

XI'AN JIAOTONG-LIVERPOOL UNIVERSITY LIBRARY

COPYRIGHT AND FAIR USE

1. Introduction

The purpose is to set out the terms and conditions for using library's resources in order to protect staff and students of Xi'an Jiaotong-Liverpool University (hereinafter referred to as 'the University') from violating the law and to help them carry out teaching, learning and researching activities under the permission of copyright owners or other representatives.

Copyright and fair use are complex concepts and this guide cannot cover all the finer points of them. A section of further reading is included at the end of this document to provide additional help.

2. Key Concepts of Copyright

- a) Copyright can be defined as the exclusive and assignable legal right entitled to the copyright owner for a fixed number of years, to print, publish, perform, film, or record literary, artistic, dramatic or musical works. Anything that is written, printed, recorded or produced in any forms is subject to copyright. Copyright covers printed and electronic material, illustrations, films, recorded music, computer software and all the other intellectual property.
- b) According to the copyright regulations in China, copyright is a mixed type of legal right combining personal rights and property rights. It is not fixed but developing with the advancement of the society.
- c) Copyright provides protection for a material for a specific period of time. The material is considered to be open content beyond this specific time period. According to the *Copyright Law of the People's Republic of China*,
 - i. The term of protection of the rights of authorship, alteration, and integrity of an author shall be unlimited.
 - ii. The term of protection of the right of publication, the right of exploitation and the right to remuneration in respect of a work of a citizen shall be the life time of the author and fifty years after his death, expiring on December 31st of the fiftieth year after his death. In the case of a work of joint authorship, such term shall expire on December 31st of the fiftieth year after the death of the last surviving author.
 - iii. The term of protection of the right of publication, the right of exploitation and the right to remuneration in respect of a work where the copyright belongs to a legal person or entity without legal personality, or in respect of a work created in the course of employment where the legal person or entity without legal personality enjoys the copyright (except the right of authorship), shall be fifty years, expiring on December 31st of the fiftieth year after the first publication of such work, provided that any such work that has not been published within fifty years after the completion of its creation shall no longer be protected under the Law.
 - iv. The term of protection of the right of publication, the right of exploitation and the right to remuneration in respect of a cinematographic, television, video-graphic or photographic work shall be fifty years, expiring on December 31st of the fiftieth year after the first publication of such work, provided that any such work that has



not been published within fifty years after the completion of its creation shall no longer be protected under the Law.

3. Fundamental Principles of Fair Use

Under certain conditions, it is permitted to copy the copyright protected materials for private study or research purposes. This kind of permission is referred to as 'fair use' or 'fair dealing'. But not everything is within fair use. To determine whether a use is or is not a fair use, the following four factors must be all applied:

- a) **The nature of the copyrighted work:** The work must be published. Published works refer to those works that have been made public by the copyright owners themselves or other persons under license. The copying of unpublished works is usually not considered as fair use.
- b) **The purpose of the use:** The copying aims at private study, teaching, research, religious affairs, philanthropy or meeting the public cultural needs, and has no commercial purposes.
- c) **The amount or substantiality of the portion used:** Although the law does not set exactly quantity limits, generally it is less likely you are within fair use if you:
 - i. use a large portion of a copyrighted work
 - ii. use the 'heart' of a copyrighted work
 - iii. repeatedly use something under fair use when you should seek permissions
 - iv. create a new work which is similar to the original work and/or appeals to the same audience as the original
- d) **The effect of the use on the potential market for the copyrighted work:** The normal use of the work shall not be affected, nor shall the legitimate rights of the copyright owner be unreasonably damaged.

4. Fair Use of XJTLU Library's Resources

The concept of fair use is complex and flexible. Whether or not you are within the boundaries of fair use depends on the facts of your particular situation. This flexibility of fair use is critical in order for the law to adapt to changing technologies and to meet innovative needs of higher education. Therefore, rather than spelling out the rules, some common practices are provided hereby as suggestions.

It is always suggested that you acknowledge the source when using the others' works. Authors' name, journal title, the publisher's copyright notices, or other means of identification of the material shall not be removed or altered. Even when you use external online material, you should always credit the source of your information.

