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The Application Risks and Administrative Regulation of Generative Artificial Intelligence in the Development of Digital Government

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Abstract
With the rapid advancement of artificial intelligence (AI) technology and the continuous progress in the development of digital government, AI has been increasingly applied in public administration, significantly enhancing administrative efficiency and quality. However, the widespread adoption of this technology has also given rise to a range of application risks. To address these issues, AI can be regarded as an administrative assistant in the digital era, and the privatization of public tasks may serve as a mechanism to balance conflicting public law values. This paper outlines the operational principles of generative artificial intelligence (GAI), discusses its legal status in the context of digital government, and analyzes the potential legal challenges arising from its application. Further, it examines how the inherent features of GAI pose specific governance challenges and explores how to construct an effective administrative legal governance framework to ensure the sound development of GAI under administrative regulation.

Keywords
Generative Artificial Intelligence; Digital Government; Administrative Regulation

1 Introduction

Artificial intelligence is a new field in the development of human society. At present, the field of artificial intelligence is experiencing an explosive growth driven by large-scale generative AI models, and the intelligent era is accelerating. On June 20, 2024, the World Intelligence Expo opened in Tianjin. In a congratulatory letter, President Xi Jinping emphasized that “artificial intelligence is an important driving force behind a new round of scientific and technological revolution and industrial transformation, which will have a profound impact on global economic and social development and the progress of human civilization.”[1]The application and popularization of generative artificial intelligence not only mark an important moment in the development of global AI technology. New technologies such as artificial intelligence are mainly applied in three core stages in the field of administrative law enforcement: administrative licensing, supervision, and administrative penalties. In the stage of administrative licensing, in accordance with the principles and provisions of the Administrative Licensing Law, artificial intelligence technology is used in the review process by embedding laws, regulations, and standards to simulate manual review and provide decision-making recommendations. The focus is on reviewing application materials, analyzing the content of applications, and giving recommendations on whether

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to approve.In terms of supervision, artificial intelligence mainly plays a role in traditional fields such as public security and market regulation, as well as emerging areas such as online information. Intelligent supervision and early warning systems analyze data to automatically identify the behavior of regulated objects, issue automatic alerts and tracking, and are used for information collection, behavior analysis, nature assessment, and supervision tips, providing data support for administrative penalties and coercive measures. In the field of administrative penalties, the application of artificial intelligence is reflected in: investigation and evidence collection, such as using traffic monitoring technology to record illegal behavior; penalty decisions, where some localities have implemented automatic penalty assessment systems that automatically generate penalty suggestions based on the circumstances; and penalty enforcement, using technology to track and supervise whether punished individuals fulfill their obligations, assess the effectiveness of law enforcement, and evaluate the risk of repeat violations.[2]

The practical application of generative artificial intelligence has triggered governance challenges in multiple areas, including data rights, personal information protection, algorithmic bias, abuse issues, and intellectual property, while also raising widespread concerns about technological ethics, the degradation of human capabilities, and unemployment. [3] As the state gradually adopts legal means to govern generative artificial intelligence, a governance model combining civil law, criminal law, and administrative law has been formed.In the era of the administrative state, administrative law, with its dual functions of defending freedom and balancing interests, has become the main force in the governance of generative artificial intelligence. New rules have emerged accordingly, such as the Interim Measures for the Administration of Generative Artificial Intelligence Services (hereinafter referred to as the “Interim Measures”), the Provisions on the Administration of Deep Synthesis of Internet Information Services, and the Provisions on the Administration of Algorithmic Recommendation of Internet Information Services, which regulate generative artificial intelligence 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 norm construction, updating of regulatory tools, and application of rules. Take the Interim Measures as an example: its legal effect is relatively low, making it difficult to meet the regulatory and institutional needs of administrative law in governing generative artificial intelligence. Moreover, its regulatory scope is limited, and some provisions conflict with the Law of the People’s Republic of China on Administrative Penalties.In response to these issues, the academic community has put forward diverse views on the administrative law governance of generative artificial intelligence. Faced with the challenges brought by new technologies, administrative organs, in regulating the application of generative artificial intelligence, should follow the principle of inclusive and prudent regulation, maintain a modest attitude, and base their actions on reality. Under the guidance of this principle, this paper will explore the legal particularities of generative artificial intelligence and, from the perspective of sectoral law, propose suggestions for improving the current administrative regulation of generative artificial intelligence technology in China.

