Opinions of the Supreme People's Court on the Adjudication of Disputes Involving Artificial Intelligence in Accordance with the Law[1]

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In order to fully implement the guiding principles of the 20th National Congress of the Communist Party of China and all plenary sessions of its 20th Central Committee, support and safeguard the accelerated development of new quality productive forces through rigorous and impartial justice, and guide people's courts at all levels in adjudicating disputes involving artificial intelligence in accordance with the law, the following Opinions are issued pursuant to the Civil Code of the People's Republic of China, the Cybersecurity Law of the People's Republic of China, the Data Security Law of the People's Republic of China, the Copyright Law of the People's Republic of China, the Anti-Unfair Competition Law of the People's Republic of China, the Law of the People's Republic of China on the Protection of Consumer Rights and Interests, the Personal Information Protection Law of the People's Republic of China, the Civil Procedure Law of the People's Republic of China and other relevant laws, taking into account the practical circumstances of adjudication by the people's courts.

I. General Requirements

1. Guiding Principles

Guided by Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era, thoroughly implement Xi Jinping Thought on the Rule of Law and conscientiously implement General Secretary Xi Jinping's important thinking on building China into a cyber power. Fully recognise that artificial intelligence is a major driving force behind a new round of scientific and technological revolution and industrial transformation. Give equal emphasis to development and security, combine the promotion of innovation with law-based governance, adjudicate disputes involving artificial intelligence fairly and in accordance with the law, and promote the safety, reliability, controllability and fairness of the application of artificial intelligence technologies. Provide effective judicial services and safeguards for comprehensively advancing the building of a strong country and national rejuvenation through Chinese modernisation.

2. Basic Principles

Uphold a people-centred approach. Harness the guiding role of judicial decisions, actively encourage artificial intelligence to enhance human well-being, and effectively strengthen judicial protection of rights and interests relating to people's livelihoods in the digital age. Actively and

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prudently explore and improve adjudicatory rules and mechanisms in the field of artificial intelligence, including algorithmic ethics and algorithmic rules, and make full and effective use of existing legal provisions. Properly address conflicts between rules, social risks and ethical challenges arising from the development of artificial intelligence technologies, and promote improvements to the corporate social responsibility framework for artificial intelligence enterprises. Give particular attention to preventing and eliminating algorithmic discrimination, protect individuals' rights to information and choice in automated decision-making in accordance with the law, and prevent and regulate abuses of artificial intelligence technologies that infringe the public's lawful rights and interests, thereby promoting artificial intelligence that serves the people and the public good.

Support innovation-driven development. Respect the underlying principles of scientific and technological innovation and the practical development of the artificial intelligence industry. Support scientific, technological and industrial innovation through judicial decisions consistent with the spirit of laws and policies and the principles governing technological development. Explore avenues for judicial protection of emerging rights and interests, and continuously strengthen protection for artificial intelligence innovations, innovators, innovative activities and the innovation environment. Balance the protection of rights and interests with technological and industrial development in an inclusive and prudent manner, fostering an environment that encourages exploration and tolerates failure. Regulate monopolistic conduct and unfair competition involving artificial intelligence technologies in accordance with the law, safeguard equal rights, equal opportunities and equal application of rules for relevant parties in developing and using artificial intelligence technologies, and strengthen equal protection of the rights and interests of business entities, including small and medium-sized enterprises. Through lawful, fair and efficient adjudication of disputes involving artificial intelligence, actively guide and promote the deep integration of the internet, big data and artificial intelligence with the real economy, support the cultivation and growth of the artificial intelligence industry, and maximise the potential of artificial intelligence to enable high-quality economic and social development.

Maintain firm safeguards for security. Determine legal liability accurately in accordance with the law, taking into account the specific harm that artificial intelligence may cause to the lawful rights and interests of civil-law subjects in different applications, and the nature and magnitude of the risks. Distinguish differences in technical principles, risk spillovers and capacity for control among different types of large models, including general-purpose and specialised models and open-source and closed-source models, and allocate legal liability reasonably among developers, providers, users and other parties. Fully and accurately implement the criminal justice policy of combining leniency with severity. Resolutely impose severe punishment in accordance with the law for offences deliberately committed using artificial intelligence, including offences endangering national security, infringing citizens' rights and interests or disrupting social order. Deal prudently and in accordance with the law with innovative activities in artificial intelligence research, development and application, observing the principles of legality in criminal offences and penalties and proportionality of punishment to the offence and criminal responsibility.