- a) Non-electronic resources
 - i. All collections of books, journals, newspapers, audio-visual materials and other non-electronic materials in XJTLU Library are copyrighted. The Library resolutely resists illegal publications.
 - ii. According to the *Copyright Law of the People's Republic of China*, for the purposes of display or preservation, the Library can wholly reproduce printed literature resources such as books, journals, newspapers and dissertations.
 - iii. For individuals,

- Copying of a chapter of a print book (no more than 1/3 and never the entire book), or an article of a periodical or newspapers is usually considered as fair use. But the material you would like to copy must be published.
- Usually, audio and video products, computer disk or CDs cannot be reproduced.
- It is impossible to define how many words you can copy (e.g., 'you can copy 250 words from an article'). Instead, what matters is the proportion that you copy. Copying of 10% of an article or essay is more likely to be considered as fair use, while copying 50% is definitely not fair use. Thus, be careful when you copy or use the original work.
- It is suggested that you contact the copyright owner to obtain permissions in order to use a large amount of the contents in the copyrighted work.
- Do not make multiple copies of a work or different works which could substitute the purchase of books or periodicals. For example, you should avoid photocopying different chapters of a work at separate time to get the whole work for your own use.
- Do not copy and use the same work (part of the same work) repeatedly unless you have obtained permissions from the copyright owner.
- When you intend to use the copyrighted work for commercial use, do contact the copyright owner for permissions.

b) Electronic resources

- i. Electronic resources refer to all databases and electronic material purchased, shared or self-built by the Library, all databases under trial use, and all material that has been digitized.
- ii. The Library has license agreement with each publisher or resource vendor which spells out the terms and conditions for using these resources.
- iii. In order to protect the copyright of Library's electronic resources, to maintain the reputation of the University, and to guarantee the legal rights of all authorized users¹ as well, individuals should pay attention to and comply with the regulations on the use of electronic resources.
 - You are allowed to search, browse, download or print single copies of articles. Downloading or printing of an entire issue or a volume of one or more journals is strictly prohibited.
 - Bulk downloading using robots, spiders or intelligent agents or systematic downloading/printing are always prohibited. Additionally, make sure that you will not use illegal approaches to download electronic resources that are not available in XJTLU Library.
 - You may send a copy of an article, a document or alike downloaded from the Library's electronic resources to another authorized user. You should avoid transmitting, disseminating or otherwise making online content available to unauthorized users (individuals or organizations outside the University).
 - You have the responsibility to protect your access accounts and computers. You should never give away your accounts or computers to unauthorized

¹ Authorized users refer to all current staff and students of XJTLU, and any visiting scholars and students who have been authorized by the Library to use its electronic resources.



users and let them search library databases or use library electronic resources.

- You may make electronic material available through a secure intranet or virtual learning environment (e.g. ICE) for teaching use with appropriate acknowledgement of its source and link. Yet some publishers do not permit users to upload resources. Please contact the Library if you are not sure whether certain material can be uploaded.
- You should not use the Library's electronic resources for commercial purposes on all accounts unless you have agreement with the copyright owner.
- If you would like to use any external online resources (e.g., contents from other websites, video clips from BBC) for teaching or research purposes, it is suggested that you contact the author, the website or organizations before doing so. You should avoid uploading these external online resources to the University's intranet or virtual learning environment without getting permissions. If no copyright owner is specifically named, do not assume that the material is in the public domain.

5. Consequences and Penalties for Copyright Infringement

- a) There could be various consequences for copyright infringement, but all possible consequences could have negative influence. It is suggested that you consult the above suggestions when copying or using library resources or other external resources. The individual who infringes copyright will be responsible for any financial or legal liability.
- b) Any fraudulent use of library's resources will result in the block of whole university's access to resources as well as damage the university's reputation. Therefore, the university will take summary jurisdiction for any breaches of the rules.
- c) Penalties permissible under summary jurisdiction include one or more of the following:
 - i. A formal warning;
 - ii. Requirement to remove materials that have been fraudulent used;
 - iii. Complete a copyright awareness quiz (online);
 - iv. A requirement to make a written commitment to XJTLU Library;
 - v. Withdrawal of library privileges for:
 - three months if first infringement;
 - one year if second infringement;
 - permanent if third or above infringement;
 - vi. Student continued infringement to be treated as misconduct under the terms of the Policy on Student Conduct and Discipline;
 - vii. Staff continued infringement to be treated as misconduct under the terms of the Staff Handbook.

6. Further Reading

Copyright Law of the People's Republic of China. (Adopted at the 15th Session of the Standing Committee of the 7th National People's Congress on September 7, 1990 and amended in



accordance with the “Decision on Amending the Copyright Law of the People’s Republic of China” made at the 24th Session of the Standing Committee of the 9th National People’s Congress on February 26, 2010)

National Copyright Administration of the People’s Republic of China. *Copyright Knowledge* [Online]. Available from: <http://www.ncac.gov.cn/chinacopyright/channels/579.html> (Accessed: 14 September 2018)

University of Liverpool Library. *Copyright Guide* [Online]. Available from: http://libguides.liverpool.ac.uk/copyright/general_information (Accessed: 14 September 2018).

Approval & Revision Log

Document Version History Version	Date	Modification Note
Version 1.0	January 8 th , 2015	Draft
Version 2.0	August 3 rd , 2015	Content Revision
Version 3.0	December 5 th , 2016	Change of title Content revision Re-structured
Version 4.0	September 26 th , 2018	Content revision Re-structured