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2 Discussion on the Legal Status of Generative Artificial Intelligence Applications

With the current requirements for building a digital rule-of-law government, the operation and use of generative artificial intelligence have gradually penetrated into government office work, and are also closely related to the law enforcement and judicial activities of administrative organs. Its status in administrative law is profound and complex, as it may involve the application of the Administrative Licensing Law as well as the Administrative Penalty Law, which determines the necessity of administrative "quasi-legislative" actions. [4]To clarify whether artificial intelligence bears legal responsibility in administrative law and what type of responsibility it assumes, it is first necessary to determine whether generative artificial intelligence can be regarded as an administrative counterpart (xingzheng xiangduiren) in the legal sense. [5]

In the field of administrative penalties, a typical example of artificial intelligence administrative law enforcement is the use of electronic surveillance equipment. The 2021 revision of the Administrative Penalty Law stipulates the standards, installation, identification, and usage rules of such equipment, as well as the review procedures. Both law and practice emphasize that the application of artificial intelligence in administrative law enforcement must comply with legal procedures. For example, the location of surveillance equipment installations must be publicly disclosed. If these procedures are not followed, the use of artificial intelligence may be deemed illegal.

Whether artificial intelligence can be regarded as a legal subject is mainly based on its gradually emerging characteristics of subjectivity. With technological advancement—especially the rise of generative artificial intelligence—AI is no longer merely a tool or passive executor but is capable of autonomous decision-making and creative work. Therefore, strong AI (qiang zhinen) functionally approximates traditional legal subjects, capable of bearing legal responsibilities and participating in legal relationships, thereby supporting its recognition as a legal subject. This trend is also increasingly acknowledged in public law discussions, particularly in administrative law. [6]

2.1 The Administrative Delegation Theory

The Administrative Delegation Theory advocates interpreting the relationship between digital platforms and administrative subjects based on the theory of administrative delegation, clarifying the powers and responsibilities between the government and digital platforms. Under this perspective, artificial intelligence is regarded as an auxiliary tool that performs automated administrative activities based on a delegated relationship, but the authority to command and the responsibility still belong to the administrative organs. The Administrative Delegation Theory acknowledges the subjectivity of artificial intelligence but emphasizes more its dependency relative to administrative subjects and civil servants. This theory originated in the era of e-government, rose during the digital era, and faces certain difficulties in providing a theoretical explanation for the application of AI in digital government. [7]

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2.2 The Administrative Assistant Theory

The Administrative Assistant Theory regards artificial intelligence as the government's digital administrative assistant, emphasizing AI's autonomy. It holds that AI is not only a form of private participation in public tasks but can also be seen as a form of social self-regulation. This theory advocates a proactive stance on the application of AI in digital government, avoiding a general prohibition, and instead focusing on how to ensure that public law values are not undermined.

In summary, the Administrative Delegation Theory emphasizes the auxiliary and dependent nature of artificial intelligence, whereas the Administrative Assistant Theory further stresses its autonomy. The former is more oriented toward the present, while the latter looks to the future. Currently, the auxiliary status of artificial intelligence in administrative law enforcement is still maintained, with ongoing improvements in procedural requirements for AI in the administrative field. However, with the development of AI technology and industry, the application of strong AI in digital government is a trend, and the Administrative Assistant Theory will gain increasing traction. [8]

3 Risks of Generative Artificial Intelligence in the Administrative Field

As discussed above, artificial intelligence has not yet obtained the status of an administrative law enforcement subject, but it can propose law enforcement suggestions and possesses certain decision-making capabilities. However, due to data update delays, equipment aging, or algorithmic defects, artificial intelligence may produce computational errors, affecting the accuracy and legality of law enforcement. For example, in administrative penalties, the administrative counterpart may question penalty decisions made using new technological means, especially when the relationship between the administrative organ and the counterpart is tense. Based on this, we will discuss the risks that generative artificial intelligence may pose in administrative law enforcement and judicial fields.

3.1 Risks of Bias and Discrimination

Artificial intelligence systems, especially generative artificial intelligence, are essentially trained based on large datasets that often contain human historical, social, and cultural biases. [9] Therefore, when AI generates content, makes decisions, or recommendations, it may unconsciously replicate or even amplify these biases and discriminations. The so-called "Chinese Room" experiment raises a core issue: AI-generated outputs may, in some contexts, exhibit decision behaviors similar to human cognitive biases and may even be unaware of such biases. This algorithmic bias is reflected not only in data selection but can also manifest during the content generation process. For example, AI may unfairly discriminate against certain groups based on race, gender, social class, and other factors when handling matters such as loan approvals or administrative judgments.