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II. Properly Adjudicating Tort Cases Involving Artificial Intelligence in Accordance with the Law and Effectively Protecting the Lawful Rights and Interests of Civil-Law Subjects

3. Accurately apply the principles for attributing tort liability involving artificial intelligence.

Apply accurately the relevant provisions of the Civil Code, the Personal Information Protection Law, the Product Quality Law, the Road Traffic Safety Law and other applicable laws to determine legal liability arising from infringements of civil rights and interests through the use of artificial intelligence. Where the law does not expressly provide for strict liability or a presumption of fault, determine whether the actor bears tort liability in accordance with the fault-based liability principle set out in paragraph 1 of Article 1165 of the Civil Code. In determining whether, and to what extent, the actor was at fault, comprehensively consider factors including the specific application of artificial intelligence, its degree of autonomy, technological and information transparency, potential risks and the scope of their effects; the measures taken by artificial intelligence developers, providers and other relevant parties to prevent and mitigate infringements involving artificial intelligence and the technological feasibility of such measures; and artificial intelligence users' ability to foresee and control harm that may result from tortious conduct involving artificial intelligence technologies.

4. Regulate infringements of personality rights and interests through generative artificial intelligence, including AI face-swapping, voice imitation and digital recreation of deceased persons, in accordance with the law.

The use of generative artificial intelligence to process the name, likeness or other attributes of a particular natural person or deceased person shall not violate laws or regulations or contravene public order and good morals. Unless otherwise provided by law, where, without a natural person's consent, an actor uses artificial intelligence to process that person's name, likeness or other attributes to generate a virtual digital representation by which that person can be identified, and uses or publicly discloses that representation, the people's court shall uphold, in accordance with the law, that person's claim that the actor has infringed their right to a name, right to likeness or other personality rights and interests. Unless otherwise provided by law, where, without a natural person's consent, that person's voice is used as training material to generate a synthetic voice by which the person can be identified, by imitating their vocal timbre, intonation, pronunciation style or other vocal characteristics, the people's court shall uphold, in accordance with the law, that person's claim that the actor has infringed their rights and interests in their voice. Where a generated or synthesised virtual digital representation or voice identifying a particular natural person is manipulated to engage in improper conduct or make false statements, thereby diminishing the social standing of that person or another person, the people's court shall determine in accordance with the law that this constitutes an infringement of the right to reputation. Where artificial intelligence technologies are used without authorisation to create or use a virtual digital representation of a deceased person, thereby infringing the deceased person's name, likeness, reputation or other protected interests, and the deceased person's close relatives seek to hold the

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actor civilly liable pursuant to Article 994 of the Civil Code, the people's court shall uphold the claim in accordance with the law.

5. Regulate infringements of natural persons' right to privacy through artificial intelligence, including online doxxing and crowdsourced identification and exposure, in accordance with the law.

Where artificial intelligence is used, for the purpose of prying into private matters, to track and analyse publicly available information concerning a particular natural person, including telephone numbers, online accounts and social media information, in order to obtain private information, or where private information so obtained is disclosed or made public, or the information obtained is used to disturb the tranquillity of private life, such conduct shall be held to infringe the right to privacy. The use of artificial intelligence to photograph, film, peep into, eavesdrop on or otherwise intrude upon a particular natural person's private spaces or private activities shall be held to infringe the right to privacy, unless otherwise provided by law or expressly consented to by that person.

6. Determine civil liability for infringements of personal information rights and interests during artificial intelligence training in accordance with the law.

