

Policy on Recordings of [*Academic*][*Instructional*] Presentations

Comments from the Academic Senate followed by comments from Campuses in a separate table.

Comments from Academic Senate	
<p>A. Distribution and Publication: No business, agency or person shall give, sell or otherwise distribute or publish course lecture notes, or any recording, in any medium, of any course given at the University of California, nor use such lecture notes or recording for any commercial purpose without the written consent of the instructor.</p>	<p><u>Berkeley Committee on Privilege and Tenure (William J. Drummond, Chair)</u> Distribution and Publication (“No business, agency or person...”) This sentence appears to ban even one student’s sharing his or her notes with another student. An easy remedy would be insertion of a comma after the second mention of “recording.” (“...nor use such lecture notes or recording[,] for any commercial purpose without the written consent...”) Does the policy intend to require prior permission if students want to make sound recordings of class sessions? The preceding paragraph, as written, makes no mention of the need to obtain permission before a sound recording is made of class sessions. As written, the policy leaves unclear whether students may provide lecture notes or sound recordings to other students without the instructor’s permission. Surely the professor does not intend to allow wholesale distribution of sound recordings, for example, even to students not presently enrolled in the class. Once the professor has consented to a recording being made, the instructor should be consulted again before such a recording is made available to other students. As written, audio recording or video taping of actual classroom sessions requires a “written agreement between the instructor and the University,” if the distribution of these recordings is “for commercial purposes.” How does the policy define “commercial purposes”? Would researching a book or preparing a video documentary be educational, or would it be commercial, if the professor is paid for the work? The policy calls on designated academic employees “to seek to retain the right” of royalty-free use of published works within UC. How would efforts to “retain the right” be measured, confirmed or documented?</p>
<p>Exception: Students enrolled in or auditing a course may take lecture notes and, with the permission of the instructor, make sound recordings of the class, for the purpose of individual or group study or for other non-commercial purposes reasonably arising from participation in the course. Students enrolled in or auditing a course may also provide such course lecture notes or sound recording to other students for the purpose of individual or group study or for other non-</p>	<p><u>Davis Committee on Research (Roger McDonald, Chair)</u> Part A appears to give the course instructor the freedom to sell or otherwise market the recording without any reimbursement, or in fact reference, to the University.</p>
<p></p>	<p><u>Davis Committee on Faculty Welfare (John B. Oakley, Chair)</u> I will be proposing some minor wording changes to the proposed Policy on Recordings... new language IN CAPS and deleted language [in brackets]: I would revise the second sentence of the exception to paragraph A to read as follows. “Students enrolled in or auditing a course may also provide such course lecture notes or sound recording to other students ENROLLED IN OR AUDITING THE SAME COURSE for the purpose of individual or group study or for other non-commercial purposes reasonably arising from participation in such course.”</p>
<p></p>	<p><u>Davis Committee on Academic Freedom and Responsibility (Michael Jubien, Chair)</u> ...second sentence of the “Exception” paragraph: For the very reason the instructor’s permission was required in the cases covered by the first sentence, so should it be required in those covered by the second. Thus: insert “Also with the permission of the instructor,” at the beginning of the second sentence.</p>
<p></p>	<p><u>University Committee on Research Policy</u> In the "Exception" section of this draft policy we prefer to see the second sentence qualify the permission for students to provide other students course lecture notes or sound recording by explicitly stating a prohibition on sales of such material. It would also be helpful to include an example of the "third parties" whose rights must be considered in the written agreement between an instructor and the University that allows recording of classes to be distributed or communicated for commercial purposes. This part of the policy is needlessly vague.</p>

