts, may exhibit decision-making behaviors similar to human cognitive biases, and may even be unaware of the existence of these biases. This algorithmic bias is not only reflected in data selection but can also manifest during the content generation process. For example, when handling loan approvals or administrative decisions, Generative AI might make unfair discriminatory decisions based on factors such as race, gender, or social class found in historical data, potentially disadvantaging certain groups.

Such bias and discrimination, especially in the realm of public administration, could severely violate individuals' rights to equal treatment and principles of fairness, undermining the foundation of the rule of law in governance. Therefore, how to regulate the algorithms of Generative AI through administrative law to eliminate potential discrimination and ensure its application adheres to principles of equality and non-discrimination is a major issue faced by current administrative law.

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## *3.2. "Black Box" Risk*

### *3.2.1. The Universal Risk of the "Black Box" Problem*

The "black box" problem refers to the high level of opacity in the AI generation process. Although AI technology, especially in Generative AI models, can autonomously generate new content and decisions based on complex data processing and deep learning algorithms, the specific decision paths and processes involved in this generation are often not effectively explainable or understandable. Particularly when large amounts of data, complex models, and self-learning mechanisms are involved, the internal operations and decision-making rules of the AI system are often a "black box" to both users and regulators. This opacity makes it difficult to trace and correct errors or biases when the AI-generated outputs occur, and it may even fail to provide a valid explanation for the decision-making process.

### *3.2.2. Administrative Field Risks of the "Black Box" Problem*

In the field of administrative law, the "black box" characteristic of Generative AI presents significant challenges for regulation. When AI makes incorrect decisions, provides inaccurate recommendations, or generates faulty content, how to trace responsibility and determine whether the decision complies with the due process and fairness requirements of administrative law becomes an urgent issue. The lack of transparency in algorithms and decision-making processes means that the application of AI in the administrative field may give rise to serious legal risks. Particularly when decisions are made public or subject to review, how administrative agencies can ensure that AI decisions align with principles of transparency, fairness, and compliance is a crucial aspect that needs to be regulated by administrative law.

## *3.3. Accountability and Responsibility Mechanism Risks*

Due to the complexity of its algorithms, models, and autonomous learning capabilities, Generative AI may generate unforeseen errors or damage in practical applications, amplifying the crisis of training data legitimacy. The urgent demand for training data has led the developers of Generative AI to extensively use data from the internet. This internet data often contains a large amount of personal information and copyright-protected content, which makes the legitimacy of training data a serious issue for Generative AI. Particularly in highly complex administrative tasks, when AI-generated outputs cause infringement or harm, determining the responsible party accurately becomes a significant challenge for administrative law. Traditional administrative law systems assign responsibility based on human agents, but since AI is a non-human "intelligent entity," there remains controversy over whether its actions can be directly attributed as legal acts for the purpose of liability.

If AI-generated outputs cause infringement due to algorithmic errors or data model failures, who should be held accountable? Should it be the AI developers, operators, or the administrative agency responsible for oversight? In some cases, the decisions generated by AI may exhibit a high degree of autonomy, which complicates the issue of assigning responsibility. Furthermore, due to AI's ability to self-adjust and evolve during the learning process, when its decisions lead to damage, determining the responsibility chain and effectively holding the algorithm developers, data providers, and users accountable still requires in-depth exploration within the framework of administrative law.

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### *3.4. Technological Dependence and the Risk of Passive Innovation*

As artificial intelligence becomes more deeply integrated into administrative management, government agencies may become overly dependent on AI systems, relying on their automated decision-making and execution capabilities. On one hand, this dependence can improve administrative efficiency and service quality, but on the other hand, it may also introduce the risk of bureaucratic inertia and evasion of responsibility by administrative staff. When AI takes on a significant number of decision-making and execution tasks, AI developers and operators may reduce their focus on specific administrative duties, leading to negligence and inaction in the administrative process. This phenomenon of bureaucratic inertia can not only affect government efficiency but may also undermine public trust in the government.

Moreover, excessive reliance on AI may stifle positive innovation in technology. Once administrative agencies become accustomed to relying on existing AI technologies, they may lack the drive to explore and apply more innovative technologies, thereby limiting the further development and improvement of AI in the field of public administration. Therefore, the challenge for future administrative law will be how to ensure that AI enhances administrative efficiency while avoiding overdependence and maintaining an innovative momentum.

## 4. Current Situation of Administrative Law Governance of Generative Artificial Intelligence in China

Relevant laws and regulations have already proposed initial responses to the governance of generative artificial intelligence's algorithms, training data, and content, establishing a certain framework. However, due to the relatively low legal effect of these measures, challenges remain in areas such as algorithm transparency, the specific institutional development of training data, and the allocation of responsibilities in content governance. Therefore, this chapter will discuss the current situation of China's governance of generative artificial intelligence.

