

Policy	Comments
<p>A. Purpose and Scope. When recordings are made of course presentations and those recordings are shared or distributed, the distribution must be conducted in a way that ensures compliance with relevant University policies; protects the integrity and quality of the teaching and learning experience; and protects the interests of the University, the course instructor, and the University's students. This policy is intended to protect, and not restrict, the core academic values and processes of the University.</p>	<p>In paragraph A of the Draft Policy, there is no mention of the controlling legal authorities in this matter, namely, the Federal and State Codes. Surely a reference to these laws should be inserted in line three of this paragraph, after the word "relevant," but certainly prior to the phrase "University policies." (Condren, SCC (UCLA))</p> <p>We recommend the deletion of "relevant" in the first sentence at the third line of that paragraph and revise that part of the sentence to read, "When recordings... compliance with applicable policies as listed herein." We would also recommend the deletion of the last sentence because it's over-broad and vague or, in the alternative, revising it to convey a more focused purpose statement that helps understand why the policy is important and is needed. In this regard, we suggest the following as a possible substitute statement: "This policy is intended to protect the integrity of the course and the copyright and publishing rights of the instructor and the University." (San Diego)</p>
<p>B. Distribution of Recordings of Course Presentations. No business, association, agency, or individual, including a student, shall give, sell, or otherwise distribute to others or publish any recording made during any course presentation without the written consent of the instructor/presenter and the Chancellor. This policy is applicable to any recording in any medium, including handwritten or typed notes. The only exceptions are that</p>	<p>Question as to the enforceability of restrictions on handwritten notes. (Merced)</p> <p>The term "Chancellor" should be expanded to "Chancellor's designee," both to be consistent with other policies and to make the consent process easier. Berkeley's Committee on Computing and Communication suggests that the approval of the instructor alone should suffice. (Academic Council)</p> <p>In paragraph B, the language "without the written consent of the instructor/presenter and the Chancellor" invites objection. I seriously doubt there is legal authority for including the Chancellor here, either as a private person or acting on behalf of the University. This highest administrative officer certainly has a right to grant approval, or perhaps withhold approval for anything that takes place on the campus. Nevertheless, to the extent that this Draft Policy focuses primarily on intellectual property, the quoted language assumes, indeed gives a reader authority to infer, that the Chancellor, representing the University, is a rightful co-owner of the "recordings" under discussion. As noted, unless the rightful owner has assigned this ownership in writing, the Draft Policy's assumption has no legal basis. (Condren, SCC (UCLA))</p> <p>We recommend the insertion of "Except as noted herein,..." as the starting phrase of the first sentence so that sentence would read, "Except as noted herein, no business..." This paragraph is also rather broad and ambiguous and may not be enforceable because of it possible infringement on "fair use" and non-commercial use of course materials in expression/speech protected by First Amendment of United States Constitution. For example, the policy as written appears to prohibit the use a student's notes by the print or electronic media reporting on the course content or the instructor's presentation of the course content. (San Diego)</p>

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<p>B. (1) students enrolled in or approved to audit a course may provide a copy of their own notes or recordings to other currently enrolled students for the purpose of individual or group study or for other non-commercial purposes reasonably arising from participation in the course, and</p>	<p>Notes taken in class by students are the intellectual property of those students and cannot be regulated. (Berkeley)</p> <p>One faculty member suggested the policy would be a better one if the exception in Section B.1 were limited to an enrolled student's own written notes. This faculty member thinks that a student should have the permission of the instructor prior to making any recording of the class, regardless of the intended use of it, since as she sees it the lectures are the property of the faculty member and the university. (Santa Cruz)</p> <p>The Council recommends eliminating the phrase "or for other noncommercial purposes reasonably arising from participation in the course," As now worded, Section B.1 would allow students to transfer recordings to noncommercial interests, including groups outside of the University and with agendas extending beyond the educational elements of the course. Any communications to individuals not enrolled in the course should necessitate the appropriate written consents. (Academic Council)</p> <p>To specify current enrollment, section B 1 of the policy should read: "students <u>currently</u> enrolled or approved to audit <u>that</u> course..." (Academic Council)</p>
<p>B (2) faculty may use recordings of course presentations, made by them or at their direction, to the extent that such use does not conflict with other University policies, including the Policy on Conflict of Commitment and Outside Activities of Faculty Members (APM 025) and the prohibition on the use of University facilities for commercial purposes (APM 015, Part II.C.3).</p>	<p>The opening paragraph, by itself, would prohibit the sale or distribution of campus lecture presentations without the Chancellor's consent, but, unfortunately, it is completely undercut by the exception in subsection (2). That subsection allows faculty to use recordings of their course presentations "at their discretion" subject to the policies on time commitment and use of facilities for commercial purposes (neither of which prohibit, or require prior approval of, the sale of lectures to other educational institutions or commercial online entities)." (Berkeley)</p>