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<p>commercial purposes reasonably arising from participation in the course.</p>	<p><u>University Committee on Faculty Welfare (Renee Binder, Chair)</u> Second sentence, Paragraph A: "Students enrolled in or auditing a course may also provide such course lecture notes or sound recording to other students <u>concurrently enrolled in or auditing the same course</u> for the purpose of individual or group study or for other non-commercial purposes reasonably arising from participation in such course."</p> <p><u>Report of the UCPB Subcommittee on Copyright Policy (Prepared by Bob Meister & Ted Groves)</u> This section provides little guidance. There need to be specific examples of "...other non-commercial purposes reasonably arising from participation in the course " How would the policy pertain to University TV stations, for example, taping of courses or public lectures?</p>
<p>B. Capture of Sounds and Images: Recordings of classes at the University of California that capture the actual sounds and/or images of those classes, in any medium, shall not be distributed or communicated for commercial purposes without a written agreement between the instructor and the University. This prohibition includes recordings made by any person with the instructor's written consent. (<i>Note: Distributions or communications, without the instructor's written</i></p>	<p><u>Berkeley Academic Freedom Committee (Robert Powell, Chair)</u> We believe that it would be useful mention "students" explicitly as an example of third parties. Although this may not be the place to state the policy, we also believe that all students should be informed if anyone is making an audio or video recording of the presentation for any purpose other than a student's personal use in conjunction with studying for the class.</p> <p><u>Davis Committee on Faculty Welfare (John B. Oakley, Chair)</u> I will be proposing some minor wording changes to the proposed Policy on Recordings... new language IN CAPS and deleted language [in brackets]: I would revise the second sentence of paragraph B to read as follows. "This prohibition includes recordings THAT HAVE BEEN made [by any person] with the instructor's written consent." I would revise the third (italicized) sentence of paragraph B to read as follows. "(Note: Distributions or communications[,] NOT AUTHORIZED BY [without] the instructor's written consent[,] are forbidden under paragraph A, above.)"</p> <p><u>Irvine Council on Faculty Welfare, Rights, Responsibilities, and Diversity (plus campus administrators) (Allan Hubbell, Chair)</u> Associate Dean Newsom reported that this policy was needed to respond to the dot.coms that started up last year. The Romero Bill was also passed to address this issue. Ms. Meyers stated that the policy does not concern itself with who owns the material, but states that a commercial enterprise does not have ownership or the right to profit from the university's or faculty member's material. Dean Matkin mentioned that the policy is not legally enforceable. However, the policy allows the University of California to protect itself through contract law when it signs an exclusive contract with one entity which then excludes any other entity from being involved with recording of presentations.</p> <p><u>University Committee on Faculty Welfare (Renee Binder, Chair)</u> Second sentence, Paragraph B: "This prohibition includes records <u>that have been made</u> by any person with the instructor's written consent." Third sentence, Paragraph B: "(Note: distributions or communications - <u>not authorized by</u> without the instructor's written consent - are forbidden under paragraph A, above.)"</p>

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<p><i>consent, are forbidden under paragraph A, above.) Any such agreement must consider not only the rights of the instructor and the University, but also those of third parties. It may be necessary to secure rights from these third parties before any distribution or communication takes place.</i></p>	<p><u>Report of the UCPB Subcommittee on Copyright Policy (Prepared by Bob Meister & Ted Groves)</u></p> <p>There are some serious syntax problems with this section. The first sentence is ambiguous. It should be broken into..two parts, beginning with a prohibition against ANY distribution of recordings of classes without a written agreement between the instructor and the University. Such a sentence would prevent the University from unilaterally distributing copies of UC classroom sounds and images without the instructor's prior knowledge and consent. In particular, it would prohibit the University from reusing the recording to offer the same "course" in future years, ostensibly for an 1. educational" rather than "commercial" purpose. It would also prevent (noncommercial) campus radio or television stations from airing recordings of classroom presentations without comprehensive institutional approval.</p> <p>The draft policy further suggests that it "may be necessary to secure rights from ... third parties" before the distribution of a presentation. Does this mean every student in a class might have a claim or every audience member at a lecture? Is it really true that students in a classroom have broader rights (which it is incumbent upon the University to protect) than do, for example, audience members at a televised live production? One would think not, but the draft policy is alarmingly vague on this. We suggest that the policy should contain more than just a statement of basic principle, and should be specific enough to specify what is allowed and required.</p>
	<p><u>UCSD Committee on Faculty Welfare (Ross M. Starr, Chair)</u></p> <p>When a course of lectures has been recorded on tape or in other electronic form can the lectures be rerun as a recorded medium of instruction at the University's discretion? Does this require faculty member agreement? Is the faculty member entitled to compensation? Does electronic recording constitute "extraordinary University resources"? What are examples of "extraordinary University resources"?</p>

