



COMMITTEE ON ACADEMIC FREEDOM

January 22, 2021

To: Jason Stajich, Chair
Riverside Division Academic Senate

From: Frederick Wilhelm, Chair
Committee on Academic Freedom

Re: Innovative Learning Technology Initiative (ILTI) Review

The UCR Senate Committee on Academic Freedom reviewed the report on the Innovative Learning Technology Initiative. We found the following items of concern:

- Courses taken for UCR credit must be subject to the standard approval practices of the UCR Academic Senate.
- The report states that UC Online will, "Negotiate systemwide contracts for instructional technology systems" (page 25).

In light of recent censorship of academic content by technology companies, it is imperative that these contracts unambiguously specify that the faculty of the University of California has 100% control of all instructional content (see attached memos from the UCR and Systemwide AF committees).

COMMITTEE ON ACADEMIC FREEDOM

November 29, 2020

To: Jason Stajich, Chair
Riverside Division Academic Senate

From: Frederick Wilhelm, Chair
Committee on Academic Freedom

Re: Zoom censorship and protecting the rights of academic freedom

In response to your email, the UCR Committee on Academic Freedom recommends that the UCR Academic Senate and the Senate's Executive Council develop a letter of concern that directly addresses the relationship between the University of California and private technology platforms in order to protect the rights of academic freedom. These private companies include Zoom, Facebook, YouTube and Instagram, and may include other companies and platforms still to be developed in the future.

The COVID pandemic has dramatically expanded the use of Big Tech platforms, making these 'essential' in the running of the University and used, for example, in teaching, consultation or public university events. However, they also pose a direct and immediate threat to academic freedom and freedom of speech.

Big Tech companies have acted unilaterally and arbitrarily to censor, cut off, and/or refuse to carry particular university sponsored events. In some cases, accounts of particular Zoom clients have been eliminated.¹ Often Zoom and other Big Tech platforms censor in response to State defined lists of undesirables. It is especially problematic that these lists are often created under the veil of government confidentiality laws and not open to public scrutiny.

These actions illustrate the real and potential power of Big Tech to run rough shod over academic freedom and have dramatically expanded concern about these technology companies' power and

¹ Zooms acquiescence to censor events and materials on behalf of a nation state or other political entity is profoundly problematic. For articles of Zoom's censorship in relation to China, see for example Washington Post, June 11, 2020, "Zoom censors Video Talk on Hong Kong and Tiananmen" ; "Zoom Blocks Activist in US After China Objects to Tiananmen Vigil," New York Times, 6/11/2020; "Zoom Caught in china Censorship Crossfire as Meetings Foiled," ABC News, June 11, 2020; a discussion followed by The Federalist, Brietbart, and the radio program, Democracy Now. For case dealing with Israel and Pro-Israel groups, see, for example, "From Palestine to China, Zoom has no business Censoring Dissent," 972.mag.com 10/26/2020; "Professors demand Universities Ditch Zoom for Shutting Down Palestinian Hijacker Events," The College Fix, October 26, 2020; "Zoom Deleted Events Discussing Zoom "Censorship"" buzfeed, downloaded 10/29/2020. For a good summary article go to <https://www.npr.org/2020/11/23/937336309/welcome-to-the-party-zoom-video-apps-rules-lead-to-accusations-of-censorship>

“their ability to control speech”² Private companies supplying these services should not be able to censor what they see fit. Shutting down a university-run event directly silences all participants and is a gross violation of academic freedom and freedom of speech.

Such censorship has been met with widespread criticism and concern. San Francisco State University (SFSU) President Lynn Mahoney condemned Zoom’s decision in censoring an event at SFSU and reiterated that SFSU “remains steadfast in its support of the right of faculty to conduct their teaching and scholarship free from censorship. We cannot embrace the silencing of controversial views, even if they are hurtful of others.” UCSB Faculty Association stated “neither Zoom nor any other private corporation has the right to veto or censor the content of our classrooms or any university-sponsored public events. By cancelling the event, Zoom directly violated CSU, SFSU, and AAUP academic freedom policies and both federal and state laws.” And the American Association of University Professors is “deeply concerned about the implications for academic freedom” at a zoom-censored New York University (NYU) webinar, that was in itself a response to Zoom censorship, and enjoined New York University to “issue a strong statement denouncing this action as a violation of academic freedom”.