Such biases and discriminatory behaviors, especially in public administration, may severely infringe upon individuals' rights to equal treatment and the principle of fairness, undermining the foundation of a rule-of-law government. Therefore, how to regulate the algorithms of generative artificial intelligence through

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administrative law to eliminate its potential discriminatory nature and ensure its application adheres to principles of equality and non-discrimination is a major issue currently faced by administrative law.

3.2 The "Black Box" Risk

3.2.1 The General Risk of the "Black Box" Problem

The "black box" problem refers to the high opacity of the artificial intelligence generation process. Although AI technology, especially in generative models, can autonomously generate new content and decisions based on complex data processing and deep learning algorithms, the specific decision paths and processes involved are often not effectively explainable or understandable. Particularly when large amounts of data, complex models, and autonomous learning mechanisms are involved, the internal operations and decision rules of AI systems are often a "black box" to both users and regulators. This opacity makes it difficult to trace and correct errors or biases in AI-generated outputs and even prevents providing effective explanations for the decision-making process. [10]

3.2.2 The Administrative Field Risk of the "Black Box" Problem

In the field of administrative law, the "black box" characteristic of generative artificial intelligence brings significant regulatory challenges. When AI erroneously makes decisions, recommendations, or generates inaccurate content, how to trace its 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 processes means that AI applications in the administrative field may trigger serious legal risks. Especially in terms of public disclosure and review, how administrative organs ensure that AI decisions conform to principles of transparency, fairness, and compliance is an important aspect requiring administrative law regulation. [11]

3.3 Risks of Accountability and Responsibility Attribution Mechanisms

Due to the complexity of its algorithms, models, and autonomous learning capabilities, generative artificial intelligence may cause unforeseen errors or damages in practical applications. The crisis regarding the legality of training data is amplified. The urgent demand for training data has driven generative AI developers to extensively use online data. A large amount of this online data contains personal information and copyrighted material, which poses serious legal issues regarding the legitimacy of training data for generative AI. Particularly in highly complex administrative tasks, when AI-generated outputs cause infringement or damage, accurately identifying the responsible party becomes a major challenge for administrative law. The traditional administrative law system allocates responsibility based on human subjects, but since AI is a non-human "intelligent agent," whether its actions can be directly treated as legal acts for tracing responsibility remains controversial.

If AI-generated outputs cause infringement due to algorithmic errors or data model failures, who should be held responsible? Should it be the AI developers, operators, or the administrative organs responsible for supervision? In some cases, AI-generated decisions may exhibit a high degree of autonomy, which fur-

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ther complicates the attribution of responsibility. Moreover, given that AI has self-adjusting and evolving characteristics during its learning process, determining the chain of responsibility and effectively holding algorithm designers, data providers, and users accountable remains an issue requiring in-depth exploration within the framework of administrative law. [12]

3.4 Risks of Technological Dependence and Passive Innovation

With the deepening application of artificial intelligence in administrative management, administrative organs may become overly dependent on AI systems, relying heavily on their automated decision-making and execution functions. On one hand, this dependence can improve administrative efficiency and service quality; on the other hand, it may bring risks of administrative staff neglecting their duties and shirking responsibilities. When AI undertakes a large portion of decision-making and execution tasks, developers and operators of AI may reduce their attention to specific administrative tasks, leading to negligence and inaction within administrative processes. This phenomenon of administrative laziness may not only affect government work efficiency but also undermine public trust in the government.

Moreover, excessive reliance on AI may suppress active technological innovation. Once administrative organs become accustomed to relying on existing AI technologies, they may lack motivation to explore and apply innovative technologies, thereby limiting the further development and improvement of AI in public administration. Therefore, how to ensure that AI enhances administrative efficiency while avoiding over-dependence and maintaining innovation momentum is a challenge that administrative law will need to address in the future.

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

Relevant laws and regulations have already proposed preliminary responses targeting the algorithms, training data, and content governance of generative artificial intelligence, and put forward certain frameworks. However, due to reasons such as their relatively low legal authority, some issues remain in areas including algorithm transparency, the specific institutional construction of training data, and the allocation of responsibility in content governance. Therefore, this chapter will discuss the current status of China's governance of generative artificial intelligence.