### *4.1. Limitations of Algorithm Mechanisms*

Regarding the regulation of generative artificial intelligence algorithms, the government has primarily imposed constraints at two levels. The first national level seeks to regulate algorithms through the establishment of relevant departmental regulations. At the legal level, particularly within administrative law and other specific areas of law, the focus of regulation is mainly on prohibiting the abusive practices of business entities. Algorithms are characterized by diversity and broad applicability, and legal scholars have proposed regulatory principles for algorithmic scenarios, advocating for customized and differentiated strategies for regulating algorithms based on specific contexts.Currently, China has preliminarily customized practices tailored to different scenarios, with relevant departments having issued specific regulations for algorithms related to recommendation services, deep synthesis services, and generative artificial intelligence services in documents such as the Regulations on the Management of Algorithmic Recommendation Services for Internet Information Services, the Regulations on the Management of Deep Synthesis Services for Internet

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Information Services, and the aforementioned Interim Measures. For instance, the Interim Measures has specifically established a set of algorithmic obligations for generative artificial intelligence service providers, covering duties such as anti-discrimination, ensuring fair competition, algorithmic filing, and providing algorithmic explanations. These regulations aim to prevent external risks that algorithms may cause, rather than enhancing algorithmic transparency. However, due to the lack of proper control over inherent risks within algorithms, it is difficult to completely avoid the occurrence of external risks, presenting challenges for administrative agencies' supervision and enforcement work. In the context of increasingly intense market competition, the black box issue of algorithms is expected to become more prominent. The Interim Measures currently does not provide clear regulations regarding the decentralization of algorithm control.

### *4.2. Improvement of Training Data Governance System*

The relevant regulations currently issued in China provide solutions to the issues of training data shortage and legality. To address data shortages, the regulations encourage the establishment of public training data resource platforms and promote the orderly opening of public data. In terms of legality, the regulations stipulate that training data must be legally sourced, must not infringe intellectual property rights, and must protect personal information. However, these provisions have not yet been translated into specific systems. The opening of public data lacks unified legal rules, resulting in issues such as false openness, low data quality, and difficulty in access in practice. Meanwhile, there is insufficient protection for the legality of training data. Since service providers do not disclose their training data, illegal practices are difficult for external parties to detect, making it challenging for the relevant regulations set by the state to be effectively enforced.

### *4.3. Inherent Contradictions in Content Governance System*

The core of content governance lies in determining who is responsible for ensuring the legality of content. Taking the Interim Measures as an example, the document presents two contradictory content governance models. On one hand, it continues the "administrative agency—service provider—user" model of online content governance; on the other hand, it establishes the "administrative agency—service provider" model. The former conflicts with the content production model of generative artificial intelligence, as generative AI cannot effectively control users' content dissemination behavior. The latter, however, sets generative AI as the sole object of content governance, which contradicts the content production model, since content production is a collaborative process involving both AI and users. Holding the service provider entirely responsible may lead to an imbalance between rights and responsibilities and may prompt service providers to impose excessive restrictions on content production, thus affecting user experience.

## 5. Improvement of Generative Artificial Intelligence's Administrative Law Governance

In response to the issues outlined above and the current state of regulation, we must recognize that the current focus is on the subject status of artificial intelligence, the legitimacy of data acquisition in law en-

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forcement processes, and the potential risks of negative innovation following technological dependence. The approach of administrative regulation towards artificial intelligence is becoming increasingly diversified, which requires us to move beyond traditional legal concepts of management and the managed in the field of administrative law. The relationship between artificial intelligence and administrative law is not merely a one-way management relationship; rather, they can achieve mutual development within the legal framework, forming an interaction at the legal level. To effectively regulate the risks of artificial intelligence, China's administrative legal system needs further improvement and development.

## *5.1. Clarify Legal Positioning and Establish Algorithm Regulation*

To effectively integrate artificial intelligence into administrative law enforcement, the auxiliary role of artificial intelligence and its participation in the process need to be further clarified. This includes delineating the applicable areas for artificial intelligence in decision-making analysis, preventing over-reliance on technology, and prudently deciding whether to use artificial intelligence assistance based on the discretionary space in different types of law enforcement. For matters that are highly data-driven, categorized, and do not involve significant interests, the application of artificial intelligence is desirable. However, for complex or significant administrative matters, careful evaluation is necessary.At the same time, a balance must be struck between the principle of rule-of-law administration and artificial intelligence algorithmic decision-making, ensuring that artificial intelligence plays a role in preventing administrative arbitrariness and abuse of discretion. It is also essential to clarify the primary responsibility of administrative law enforcement agencies and officers when using artificial intelligence, avoiding the "monopoly" of administrative law enforcement power by technological institutions or experts, and preventing the abdication of responsibility by using the algorithmic "black box" or data errors as an excuse.