The widely respected Middle East Studies Association (MESA) issued a statement on Academic Freedom and Corporate Control of Digital Platforms, concerned that “corporate-controlled video-conferencing platforms poses threats to the free and safe exchange of idea,” and that these companies showed a “willingness to suppress the expression of certain viewpoints,” in particular those which discuss Palestinian/Israeli issues.”³ In situations where the physical security of some participants may be threatened, the university must be especially vigilant to prevent private companies from infringing on the rights of academic freedom and freedom of speech.

In this time of pandemic, universities are dependent on these technological platforms. Yet the university must not be complicit in the actions of these privately run companies that threaten academic freedom or freedom of speech. While some have noted that these private companies have the right to set their own terms of service, users also have the right to stipulate what is appropriate for their needs. Two appropriate responses might address this critical issue for the University.

One is to clarify the universities’ contractual relation with these tech companies, and insist that these companies have no right to veto, censor or alter the content of classrooms, speakers or university sponsored public events. Such an agreement should be inserted directly into the contract with the company concerned. Evidently, patrons of other companies besides Zoom have a right to

² Washington Post 6/11/2020.

³ 9/23/2020; 10/28/2020 AAUP to NYU, 10/28/2020 from AAUP website. All universities dealing with China face challenges in using Zoom and perhaps other tech platforms. San Francisco State University, New York University, the University of Hawaii encountered Zoom censorship. And in responses to Zoom censorship, there were those at the following universities who participated in Zoom protests: ,University of Massachusetts, Boston, Loyola University New Orleans School of Law, Claremont Colleges, University of Alberta (Canada), and the University of Leeds (Great Britain) The following organizations have expressed concern about the ability of BigTech to censor and to violate standards of academic freedom. American Associations of University Professors; California Scholars for Academic Freedom, and a statement by the Middle East Studies Association, MESA Statement on Academic Freedom and Corporate Control of Digital Platforms

stipulate their own restrictions or eliminate restrictive clauses with these companies, and Zoom could make similar arrangements.

Two: If companies are unable or unwilling to abide by the standards of free speech and academic freedom, the universities should seriously consider terminating these contracts and choosing alternative platforms.

The University of California is a major institution with substantial bargaining power to negotiate with these technological companies. A partnership of the UC with the California State University system, and perhaps other US universities, would clearly strengthen the negotiating power of all concerned.

The UCR Committee on Academic Freedom requests that the Academic Senate and the Executive Committee of the Academic Senate enjoin the University of California, and the Academic Senate of the University to evaluate their relationship with Big Tech platforms and reevaluate their contractual relationships with Big Tech (such as Zoom, Facebook, You Tube and Instagram) and ensure that academic freedom is not violated by private companies and that they are specifically and contractually forbidden to do so.

We look forward to your response.

Sincerely,

UCR Committee on Academic Freedom



UNIVERSITY COMMITTEE ON ACADEMIC FREEDOM (UCAF)
Brian Soucek, Chair
bsoucek@ucdavis.edu

Assembly of the Academic Senate
1111 Franklin Street, 12th Floor
Oakland, CA 94607-5200
Phone: (510) 987-9466

December 17, 2020

**MARY GAUVAIN, CHAIR
ACADEMIC SENATE**

RE: CENSORSHIP BY ZOOM AND OTHER PRIVATE PLATFORMS

Dear Mary,

The University's responsibility to protect academic freedom and freedom of expression cannot be outsourced. As we all know, UC currently relies heavily on platforms such as Zoom to facilitate our teaching, research, governance, and the public dissemination of knowledge. UC cannot, however, rely on private companies to protect the academic freedom on which those core university functions depend.

The threats here are not just hypothetical. Zoom has already canceled political events and academic discussions at other institutions, after receiving complaints and finding violations of their terms of service.¹ UCAF's worries go beyond the facts of particular prior cases, which vary in potentially important ways. UCAF is concerned about dangers evident in UC's own contract with Zoom, under which Zoom retains largely unfettered discretion to control what content it hosts. We suspect that Zoom is not alone in this regard.

Zoom's current Terms of Service,² which incorporate by reference the company's Community Standards,³ prohibit all of the following:

- "posting or sending hateful imagery," where that is defined to include "symbols historically associated with hate groups (e.g. the Nazi swastika)," images of individuals altered "to include animalistic features," and "logos, symbols, or images whose purpose is to promote hostility and malice against others based on" protected grounds such as race, gender, or religious affiliation;
- "the celebration of any violent act that may inspire others to replicate it";
- depicting "any form of gory media related to death, serious injury, violence, or surgical procedures" or "media that depicts death, violence, or serious physical injury in graphic detail," including

¹ See, e.g., "Zoom Blocks Activist in U.S. After China Objects to Tiananmen Vigil," N.Y. Times (June 11, 2020), <https://www.nytimes.com/2020/06/11/technology/zoom-china-tiananmen-square.html>; Letter from CUCFA to UC President Drake (Sept. 24, 2020), <https://cucfa.org/2020/09/potential-censorship-by-technology-providers/>; Letter from AAUP to NYU President Hamilton (Oct. 28, 2020), <https://academeblog.org/2020/10/29/aaup-urges-nyu-president-to-address-zoom-censorship/>.