4.1 Limitations of Algorithmic Mechanisms

Regarding the regulation of generative artificial intelligence algorithms, it can be seen that the country mainly imposes constraints at two levels. The first level at the national state level attempts to regulate algorithms by establishing relevant departmental rules and regulations. At the legal level, particularly within administrative law and other sectoral laws, the regulation of algorithms mainly focuses on prohibiting the abuse of algorithms by business entities. Algorithms have diverse applications and widespread usage characteristics. Legal scholars have proposed a principle of scenario-based regulation of algorithms, advocating differentiated regulatory strategies tailored to specific contexts.

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Currently, China has preliminarily adopted differentiated practices customized for different scenarios. Relevant departments have respectively issued specialized provisions regarding algorithms in the Regulations on Algorithm Recommendation for Internet Information Services, the Regulations on Deep Synthesis of Internet Information Services, and the aforementioned Interim Measures. These regulations address algorithms in recommendation services, deep synthesis services, and generative AI services respectively. Taking the Interim Measures as an example, it has specially constructed a set of algorithmic obligation systems for generative AI service providers, covering anti-discrimination, ensuring fair competition, algorithm filing, and algorithm explanation obligations. These provisions aim to prevent external risks possibly caused by algorithms rather than enhancing algorithmic transparency.

However, given that internal risk control of algorithms has not yet been adequately implemented, external risks remain difficult to completely avoid, posing challenges to administrative supervision and law enforcement. Against the backdrop of increasingly intense market competition, the "algorithm black box" problem is expected to become more prominent. The Interim Measures have not yet made clear provisions regarding the decentralization of algorithmic control.

4.2 Improvement of Training Data Governance System

The currently promulgated national measures propose solutions to the shortage and legality issues of training data. To address data shortages, these measures encourage the construction of public training data resource platforms and promote the orderly opening of public data. Regarding legality issues, the regulations require that training data must be legally sourced, not infringe intellectual property rights, and protect personal information. However, these provisions have yet to be translated into concrete institutional frameworks. The lack of unified legal rules governing the opening of public data has led to issues in practice such as false data openness, poor data quality, and difficulties in access across different regions.

At the same time, the protection of the legality of training data is insufficient. Since service providers do not disclose their training data, illegal activities are difficult for the public to detect, making the effective enforcement of relevant national regulations challenging.

4.3 Inherent contradictions in content governance regimes

Content governance centers on determining who bears the responsibility for ensuring that content is legitimate. Taking the Interim Measures as an example, there are two contradictory content governance models in the document. On the one hand, it continues the network content governance model of "administrative authorities - service providers - users"; on the other hand, it establishes the "administrative authorities - service providers" model. On the other hand, the "administrative authority-service provider" model has been established. The former is inconsistent with the content production model of generative artificial intelligence, because it is difficult for generative artificial intelligence to form a de facto domination over the content dissemination behavior of users. The latter sets generative AI as the sole object of content governance, which is contrary to the content production model because content production is a process in which both AI and users participate. Attributing responsibility exclusively to the service provider may lead to an imbalance between rights and responsibilities and may prompt the service provider to impose excessive restrictions on content production behaviors, affecting the user experience.

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5 Improvement of Administrative Law Governance for Generative Artificial Intelligence

In response to the aforementioned issues and the current regulatory situation, we should clarify that the existing problems mainly focus on the legal status of artificial intelligence as a subject, the legality of data acquisition during law enforcement, and the potential risks of passive innovation arising from technological dependence. The administrative regulation of AI is becoming increasingly diversified, which requires us to move beyond the traditional legal concept of management and being managed within administrative law. The relationship between AI and administrative law is not merely a one-way regulatory relationship; rather, they can achieve mutual development within the legal framework, forming legal-level interaction. To effectively regulate AI risks, China's administrative legal system needs further improvement and development.

5.1 Clarify Legal Positioning and Establish Algorithm Regulation

To effectively integrate AI into administrative law enforcement, the auxiliary role of AI and its participation procedures need to be further clarified. This includes delineating the applicable matters for AI in decision-making analysis, preventing overreliance on technology, and prudently deciding whether to use AI assistance based on the discretionary scope of different law enforcement types. For matters that are highly data-driven, categorized, and do not involve significant interests, the application of AI is appropriate; for complex or significant administrative management matters, careful evaluation is required [14].

At the same time, it is necessary to balance the principle of lawful administration with AI algorithmic decision-making, ensuring AI plays a role in preventing administrative arbitrariness and abuse of discretion, while clarifying the primary responsibilities of administrative law enforcement agencies and officers when using AI. This avoids the "monopoly" of administrative law enforcement power by technical institutions or experts and prevents shirking of responsibility under the pretext of algorithmic black boxes or data errors.

