

Copyright: Walking the Tightrope

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Our Impetus

Fielding increasing numbers of copyright questions at the library without legal expertise:

- *Can this go on reserve?*
- *Can I distribute this to my students?*
- *Can I put this in my presentation?*
- *Can I use this in class?*
- *Can I digitize this VHS?*



The Lucky Break
Librarian Beth Dyer entered the 2015 NAHSL Scholarship raffle and won a copyright consultation with Barbara Ingrassia.

Barbara Ingrassia,
Certified Copyright Consultant
Photo Courtesy of Worcester Magazine

Case Studies

- Georgia State University (GSU) e-reserves case (Cambridge University Press v. Patton)
- Google Books Scanning (Authors Guild v. Google)
- + UNE Library scenarios

TAKEAWAY

The correct answer to copyright questions usually begins with "It depends..."

Fair Use Checklist

Name: _____ Date: _____ Prepared by: _____

Project: _____ Item Description: _____

This tool is to help you determine whether your activities are within the limits of fair use under Section 107 of the U.S. Copyright Act. Check all boxes that apply, then assess whether the cumulative weight of the checked factors favor or oppose fair use. It is recommended that you retain a completed copy of this form for each fair use of a copyrighted work. This tool is for planning purposes only and not to be construed as legal advice.

PURPOSE OF USE	
FAVORING FAIR USE	OPPOSING FAIR USE
<input type="checkbox"/> Teaching (including multiple copies for classroom use) <input type="checkbox"/> Research <input type="checkbox"/> Scholarship <input type="checkbox"/> Nonprofit educational institution <input type="checkbox"/> Criticism <input type="checkbox"/> Comment <input type="checkbox"/> News reporting <input type="checkbox"/> Transformative or productive use (changes the work for new utility) <input type="checkbox"/> Restricted access (to students or other appropriate group) <input type="checkbox"/> Parody	<input type="checkbox"/> Commercial activity <input type="checkbox"/> Profiting from use <input type="checkbox"/> Entertainment <input type="checkbox"/> Bad-faith behavior <input type="checkbox"/> Denying credit to original author <input type="checkbox"/> Non-transformative use, verbatim/exact copy
NATURE OF COPYRIGHTED MATERIAL	
FAVORING FAIR USE	OPPOSING FAIR USE
<input type="checkbox"/> Published work <input type="checkbox"/> Factual or nonfiction based <input type="checkbox"/> Important to educational objectives <input type="checkbox"/> Non-consumable work	<input type="checkbox"/> Unpublished work <input type="checkbox"/> Highly creative work (art, music, novels, films, plays) <input type="checkbox"/> Fiction <input type="checkbox"/> Consumable work (i.e., workbook, test) <input type="checkbox"/> Work made for the educational market (i.e. casebook)
AMOUNT COPIED	
FAVORING FAIR USE	OPPOSING FAIR USE
<input type="checkbox"/> Small portion of work <input type="checkbox"/> Portion used is not central or significant to entire work <input type="checkbox"/> Amount taken is narrowly tailored to accomplish a demonstrated, legitimate purpose in the course curriculum	<input type="checkbox"/> Large portion of whole work used <input type="checkbox"/> Portion used is central to or "heart of the work" <input type="checkbox"/> Amount taken is more than necessary to accomplish a demonstrated, legitimate purpose in the course curriculum
EFFECT ON MARKET FOR ORIGINAL	
FAVORING FAIR USE	OPPOSING FAIR USE
<input type="checkbox"/> User owns lawfully purchased or acquired copy of original work <input type="checkbox"/> One or few copies made <input type="checkbox"/> No significant effect on market or potential market for copyrighted work <input type="checkbox"/> No similar product marketed by copyright holder <input type="checkbox"/> Lack of licensing mechanism	<input type="checkbox"/> Could replace sale of, or significantly impair market or potential market for copyrighted work or derivative <input type="checkbox"/> Reasonably available licensing mechanism for use of copyrighted work <input type="checkbox"/> Affordable permission available for using work <input type="checkbox"/> Numerous copies made <input type="checkbox"/> Made accessible on web or in another public forum <input type="checkbox"/> Repeated or long-term use