The processing, within a reasonable scope, of personal information that individuals have themselves made public or that has otherwise been lawfully made public, for the purpose of training artificial intelligence models, shall generally not be held to infringe personal information rights and interests where the individual has not expressly refused such processing. Where the processing has a significant impact on the individual's rights and interests, the individual's consent shall be obtained in accordance with the law. In determining what constitutes a reasonable scope, comprehensively consider factors including the necessity and appropriateness of the purpose of personal information processing and the functions of the model; the type and sensitivity of the personal information involved and its potential impact on individual rights and interests; and the circumstances in which the individual made the information public and the scope of use that could reasonably have been anticipated.

7. Determine the tort liability of generative artificial intelligence service providers prudently.

Where content automatically generated by generative artificial intelligence infringes another person's right to reputation, right to privacy or other personality rights and interests, and, after receiving notice from the rights holder, the generative artificial intelligence service provider fails promptly to take necessary measures, such as ceasing to generate infringing content, the provider shall bear tort liability for the resulting harm in accordance with the law. The notice shall contain prima facie evidence of the infringement and the rights holder's true identity information. Where an internet user maliciously induces generative artificial intelligence to generate infringing content, including by entering infringing prompts, and thereby causes harm to another person, that user shall bear tort liability in accordance with the law. Where, after receiving notice from the rights holder, the generative artificial intelligence service provider fails promptly to take necessary

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measures, such as ceasing to generate infringing content or blocking the relevant generation instructions, and the rights holder seeks to hold the internet user and the service provider civilly liable pursuant to Article 1195 of the Civil Code, the people's court shall uphold the claim in accordance with the law.

8. Apply the system of injunctions against infringements of personality rights in accordance with the law.

Where a natural person, legal person or unincorporated organisation has evidence that an actor is using, or is about to use, artificial intelligence to engage in unlawful conduct infringing its personality rights and interests, and failure to stop that conduct promptly would cause irreparable harm to its lawful rights and interests, it may apply to the people's court for an order requiring the actor to cease the conduct or requiring the relevant network service provider or generative artificial intelligence service provider to cease providing the relevant services. The people's court may issue an injunction against infringement of personality rights in accordance with the law. In issuing such an injunction, the people's court shall adopt appropriate injunctive measures in light of factors including the type of personality right infringed, the manner of the unlawful conduct, and the scope and severity of the potential harm. The measures shall not exceed what is necessary.

9. Determine liability for artificial intelligence products accurately.

The people's courts shall, in accordance with the definition of a "product" in the Product Quality Law, accurately identify artificial intelligence products embodied in tangible objects and apply the corresponding legal rules. Where a defect in an artificial intelligence product causes harm, the producer and seller shall bear product liability in accordance with the law. In determining whether an artificial intelligence product presents an unreasonable danger to personal or property safety, comprehensively consider factors including the product's nature and intended use, its capacity for autonomous learning, upgrades and updates, the degree of user control over the system, and compliance with relevant national and industry standards. Particular attention shall be paid to whether the producer and seller have provided truthful explanations and clear warnings concerning the product's intended applications, inherent limitations and foreseeable risks.

10. Regulate infringements of consumers' lawful rights and interests, including discriminatory pricing based on big data and impersonation of celebrities to promote sales, in accordance with the law.

Where a business operator uses algorithms to impose unreasonable differential treatment in transaction prices or other terms for the same goods or services, thereby infringing another person's lawful rights and interests and causing harm, the people's court shall determine in accordance with the law that the operator bears the corresponding tort liability. In determining whether differential treatment is unreasonable, comprehensively assess whether the reasons for that treatment are legitimate, sufficient and non-discriminatory, taking into account whether it substantially restricts or impairs consumers' rights to information, independent choice or fair transactions; whether it establishes individualised transaction terms based on information such as

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consumers' purchasing preferences, willingness or ability to pay, or browsing history; and whether it contravenes the principle of good faith or business ethics. Where a business operator uses artificial intelligence to impersonate a celebrity to promote goods or services and such conduct constitutes fraud, the people's court shall uphold, in accordance with the law, a consumer's claim for punitive damages pursuant to Article 55 of the Law on the Protection of Consumer Rights and Interests.

11. Determine liability for compensation arising from traffic accidents involving autonomous vehicles and vehicles equipped with driver-assistance functions in accordance with the law.