5.2 Establish Refined Controls and Improve Law Enforcement Procedures

5.2.1 Clarify Procedural Requirements to Ensure Proper Exercise of Procedures

Regarding procedural requirements, it is first necessary to establish clear rules and review requirements to ensure that administrative law enforcement agencies maintain control over and can correct the technology. The right to be informed of administrative counterparties must be respected, and to some extent, they should be granted the right to choose whether to allow AI intervention in decision-making. Relevant systems regarding the principle of consent of administrative counterparties should be improved to fully guarantee their legitimate rights. Most importantly, remedies and procedural transitions must be clarified to ensure that administrative counterparties have the right to make statements and defenses, obtain explanations, and request hearings. Complaints and administrative reconsiderations against AI law enforcement decisions should be transferred to manual handling procedures [15].

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5.2.2 Enhance Public Participation and Broaden Channels for Democratic Supervision

Due to the "black box" risk existing in the operation and use of AI, its data acquisition and processing are usually lacking transparency, making it difficult to trace and understand its decision-making mechanisms [16]. To address this issue, administrative law can require AI systems to improve their transparency and traceability. This includes requiring AI systems to record and archive in detail the basis for their decisions. At the same time, it encourages active public participation in the operation and decision-making processes of AI-generated outputs. Through hearings, public criticism, and suggestions, citizens' right to know can be effectively protected, promoting information transparency and thereby enhancing the credibility and legitimacy of administrative processes.

5.2.3 Build Multi-Party Co-Governance and Strengthen Government-Enterprise Cooperation

The complexity and rapid iteration of generative artificial intelligence technology make it difficult for government regulation alone to comprehensively cover and effectively address all issues. As the main body of technological innovation and application of generative AI, enterprises possess deeper understanding of the technical characteristics and potential risks. Therefore, government-enterprise cooperation has become an important and necessary model.This cooperation model not only fully leverages the respective advantages of the government and enterprises to form a joint force to tackle the challenges brought by technology, but also promotes a close integration of technological innovation and market demand, driving the continuous advancement and development of generative AI technology.To achieve effective government-enterprise cooperation, specific cooperation pathways need to be clearly defined. First, the government should formulate clear cooperation frameworks and principles to provide enterprises with clear guidance and guarantees for participating in the regulatory process. Second, establishing an efficient information-sharing mechanism is key to government-enterprise cooperation. The government and enterprises should ensure timely transmission and sharing of information regarding regulatory policies, market dynamics, technological progress, and more.Finally, strengthening joint supervision and law enforcement is essential. The government should enhance routine supervision and special inspections of generative AI services to promptly identify and rectify violations. Enterprises should actively cooperate with government regulatory efforts, proactively accept supervision, and jointly maintain market order and public interest.Through joint supervision and law enforcement, illegal activities can be more effectively combated, ensuring fair competition and healthy market development. At the same time, government-enterprise cooperation can establish mechanisms for risk sharing and benefit sharing, jointly addressing challenges and risks brought by technology, thereby achieving a sustainable development of mutual benefit and win-win outcomes [17].

5.3 Clarify Enforcement Liability and Formulate Rules and Principles

Establishing clear principles for attributing liability in the use of artificial intelligence in administrative enforcement is also crucial. Since AI has not yet become an administrative enforcement subject, a liability principle of "distinguishing internal and external responsibilities" should be adopted to protect the rights of administrative counterparts while reasonably allocating legal responsibility.

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For administrative enforcement actions that are evidently unreasonable or illegal, the administrative agency should bear compensation liability. Internal responsibility allocation involves both review responsibility and technical responsibility, which requires clear definition of the rights and obligations between the administrative enforcement agency and the AI technology provider through contracts to ensure that liability arising from technical causes is clearly assigned.After the administrative agency fulfills its compensation obligations, it may seek recourse against the technology provider through civil or administrative channels.

6 Conclusion

After exploring the legal status of generative artificial intelligence, its application risks, and administrative regulation, we have gained a profound understanding of the double-edged nature of this emerging technology. The rapid development of generative AI technology undoubtedly brings unprecedented opportunities for innovation across numerous fields. However, its potential risks related to data security, algorithmic bias, and intellectual property cannot be overlooked. Therefore, administrative regulation, as a crucial means to balance technological innovation and risk control, holds significant importance. By clarifying the legal status of generative AI, improving administrative enforcement procedures, establishing legal responsibilities for AI in administrative enforcement, and strengthening joint supervision and enforcement, we can effectively address the challenges posed by generative AI and ensure its steady progress within a lawful and compliant framework.

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