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<p>C. Special Considerations Pertaining to Recordings that Capture Sounds and Images. Any distribution of a recording of a course presentation at the University of California that captures the actual sounds and/or images of that course presentation, in any medium, must consider not only the rights of the instructor and the University, but also those of third parties, such as the privacy rights of students enrolled in the course. It may be necessary to secure rights from these third parties before any recording, distribution, publication, or communication occurs.</p>	<p>Current copyright and student codes of conduct already prohibit unauthorized distribution of course lectures. Administration should consider enforcement of current laws and rules before placing restrictions on use of video material. (Berkeley)</p> <p>Section C discusses the rights of third parties, with an example of students enrolled in the course. Other examples, such as the copyright holder of any image that is shown during a lecture, or previously recorded conversations which are part of a lecture, might be added. (Santa Barbara)</p> <p>Concerns as to whether Section C of the policy as proposed would require an instructor to get approval from every student in the course before audio or video recordings of a lecture could be made and/or archived on the Web. (Santa Cruz)</p> <p>(Academic Council):</p> <ul style="list-style-type: none"> • Students should be given the right not to appear in a recording; however, it should be clarified that a student's choice does not dictate whether the recording should take place at all. • Would students sharing audio recordings or videos with one another be bound by the same privacy provision? • How will students and others be informed of the privacy policy and how will permission be obtained? • The policy should clarify whether a professor must get permission from each student if a lecture is posted on the web in audio or video format. <p>This entire paragraph creates more ambiguity than clarification about the applicability of this policy to sounds and images used or generated in a course, because for example the rights of third parties with respect to sounds and images are not defined. The last sentence of this paragraph also adds to the vagueness because the use the term "may" injects uncertainty about the need to secure permission to record, distribute or publish the images or sounds created by or from participants in the course. Therefore, we suggest that the "third party" rights to be covered under this policy for participants in a course be defined and that this policy specify how it would be applied with respect to those rights. For example, once the third party rights are defined or identified the last sentence of this paragraph could be revised to read, " It shall be necessary to secure the permission of participants in a course ("third parties") to the record, distribute, publish, or use in any communication not directly related to the conduct of the course, of any sound or image created by such third parties in connection with their participation in the course." (San Diego)</p>

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	<p>General Comments: The policy addresses standard formats such as lectures and seminars where the delivery is primarily oral, however it does not address other formats such as web- and tele-based interactive instruction. These formats and others that will soon be on the horizon will involve a different set of issues. (Santa Barbara)</p> <p>The policy should be revised to facilitate academic discourse among students and to accommodate students with disabilities. (Academic Council)</p> <p>While UC can protect itself through contract law when it signs an exclusive contract with one entity that excludes any other entity from being involved in the recording of presentations, it is not clear that the amended policy is legally enforceable. (Academic Council)</p> <p>The policy presumes that courses are taught at a single UC campus. What are the implications for courses that involve multiple campuses? (Academic Council)</p> <p>Does the policy as written cover live transmission, e.g., through a cell phone, without a recording aspect? (Academic Council)</p> <p>The policy should address more fully the use of previously copyrighted materials within course presentations. (Academic Council)</p> <p>Specific examples would add clarity in sections B and C. (Academic Council)</p> <p>...ownership of the copyrightable material in the lectures an instructor gives in his or her course belongs exclusively to him or her. The "institution," in this case the University, has no legal copyright to this material, unless the instructor, the sole rightful owner, assigns in writing this ownership, or co-ownership, to the University (US Code, Title 17, 204(a)). (Condren, SCC (UCLA))</p> <p>This policy is one that seems relevant. I encourage its adoption as is. (Interim Dean Mark Matsumoto of College of Engineering, Riverside)</p> <p>I have read the policy and support it as currently written. In addition to the copyright issues, I m glad to see that the right of privacy for audience members is addressed in Section C. (Mike Wicke, coordinator for MOP/Copyright/Trademark/VCA, Riverside)</p>