Where an autonomous vehicle or a vehicle equipped with driver-assistance functions causes harm in a traffic accident while travelling on a road, liability for compensation shall be borne in accordance with the relevant provisions of the Civil Code and the Road Traffic Safety Law. Where a product defect in a vehicle causes a traffic accident resulting in harm, and a party seeks to hold the producer or seller liable for compensation pursuant to Chapter IV of Book Seven of the Civil Code, the people's court shall uphold the claim. Where a defect in a vehicle equipped with driver-assistance functions combines with the driver's negligent or otherwise culpable conduct to cause the same harm, and a party seeks compensation from both the driver and the vehicle producer or seller pursuant to Article 1172 and other relevant provisions of the Civil Code, the people's court shall uphold the claim in accordance with the law. Where a vehicle producer or seller makes false or misleading representations concerning the level of automation, degree of intelligence, performance, intended use or other characteristics of an autonomous vehicle or a vehicle equipped with driver-assistance functions, thereby impairing consumers' lawful rights and interests, the people's court shall uphold, in accordance with the law, a consumer's claim to hold the producer or seller civilly liable under the Civil Code, the Law on the Protection of Consumer Rights and Interests or other applicable laws. To ascertain the cause of a road traffic accident, the people's court may require parties controlling the relevant data, including vehicle producers, sellers and operators, to provide, to the extent necessary, authentic and complete records of autonomous-driving or assisted-driving events and other data required to establish the facts of the case.

III. Properly Adjudicating Intellectual Property Disputes Involving Artificial Intelligence in Accordance with the Law and Safeguarding High-Quality Development and a High Level of Security in Artificial Intelligence

12. Regulate infringements of intellectual property rights involving artificial intelligence in accordance with the law.

Where content generated by artificial intelligence infringes another person's copyright, the people's court shall determine the liability of artificial intelligence developers, providers and users reasonably and in accordance with the law, comprehensively considering factors including the type of artificial intelligence service, industry characteristics, sources of training data, each party's degree of involvement, necessary measures taken and benefits obtained. Where an artificial

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intelligence developer raises a defence of non-infringement, it shall be ordered to substantiate that defence by providing information on the sources of training data, records of the training process, the model's operating mode, its scientific and theoretical basis, and other supporting material. A rights holder alleging that an artificial intelligence provider has infringed its copyright through algorithmic technologies shall provide relevant evidence. Where an artificial intelligence user knows or ought to know of the existence of a prior work, uses artificial intelligence to generate a work substantially similar to that prior work and has no reasonable defence, the people's court shall uphold the prior work's rights holder's claim for tort liability. A person who uses artificial intelligence to engage in infringement or counterfeiting, false advertising, manipulation of traffic or transaction volumes, or other conduct that infringes another person's rights or constitutes unfair competition shall bear the corresponding liability in accordance with the law.

13. Determine the legal liability of parties involved in artificial intelligence-related open-source software reasonably and in accordance with the law.

When adjudicating cases involving open-source software and determining the tort liability of its developers and providers and subsequent developers and providers, comprehensively consider factors including the type of open-source licence, the specific restrictions on rights, security and compliance measures, and the extent of information disclosure. Grant appropriate exemptions from liability to open-source software developers and providers in accordance with the law. Where open-source software developers or providers make available, free of charge and on an open-source basis, certain code modules needed for the research and development of artificial intelligence-related software, and publicly explain their functions and security risks, and another person's use of those modules results in an infringement, the people's court may determine that the open-source software developers or providers bear no tort liability.

14. Regulate the grant and confirmation of patent rights for inventions and creations involving artificial intelligence in accordance with the law.

Where an invention or creation involving artificial intelligence employs technical means that follow the laws of nature, solves a technical problem and achieves a technical effect consistent with the laws of nature, the people's court shall determine in accordance with the law that it constitutes subject matter protected by the Patent Law, unless it violates the law or social morality, harms the public interest, or involves no substantive contribution by a natural person. Where a natural person uses artificial intelligence to complete an invention or creation and makes a creative contribution to its substantive features, that person shall be recognised as an inventor. Where the technical solution is described in the specification of a patent involving artificial intelligence to an extent that enables a person of ordinary skill in the art to carry out the invention, the requirement of sufficient disclosure for patent grant shall be deemed satisfied.

