

# Limitations and Exceptions to Copyright in China

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This overview on copyright flexibilities in China consists of two parts: first, answers to a questionnaire on the state of copyright law and second, a table organizing the limitations and exceptions to copyright in China's laws. The first part includes an analysis of copyright flexibilities and the current political context of copyright provided by Hong Xue. The questionnaire was given to participants at a meeting on Limitations and Exceptions to Copyright hosted by IViR and PIJIP last December. The authors reviewed the answers before this document was uploaded. The second part was compiled by PIJIP fellow Marcela Palacio Puerta. The compilation is part of a larger project to map flexibilities in copyright law, and input is appreciated. Please send comments, corrections, or suggestions to [pjip@wcl.american.edu](mailto:pjip@wcl.american.edu).

## I. Questionnaire on Copyright Flexibilities Answers by Hong Xue

**1. Please provide a short (e.g. 250 word) description of your country or region's copyright legal framework and current statutory provisions and judicial doctrines providing for copyright limitations and flexibilities. You may include a general categorization (e.g. - closed list only, list plus fair use, list plus fair dealing) as well as a description of any notable or novel aspects to the law (e.g. a flexible quotation right, any open-ended exceptions, provisions for equitable remuneration, etc.). Please include a copy or link to your law.**

China is a civil law country that protects copyright based on statutes rather than judicial cases. The Copyright Law [[http://www.law-lib.com/law/law\\_view.asp?id=310803](http://www.law-lib.com/law/law_view.asp?id=310803)] that was enacted in 1990 and had been revised twice (in 2001 and 2010) is the primary legal source for copyright protection. In the ambit of the Copyright Law, there are a couple of regulations issued for the implementation of a variety of aspects of copyright protection, such as protection of computer software copyright or right of communication of works via information networks. China's copyright limitations and exceptions are in closed list, which is specified in the Copyright Law and related Regulations, in the form of free use or compulsory licensing.<sup>1</sup> Lack of a general exception clause has already prevented the use of copyright works for innovation and recreation. However, there are some flexible aspects that may facilitate access to works. For example, use of a published work for the purposes of the user's own private study, research or self-entertainment is subject to neither the right of the owner's consent nor remuneration.<sup>2</sup> Quotation from a published work for the purposes of introduction of, or comment on, a work, or demonstration of a point must be appropriate, although degree of appropriateness is not defined.<sup>3</sup>

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<sup>1</sup> Chinese Copyright Law, arts. 22 & 24 (1991) (P.R.C.), *unofficial translation provided by WIPO at* [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=125980](http://www.wipo.int/wipolex/en/text.jsp?file_id=125980).

<sup>2</sup>Id. at art. 22(1)

<sup>3</sup> Id. at art. 22(5)

**2.a. How might your copyright law apply to use of illustrative (rather than critical) excerpts from a copyrighted fiction film in a commercial documentary?**

It can generally be deemed as a kind of “quotation,” whose formality is not defined in the Copyright Law, provided that the illustrative use does not go beyond “appropriate” scope [excerpts as such], truthfully mentions the name of the work and right owner and would not infringe the other rights enjoyed by the copyright owner.<sup>4</sup>

**2.b. How might your copyright law apply to digitization of a library’s special collection for the purpose of providing some level of online access to the general public?**

Under the Regulations for Protection of Right of Communication via Information Network, a library may only provide access via information network to the customers within the premises of the library, without subject to right owner’s consent or remuneration.<sup>5</sup>

**2.c. How might your copyright law apply to the following example of user-generated content that transforms a copyrighted work in a manner that is a spoof, but which lacks any criticism or comment on the copyrighted work itself: [bit.ly/jrLT9h](http://bit.ly/jrLT9h) (Guitar Baby).**

No, no specific provision at all. Egao (evil doing) is very popular among Chinese Internet community.<sup>6</sup> These spoofs are everywhere on the Internet. Never all the pop-culture products have become their raw materials. Avatar, for example, was remixed into a story of local community against forceful “demolition” of residence by municipal administrative staff. Such use of work could arguably be deemed as “quotation.”

