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On January 20, 2025, DeepSeek, a fast-growing Chinese artificial intelligence (“AI”) company, released a new open-source AI model that may transform the global AI landscape. While DeepSeek’s AI models can be operated locally without cloud dependency (DeepSeek’s V3 source code is offered under the [MIT license](#)), users utilizing DeepSeek’s SaaS interfaces will need to comply with its [Terms of Use](#) (“TOU”). The TOU has significant implications for IP ownership, confidentiality, data security and privacy.

- 1. Ownership and Confidentiality.**
DeepSeek’s TOU grants users ownership of their inputs and AI-generated outputs. However, DeepSeek reserves the right to use both inputs and outputs to improve its own services.

Since DeepSeek may reuse inputs and outputs to improve its services, users should not expect exclusive control or stringent confidentiality protections over them. Sensitive or confidential information submitted to DeepSeek’s platform may be used for training AI models, potentially exposing such data to public disclosure or third-party access.

Therefore, it is crucial for users to implement clear policies and technical safeguards to prevent the leakage of confidential or sensitive information through AI services.

- 2. Infringement and Liability.**
Limited information is available under the TOU regarding the training data used for DeepSeek’s AI platform and its “responsible AI” practices. DeepSeek does not offer an indemnity to users. So there is no indemnity for intellectual property infringements related to training data, placing liability for such breaches on the users. Users also agree to indemnify DeepSeek for liabilities, damages and costs arising from breaches of the TOU, applicable laws, third-party rights, fraud, illegal acts, or intentional misconduct or gross negligence.

It remains unclear whether DeepSeek’s platform will include filters to detect and prevent infringement of third-party copyrights, which may leave users vulnerable to such risks.

- 3. Attribution and Other Ambiguous Requirements.**
Users must indicate when outputs are generated by AI and comply with vague guidelines, such as using the AI services in accordance with the “*principles of voluntariness, equality, fairness, and good faith*” and not using it to “*seek unjust benefits*” or “*disrupt the normal order of the internet platform*” or “*other uses... that may harm DeepSeek’s interests.*” DeepSeek may suspend or terminate accounts in the event of non-compliance with the above requirements.

Therefore, users, particularly those integrating DeepSeek into client-facing products, should be aware that DeepSeek may broadly interpret its vague restrictions, potentially limiting access to the AI services or initiating legal action against alleged breaches.

- 4. Personal Data.**
DeepSeek’s [privacy policy](#) (“**Privacy Policy**”) grants DeepSeek broad rights to collect and use user data from inputs and user devices. DeepSeek’s permitted uses include monitoring interactions, analyzing behavior, improving its technology, complying with legal obligations, performing tasks in the public interest, and protecting the “*vital interests*” of users and others. The Privacy Policy also allows DeepSeek to share user information with third-party advertising and analytics partners.

Since personal data is stored on servers in China, where government access may be permitted under certain circumstances according to local laws, it is unclear how such access and rights to personal information may be interpreted under Chinese law.

As with any use of an AI tool, companies should carefully review the AI tool’s privacy policy prior to use to ensure it comports with their internal data security and retention policies, as well as external obligations to customers or users.

- 5. Governing Law and Jurisdiction.**
DeepSeek’s TOU is governed by Chinese law, with disputes resolved exclusively in the court having jurisdiction over the registered office of Hangzhou DeepSeek Artificial Intelligence Co., Ltd. This may limit users’ ability to bring claims outside of China.

In addition, the current governing law and jurisdiction may pose challenges, for example, pursuant to Article 4 of the Chinese Interim Measures for Generative AI Services Act, which requires AI developers and users to uphold “*core socialist values.*”

- 6. Amendments.**
Changes to DeepSeek’s TOU are deemed accepted by users with continued use, even without explicit consent, potentially leaving users unaware of significant changes that could affect their rights.

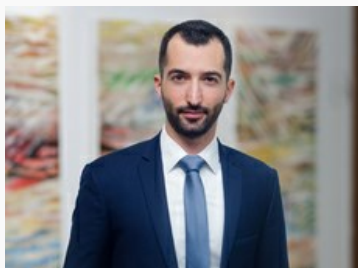
- 7. Recommendations.**
The following are general guidelines and recommendations that may apply to DeepSeek, as well as the use of any other AI tool (depending on the applicable terms of use):
 - A. Avoid Inputting Sensitive Data:** Refrain from inputting confidential, sensitive or personal information unless clear privacy guarantees are in place and risks are fully understood.
 - B. Check for Compliance:** Ensure the AI tool complies with the highest regulatory standards, such as GDPR, the EU AI Act, or other applicable privacy and AI regulations, before use.
 - C. Encrypted AI Tools:** Select AI tools that provide encryption and strong data protection policies.
 - D. Anonymized Third-Party Tools:** Use third-party tools that ensure confidential or personal information is not used to train the AI model.
 - E. Local Use:** Consider running AI models locally on your servers or computer to retain full control over your data.
 - F. No Improvement Rights:** If possible, restrict the AI platform from using input data to improve its services.
 - G. Flow Down Terms:** When integrating AI tools into client-facing products, ensure that the platform’s restrictions are reflected in end-user terms, and proper attribution is provided.

As with all AI models, it is essential for users to thoroughly review the terms of the AI tool to understand the legal risks associated with using such a tool.

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