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15. Determine liability for breach in the performance of artificial intelligence-related technology contracts prudently and in accordance with the law.

When adjudicating disputes concerning contracts for artificial intelligence-related technology development, transfer, licensing, consultancy or services, the people's courts shall determine liability for breach in accordance with the law and the contractual terms, giving full consideration to matters including the characteristics of artificial intelligence research and development and whether the technology developer has made reasonable efforts.

16. Regulate the use of data relating to artificial intelligence in accordance with the law.

Where artificial intelligence developers lawfully obtain data through collection and generation, derivation and creation, acquisition by assignment, licensing or other means, and enjoy corresponding rights and interests in those data, the people's courts shall protect those rights and interests. Data or datasets constituting compilations or meeting the requirements for other categories of works shall be protected under the Copyright Law. Data or datasets constituting trade secrets shall be protected under the Anti-Unfair Competition Law. For data or datasets that do not constitute trade secrets, where the alleged infringing conduct violates Article 13 of the Anti-Unfair Competition Law, liability shall be borne in accordance with the law. Business operators that use data, algorithms or other technological means to conclude monopoly agreements, abuse a dominant market position or engage in other such conduct shall bear the corresponding liability in accordance with the law. Persons who compromise the operational security of artificial intelligence by technological means, including fabricated disruptive data, malicious data labelling or adversarial example attacks, shall bear the corresponding liability in accordance with the law.

IV. Improving Procedural Rules for Adjudicating Disputes Involving Artificial Intelligence and Punishing Unlawful and Criminal Conduct, Including Obstruction of the Administration of Justice through Generative Artificial Intelligence, in Accordance with the Law

17. Ascertain the facts of disputes involving artificial intelligence accurately and in accordance with the law.

Given the highly technical and specialised nature of disputes involving artificial intelligence, the people's courts shall strengthen procedural guidance and explanations in accordance with the law, guiding the parties to submit evidence concerning disputed facts promptly and comprehensively. Where, for objective reasons, a party is unable to collect evidence independently, it may apply to the people's court to investigate and collect the evidence; where necessary, the people's court may investigate and collect evidence on its own initiative. Where a party applies for preservation of evidence to secure evidence relating to key technologies, the people's court shall examine the application promptly and in accordance with the law. Where a party controlling documentary evidence, electronic data or other evidence refuses to produce it without justification, and the opposing party asserts that its contents are adverse to the party controlling it, the people's court may find that assertion established. In addressing specialised issues concerning the technical principles or operating mechanisms of artificial intelligence, the people's courts shall, in

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accordance with the law, make full use of people's assessors, appraisers, expert assistants and technical investigators to assist in establishing the facts.

18. Explore improvements to the rules for examining evidence in disputes involving artificial intelligence.

The people's courts shall give full consideration to the complexity of artificial intelligence technologies, the opacity of system operations and the particular characteristics of evidence collection, and continuously improve evidentiary review rules to accommodate technological developments. Particular attention shall be paid to the authenticity and integrity of the processes by which electronic data are generated, collected, stored and transmitted. Different priorities for evidentiary review shall be specified for evidence produced through different information technologies, including big data and blockchain. In examining big data analysis reports, particular attention shall be paid to matters including the sources of the underlying data, data-cleaning rules and the scientific soundness of the analytical methods. In examining evidence preserved using blockchain, particular attention shall be paid to matters including the authenticity of the data before their placement on the blockchain and the reliability of the technological platform. Where a party submits artificial intelligence-generated content as evidence of infringement, the people's court shall assess it by comprehensively considering factors including the design of the prompts and their influence on the generated results, the degree of similarity between the generated content and the work in which rights are asserted, consistency across repeated tests, and model training, algorithm design and mechanisms for filtering generated content.

19. Regulate improper evidence gathering through artificial intelligence and other conduct obstructing the administration of justice in accordance with the law.