² <https://zoom.us/terms/>

³ <https://zoom.us/docs/en-us/community-standards.html>

depictions of “visible wounds” and “bodily fluids”;

- nudity, which is restricted “by default,” though Zoom “may make allowances” when “the intent is clear” that nudity is shared for “educational or medical reasons”;
- “impersonat[ing] anyone,” defined as “pretending to be someone you are not”;
- “use [of] another’s name or image without their permission”;
- engaging in activity that is false or misleading;
- communicating “any material that is . . . indecent.”

Zoom encourages users to report violations of its Terms of Use and Community Standards through its online “Trust Form.”⁴

From swastikas portrayed in history classes to nudity in art studios, from clinical training in the medical schools to impersonation by our theater clubs, mock trial teams, and school mascots, members of the University of California routinely violate Zoom’s terms and standards in the course of regular instruction, research, and extracurricular activities. Of course, Zoom may never enforce its terms and standards to the absurdly broad extent that their vague language would allow. (Insofar as it *would* never do so, Zoom should have no objection to clarifying and limiting its contractual language.) Under our current contract, however, the power to decide what content to allow lies with Zoom, not the University. This is an astonishingly open-ended threat to the University’s ability to carry out its fundamental mission.

Zoom has the ability to censor University content on the basis of criteria—such as indecency, falsity, goriness, or the promotion of hostility—that would be unconstitutional for the University to employ in some contexts, and a serious violation of academic freedom in many other contexts. This will surely make companies like Zoom an attractive target for those seeking to influence what gets said, taught, and studied at the University. The University needs to take steps to guard against such outside influence now—*particularly* now, when UC is so thoroughly reliant on the services of companies like Zoom.

To their credit, our colleagues in Academic Affairs and Information Technology at UCOP had begun meeting to discuss these issues even before UCAF raised them. On December 4, 2020, in a letter to the Council of UC Faculty Associations (attached), the University Provost also addressed the problem, reaffirming in his letter “that the University of California is committed to upholding and preserving principles of academic freedom.” Bringing attention to these principles is always welcome, but the present threat to them requires a stronger response.

Provost Brown writes in his December 4 letter that “Zoom is a private company that has the right to set its own terms of service in its contracts with users.” This is true, but incomplete: the right to set contractual terms is not Zoom’s alone; the University of California is party to the contract as well. UC has already negotiated additions to its contract with Zoom on issues of data security and privacy. Protecting academic freedom is no less vital. The University of California has the responsibility—and fortunately also the stature and market power—to negotiate terms of service that do not just facilitate the University’s core activities, but preserve the academic freedom that makes them possible in the first place.

UCAF therefore requests that Academic Council call on the administration to take the following steps:

⁴ <https://zoom.us/trust-form>

First, negotiate with Zoom for contractual terms that protect the academic freedom of UC faculty and other teachers and researchers, the freedom of scholarly inquiry of UC students, and the First Amendment rights of the entire UC community. Content on University of California Zoom accounts should be censored only if hosting it would cause Zoom to violate the law. Any other content limitations should be left to the University.

Second, identify other platforms that UC faculty, students, and staff can use as an alternative if censorship by Zoom occurs or is feared. Provost Brown's recent letter encourages faculty to "contact their local Information Technology Department for recommendations as to other vendors." But the threat of censorship is one that affects the entire University. It results from university-wide contracting. A university-wide solution is therefore appropriate. UC should make available backup platforms that can be used for courses and other events while UC's negotiations with Zoom proceed (or, certainly, if its negotiations fail).

Third, since Zoom is not the only private platform or service the University uses to carry out its core activities, UC should identify other contracts that might raise similar threats to academic freedom and free speech. A renegotiated contract with Zoom could provide a model for negotiations with those contractors, as well as for other universities grappling with similar concerns.

The University of California has an opportunity to be a leader on this important issue. UCAF asks that Academic Council endorse this statement of concern and proposed responses. Thank you for your consideration.

Sincerely,

Brian Soucek, Chair
UCAF