Extending limitations had happened in court trials. For example, a group of students from Beijing Cinematographic Academy, for completion of a film project, produced a movie by adapting a novel without permission of the novelist. The movie was later showed in the Academy. Since the educational exceptions permissible under the Copyright Law are limited to translation and/or limited-number reproduction of copyright works, the court innovatively analogizes shooting a movie and public screening to the education category and exempted the students’ infringement liability.

**3. Please provide a short (e.g. 250 words) description of the current political context around copyright law in your country. Please indicate, where relevant, whether any reform has been planned, the timeline for reform proposals, a description of any current or potential proposals or campaigns for expanding limitations and exceptions and any use cases that are prominent in the political conversation.**

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<sup>4</sup> *Id.* at art. 22(1)

<sup>5</sup> *Id.* at art. 22(8)

<sup>6</sup> Huang Qing, *Parody Can Help People Ease Work Pressure*, China Daily, July 22, 2006, at 4, available at [http://www.chinadaily.com.cn/cndy/2006-07/22/content\\_646887.htm](http://www.chinadaily.com.cn/cndy/2006-07/22/content_646887.htm)

China's Copyright Law is going to be revised for the 3<sup>rd</sup> time.<sup>7</sup> The revision plan has been launched by the State Council, which is the highest administration, in the middle of 2011. The preliminary draft will be presented to State Council Legislative Office for review, and then submitted to the Standing Committee of the National People's Congress, the highest legislature, for examination and approved. The 3<sup>rd</sup> Revision of China's Trademark Law has been going on for more than 5 years but is still under construction.<sup>8</sup> The Copyright Law revision is not likely to take less time than that. I am currently campaigning for a general exception clause plus non-exhaustive illustrative list. Other new exceptions, such as format shifting, are also being contemplated.

## II. Overview of Limitations and Exceptions in China Prepared by PIJIP Fellow Marcela Palacio Puerta

**Exceptions framework:** Closed list.

Copyright Law of the People's Republic of China, September 7, 1990- Copyright Limitations and Exceptions

- Use of a work for personal study, research or appreciation. (Art. 22.1)
- Quotation (Art. 22.2)
- Inclusion or quotation of a work in a media for reporting current events. (Art. 22.3)
- Publishing or rebroadcasting, an article of a newspaper, TV station or radio station, in another newspaper, etc of articles in current political, economic or religious topic. Unless the author precludes this publishing. (Art. 22.4)
- Publishing or broadcasting by the media of a speech delivered at a public gathering. Unless the author precludes this publishing. (Art. 22.5)
- Translation or reproduction of a work for teaching or researching. (Art. 22.6)
- Use of a published work by a state organ for the purpose of fulfilling its official duties. (Art. 22.7)
- Libraries, archives, memorial hall, and museum: reproduction of a work for the purpose of displaying, or preservation of a copy, of the work. (Art. 22.8)
- Gratuitous live performance of a published work. (Art. 22.9)
- Drawing, photographing or video-recording, of a work placed in a public place. (Art. 22.10)

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<sup>7</sup> *Introduction to 3rd Revision Draft of China Copyright Law*, Bridge IP Law Commentary, <http://www.chinaiplawyer.com/introduction-3rd-revision-draft-china-copyright-law/> (last visited April 9, 2012).

<sup>8</sup> *On the 3rd Revision of Chinese Trademark Law*, Unitalen Attorneys at Law, <http://www.unitalen.com/html/node/36170-1.htm> (last visited April 9, 2012).

- Translation of a published work of a Chinese citizen, legal entity or other organization from Han language into minority nationality languages. (Art. 22.11)
- Transliteration of a published work into Braille for publication. (Art. 22.12)
- Compilation in textbooks for the purpose of compiling and publishing textbooks for the nine-year compulsory education and for national education planning, provided that remuneration is paid. (Unless the author declares in advance that the use of his work is not permitted). (Art. 23)