Where a party exploits the autonomous learning and decision-making capabilities of artificial intelligence to obtain false evidence through human intervention or deception, including deleting or altering labels identifying generated or synthesised content, entering specific instructions, selectively presenting results or employing adversarial interference, and fabricates the basic facts of a civil case to engage in sham litigation with the intention of harming state interests, the public interest or another person's lawful rights and interests, the people's court shall dismiss its claims in accordance with the law and impose a fine or detention according to the seriousness of the circumstances. Where the conduct constitutes a criminal offence, criminal liability shall be pursued in accordance with the law. Where a participant in litigation or another person uses artificial intelligence to fabricate evidence and obstructs the people's court's adjudication of a case, the matter shall be dealt with under Article 114 of the Civil Procedure Law. Where litigation documents, case-law research reports or other materials submitted by a participant in litigation have been generated using artificial intelligence, that participant shall carefully verify the authenticity and accuracy of the relevant laws, judicial interpretations, cases and other content before submitting them to the court, disclose the use of artificial intelligence assistance when submitting them, and bear responsibility in accordance with the law for the authenticity and accuracy of the content.

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20. Punish criminal activities carried out using artificial intelligence in accordance with the law.

Where the use of artificial intelligence to commit fraud, insult, defamation, damage to business reputation or commodity reputation, infringement of citizens' personal information, unlawful acquisition of computer information system data, production, sale or dissemination of obscene materials, or other conduct constitutes a criminal offence, criminal liability shall be pursued in accordance with the law. Where, after activating a driver-assistance function, an actor uses privately installed accessories to evade monitoring by the driver-assistance system, causing a road traffic accident, and such conduct constitutes a criminal offence, criminal liability shall be pursued in accordance with the law.

V. Strengthening Adjudicatory Guidance in Disputes Involving Artificial Intelligence and Continuously Improving Working Mechanisms

21. Make full use of diversified dispute resolution mechanisms.

The people's courts shall actively employ diversified dispute resolution mechanisms to resolve disputes involving artificial intelligence appropriately. They shall promote coordinated mechanisms with authorities responsible for the artificial intelligence industry, sector-specific and specialised mediation organisations, artificial intelligence experts and academics, and other relevant parties to undertake joint dispute resolution and ensure effective prior mediation. Within their adjudicatory functions, they shall promote the prevention and resolution of disputes involving artificial intelligence in accordance with the rule of law. Through public hearings, explanation of the law by reference to cases and other means, they shall actively clarify rights and obligations, define the boundaries of permissible conduct, and harness the exemplary and guiding role of judicial decisions to prevent disputes involving artificial intelligence at their source and resolve them promptly.

22. Strengthen adjudicatory supervision and guidance.

Promote and standardise the exercise of jurisdiction by higher-level courts over cases otherwise falling within the jurisdiction of lower-level courts, strengthen the exemplary and guiding role of adjudication, and ensure effective adjudicatory supervision and guidance. Disputes involving artificial intelligence that concern significant interests, present difficult and complex issues of a new type, have significance for the establishment of rules, require uniform standards for the application of law, or present similar circumstances shall be taken up and adjudicated by higher-level people's courts. Make full use of the People's Courts Case Database and strengthen case-based guidance to promote uniform application of the law and improvements to artificial intelligence governance rules.

23. Strengthen interdepartmental cooperation and coordination.

Make full use of judicial functions to serve state and social governance through judicial recommendations, cooperative mechanisms and other means. Strengthen coordination and

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cooperation with cyberspace affairs authorities, public security organs, procuratorates, market regulation authorities and other relevant bodies, and establish and implement enduring mechanisms for comprehensive governance. Guide relevant enterprises, platforms and industry associations in conducting standardised self-governance, and promote coordinated protection throughout the artificial intelligence lifecycle through industry self-regulation, administrative oversight and judicial safeguards.

24. Strengthen international judicial exchanges and cooperation.

Adjudicate cross-border disputes involving artificial intelligence and data appropriately. On the basis of mutual respect, equality and mutual benefit, advance international exchanges and cooperation in adjudication relating to artificial intelligence, strengthen coordination and mutual learning concerning rules, promote a fairer, more reasonable, inclusive and open artificial intelligence governance system, and foster and protect the diversity of artificial intelligence ecosystems and human civilisation.

Supreme People's Court

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