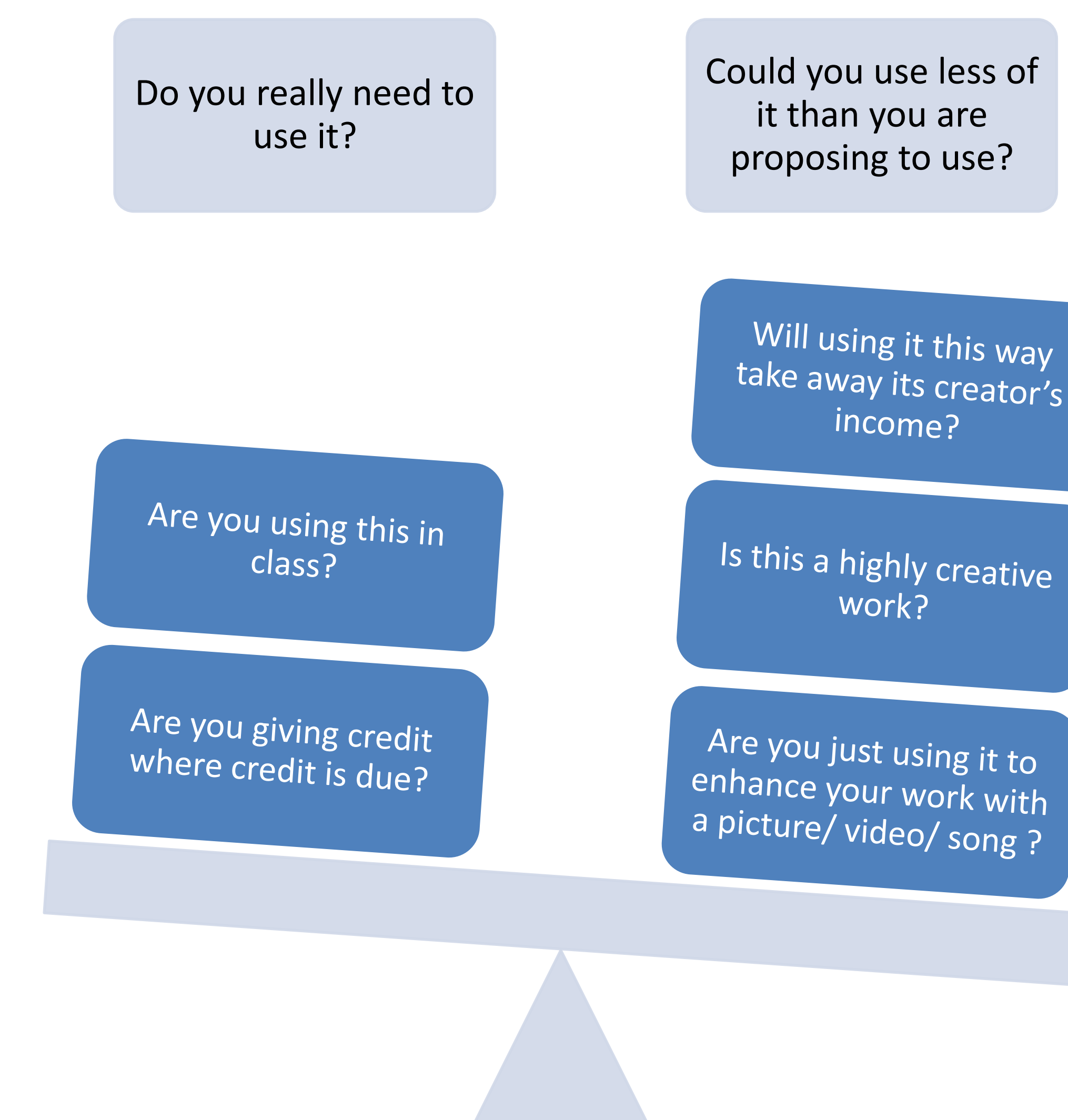
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<http://www.une.edu.une.idm.oclc.org/sites/default/files/FairUseChecklistUNELibraryServices.pdf> or <http://tinyurl.com/hpncf78>

Or email me at bkennyon@une.edu and I'll send you a copy.

No Need to Reinvent the Wheel

We based our checklist on (and cited) those created and freely shared by Cornell University, Columbia University, and Grand Valley State University. Before placing it on the website, we passed it by UNE's legal counsel for approval.



The Balancing Act

Users don't turn the checklist in; they fill it out to help determine whether their use is fair, and keep it for their records. The determination of fair use is made by the user, not the librarian. By walking faculty and students through the checklist, and referring to it ourselves, we help them answer their questions while teaching them about copyright.