## *5.2. Establishing Refined Control and Improving Law Enforcement Procedures*

### *5.2.1. Clarify Procedural Requirements and Ensure Proper Exercise of Procedures*

Regarding procedural requirements, it is essential to establish clear rules and review requirements to ensure that administrative law enforcement agencies have control over and can correct the use of technology. The right to know of administrative counterparts should also be respected, and, to some extent, they should be granted the right to choose whether to allow artificial intelligence to intervene in decision-making. Furthermore, the relevant system for the principle of consent from administrative counterparts should be improved, fully ensuring their legal rights. Most importantly, it is necessary to clarify the avenues for relief and procedural transitions, ensuring that administrative counterparts have the right to state their case, receive explanations, and request hearings. For appeals against decisions made by artificial intelligence in law enforcement, these should be transferred to a manual processing procedure.

### *5.2.2. Enhance Public Participation and Broaden Channels for Democratic Supervision*

Due to the "black box" risk in the operation and use of artificial intelligence, its data acquisition and processing processes often lack transparency, making it difficult to trace and understand its decision-making mechanisms. To address this issue, administrative law can require artificial intelligence systems to enhance

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their transparency and traceability. This includes requiring AI systems to meticulously record and archive their decision-making bases. At the same time, it is important to encourage public participation in the operation and decision-making processes of AI-generated content. Through methods such as hearings, public criticism, and suggestions, citizens' right to know can be effectively protected, facilitating the transparency of information and thereby enhancing the credibility and legitimacy of administrative processes.

#### *5.2.3. Build Multi-Stakeholder Governance and Strengthen Government-Enterprise Cooperation*

The complexity and rapid iteration of generative artificial intelligence technology make it difficult for a single government regulator to comprehensively cover and effectively address all issues. As the main entity driving technological innovation and application, enterprises possess a deeper understanding of the technology's characteristics and potential risks. Therefore, government-enterprise cooperation has become an important and necessary model. This cooperative model not only fully leverages the advantages of both government and enterprises, forming a synergy to jointly address the challenges posed by the technology, but it also fosters a close alignment between technological innovation and market demands, promoting the continuous progress and development of generative AI technology.To achieve effective government-enterprise cooperation, specific cooperation paths must be clearly defined. First, the government should establish clear cooperation frameworks and principles, providing enterprises with clear guidance and protection for their participation in the regulatory process. Second, establishing an efficient information-sharing mechanism is key to government-enterprise cooperation. Both parties should ensure the timely transmission and sharing of information regarding regulatory policies, market dynamics, and technological advancements. Finally, strengthening joint regulation and enforcement is essential. The government should enhance daily supervision and special inspections of generative AI services, promptly identifying and correcting violations. Enterprises should actively cooperate with the government’s regulatory efforts, willingly accept supervision, and work together to maintain market order and public interest. Through joint regulation and enforcement, illegal activities can be more effectively combated, ensuring fair competition and healthy development in the market. Additionally, government-enterprise cooperation can establish a mechanism for shared risk and benefit, jointly addressing the challenges and risks posed by technology, and achieving mutually beneficial and sustainable development.

### *5.3. Clarify Law Enforcement Responsibilities and Establish Rules and Principles*

Constructing the principle of accountability for artificial intelligence in administrative law enforcement is also crucial. While artificial intelligence has not yet become an entity subject to administrative law enforcement, a "differentiated accountability" principle should be adopted to protect the rights of administrative counterparts while reasonably distributing legal responsibilities. For administrative enforcement actions that are clearly unreasonable or illegal, the administrative authority should bear liability for compensation. Internal responsibility distribution involves both review responsibility and technical responsibility, which should be clarified through contracts that define the rights and obligations between the administrative authority and the AI technology provider, ensuring clear accountability for illegal actions caused by technological issues. After fulfilling the compensation responsibility, the administrative authority may pursue legal action against the technology provider through civil or administrative channels.

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## 6. Conclusions

After exploring the legal status, application risks, and administrative regulation of generative artificial intelligence, we have gained a profound understanding of the dual-edged nature of this emerging technology. The rapid development of generative artificial intelligence undoubtedly brings unprecedented innovation opportunities to many fields. However, the potential risks related to data security, algorithmic bias, intellectual property, and others cannot be overlooked. Therefore, administrative regulation, as an essential tool for balancing technological innovation and risk prevention, is of significant importance. By clarifying the legal status of generative artificial intelligence, improving administrative enforcement procedures, establishing the legal responsibilities that artificial intelligence must bear in administrative enforcement, and strengthening joint regulation and law enforcement, we can effectively address the challenges posed by generative artificial intelligence and ensure that it advances in a lawful and compliant manner.

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