Comments from Campuses	
<p>A. Distribution and Publication: No business, agency or person shall give, sell or otherwise distribute or publish course lecture notes, or any recording, in any medium, of any course given at the University of California, nor use such lecture notes or recording for any commercial purpose without the written consent of the instructor.</p> <p>Exception: Students enrolled in or auditing a course may take lecture notes and, with the permission of the instructor, make sound recordings of the class, for the purpose of individual or group study or for other non-</p>	<p><u>Davis</u></p> <p>Please consider whether to define "course" and "class," because many faculty consider a course to be a series of classes. We suggest the reference to "course" in the first paragraph be "class" so that the prohibition applies to single lectures as well as and entire course.</p> <p>Please insert "non-University" after the first word of this section (thus, "No non-University business, agency or person...") otherwise you will prohibit UC from using its own lecture notes As written, UC cannot "distribute or publish" without the written consent of the instructor either! Reword to exclude UC from the list of prohibited folks.</p> <p>Use of the term "lecture notes" may not obtain the desired result here, as it is jargon for the notes a teacher prepares for giving a lecture, rather than including a student's notes of a lecture, which is the intended meaning here. May we suggest this be rephrased to "notes of a given lecture" or something more broad.</p> <p><u>Charles Nash, Davis</u></p> <p>I would appreciate having some specific examples of "...other non-commercial purposes reasonably arising from participation in the course."</p>

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<p>individual or group study or for other non-commercial purposes reasonably arising from participation in the course. Students enrolled in or auditing a course may also provide such course lecture notes or sound recording to other students for the purpose of individual or group study or for other non-commercial purposes reasonably arising from participation in the course.</p>	<p><u>Berkeley (Official)</u> This policy should state explicitly that students are among those who may not distribute recordings or lecture notes for commercial purposes.</p>
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<p>B. Capture of Sounds and Images: Recordings of classes at the University of California that capture the actual sounds and/or images of those classes, in any medium, shall not be distributed or communicated for commercial purposes without a written agreement between the instructor and the University. This prohibition includes recordings made by any person with the instructor’s written consent. (<i>Note: Distributions or communications, without the instructor’s written consent, are forbidden under paragraph A, above.</i>) Any such agreement must consider not only the rights of the instructor and the University, but also those of third parties. It may be necessary to secure rights from these third parties before any distribution or communication takes place.</p>	<p><u>Davis</u></p>
	<p><u>Charles Nash, Davis</u></p> <p>There are some serious syntax problems with this section. The first sentence is ambiguous. It should be broken into two parts, beginning with a prohibition against ANY distribution of recordings of classes....without a written agreement between the instructor and the University. Such a sentence would prevent both the University and the instructor from unilaterally distributing gratis copies of UC classroom sounds and images all over the place without mutual prior knowledge and consent.</p> <p>Agreements of this kind must be reached on a case-by-case basis. A faculty member should have the right to send a tape of one of his/her lectures to a few friends (e.g., prospective employers or prize committees) because the final product (now in tangible form) really does belong to him/her under copyright law, but it’s not unreasonable for UC to know that that will be happening.</p> <p>This is a different issue from distributing/communicating them for commercial purposes, but one that is no less important to the faculty. For example, because of the disciplinary consequences that could stem from the University not having signed off, it would prevent (noncommercial) campus radio or television stations from airing recordings of classroom presentations w/o comprehensive institutional approval.</p> <p>The concern for “third parties” needs to be fleshed out. Is it really true that students in a classroom have broader rights (which it is incumbent upon the University to protect) than do, for example, audience members at a televised live production?</p>
	<p><u>Santa Barbara</u></p> <p>The proposed policy on ownership of course materials states that, absent exceptional circumstances, course materials are owned by the instructor. Nevertheless, Section B of the proposed policy requires an agreement with the University for any “commercial use” of the sounds or images of a lecture. These two policies appear inconsistent. The Committee respectfully suggests that if the faculty member owns the course materials under the new policies, he or she should determine the commercial use of lectures stemming from such materials, not the University.</p> <p>Additionally, the Committee feels that the reference to sound recordings in both Section A and Section B may be confusing to readers. To assure that the Policy can be easily understood, the Committee suggests that Section A address only written notes, and Section B addresses only sound/image recordings.</p>