



Mary Gauvain
Telephone: (510) 987-0887
Email: mary.gauvain@ucop.edu

Chair of the Assembly of the Academic Senate
Faculty Representative to the Regents
University of California
1111 Franklin Street, 12th Floor
Oakland, California 94607-5200

February 4, 2021

**MICHAEL T. BROWN
PROVOST AND EXECUTIVE VICE PRESIDENT
UNIVERSITY OF CALIFORNIA**

Re: Concerns about Censorship by Zoom and other Private Platforms

Dear Michael,

At its January 2021 meeting, the Academic Council unanimously endorsed the attached letter from the University Committee on Academic Freedom (UCAF) expressing concern about ways in which Zoom's terms of service may lead to instances of censorship that violate the University's academic freedom principles and responsibilities. The concerns follow several high profile instances in which Zoom has canceled political events and academic discussions at universities after receiving complaints and finding violations of its terms of service.

The letter recommends several steps the UC administration can take to protect academic freedom, including negotiating with Zoom for new contractual terms that protect academic freedom, scholarly inquiry, and First Amendment rights; identifying back-up platforms and permanent alternatives; and analyzing UC's contracts with other vendors for similar threats.

The Council appreciates your December 4 letter to the Council of UC Faculty Associations (also attached) that affirms UC's commitment to academic freedom. We also understand that since the UCAF letter was written, Zoom has reached out to UC and other higher education institutions to discuss a possible revision to Zoom's terms of service and a new policy specific to college and university accounts. We are encouraged by the Administration's commitment and by Zoom's recent overtures, but we believe additional leadership from UC is needed to ensure that Zoom follows-through on modifications to its terms of service to reflect the academic freedom expectations of the academy. We believe this could be accomplished most simply and effectively by granting UC full content moderation rights within the bounds of the law.

Thank you for the opportunity to opine. Please do not hesitate to contact me if you have additional questions.

Sincerely,

Mary Gauvain

Mary Gauvain, Chair
Academic Council

Cc: President Drake
Chief of Staff Kao
Chief of Staff Peterson
Academic Council
UCAF Chair Soucek
Senate Directors
Systemwide Senate Director Baxter

Encl.



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 23, 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 Terms of Service,² which incorporate by reference the company's Community Standards,³ currently 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";

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/>. But see "US Charges Ex-Zoom Employee with Shutting Down Tiananmen Square Events," BBC.com (Dec. 19, 2020), <https://www.bbc.com/news/world-us-canada-55372493>.

² <https://zoom.us/terms/>

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

- 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 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,

A handwritten signature in black ink that reads "Brian Soucek". The signature is written in a cursive, flowing style.

Brian Soucek, Chair
UCAF



OFFICE OF THE PROVOST AND
EXECUTIVE VICE PRESIDENT FOR ACADEMIC AFFAIRS

OFFICE OF THE PRESIDENT
1111 Franklin Street, 11th Floor
Oakland, California 94607-5200

December 4, 2020

Council of UC Faculty Associations (CUCFA)
1270 Farragut Circle
Davis, CA 95618

Dear Executive Board of the Council of UC Faculty Associations:

I write to follow-up on my letter to you dated November 3, 2020 regarding your September 24, 2020 letter to President Michael V. Drake, M.D., which was forwarded to my office for review, appropriate follow-up, and response. In your September 24, 2020 letter, you expressed concerns about the decision of several media platforms to cancel an event sponsored by a group affiliated with San Francisco State University on September 23, 2020, titled, “Whose Narratives: Gender, Justice and Resistance.”

I would first like to affirm that the University of California is committed to upholding and preserving principles of academic freedom. These principles reflect the University’s fundamental mission, which is to discover knowledge and to disseminate it to its students and to society at large. In recognition of the importance of academic freedom, as well as freedom of speech, my office in partnership with other internal stakeholders, has been actively engaging with Zoom regarding your concerns and determined that there have been no cancellations of events sponsored by the University of California. In addition, we confirmed that Zoom does not monitor use of its platform by participating in public or private events, including classes, events, or protests hosted on its platform.

I understand that prior to canceling the event at SF State, the campus and Zoom attempted to resolve the concerns ahead of time and that the interpretation of whether a violation of federal law had occurred remained unresolved prior to the cancellation. If Zoom receives any complaints regarding a UC sponsored event that would potentially violate Zoom’s acceptable use policy, my office will be consulted in advance in an effort to remedy the situation and to enable a joint conversation to discuss the approach. As the Regents of the University of California have bestowed on the Academic Senate, through its role in shared governance, the responsibility to protect academic freedom at UC, the Academic Senate will be involved in the joint conversation.

Zoom has also assured us that they are taking these concerns seriously and that, effective November 2, 2020, former UC President Janet Napolitano has been appointed to the Zoom Board of Directors. I understand that on November 6, 2020, CUCFA wrote a letter to former President Napolitano alerting her to the concerns regarding the potential for censorship of faculty by Zoom and requesting that as a faculty member of the University of California she make clear to Zoom that censorship is not consistent with the values of the University of California.

December 4, 2020

Page 2

I also recognize that Zoom is a private company that has the right to set its own terms of service in its contracts with users. In addition to Zoom, UC maintains agreements with other platforms. To the extent any faculty does not want to utilize Zoom for a specific event, they may contact their local Information Technology Department for recommendations as to other vendors that provide similar services.

I want to reiterate that the University takes seriously your concerns regarding censorship, freedom of speech, and academic freedom. Thank you for raising this important matter.

Sincerely,

A handwritten signature in blue ink that reads "Michael T. Brown". The signature is written in a cursive, flowing style.

Michael T. Brown, Ph.D.
Provost and
Executive Vice President for Academic Affairs

cc: President Drake
Academic Council Chair Gauvain
Academic Council Vice Chair Horwitz
Chancellors
Executive Vice Chancellors/Provosts
Vice Provost Carlson
Associate Vice Provost Lee
Executive Director Baxter