



FLORIDA STATE UNIVERSITY
OFFICE OF FACULTY DEVELOPMENT AND ADVANCEMENT

July 30, 2021

TO: FSU Faculty and Instructors

FROM: Janet Kistner, Vice President for Faculty Development and Advancement

RE: Class Lecture Recordings

As promised, here is additional guidance for implementation of Chapter 2021-159, Laws of Florida (also referred to as HB 233). This guidance is specific to the section that pertains to student recording of class lectures. Included below is an overview, a proposed syllabus statement, and a faculty-focused FAQ that were developed in conjunction with our colleagues in the State University System Offices of General Counsel. While not every situation can be anticipated, we are hopeful that the following will provide some clarity to you.

OVERVIEW

A state university student may, without prior notice, audio or video record a class lecture in which the student is enrolled for three specified purposes as outlined in House Bill 233/Section 1004.097, Florida Statutes: (1) for the student's own personal educational use; (2) in connection with a complaint to the university where the recording is made; or (3) as evidence in, or in preparation for, a criminal or civil proceeding.

A **class lecture** is defined as an educational presentation by the instructor as part of a university course intended to inform or teach enrolled students about a particular subject. A class lecture will occur most often in a course identified by the university as a lecture-type course, whether online or in-person, as opposed to a lab course or a course section identified as a discussion section or seminar. Class lecture does not include lab or recitation sessions; student presentations (whether individually or part of a group); class discussions (except when incidental to a class lecture); academic exercises involving student participation; clinical practica and presentations that involve patient histories and other types of protected health information; academic exercises involving student participation; test or examination administrations; field trips; and private conversations between students in the class or between a student and a faculty member. Any class recording that personally identifies a student who has not consented to being recorded will not be recognized as a part of a class lecture for these purposes, and such a

recording may be subject to other laws or institutional policies such as the Code of Student Conduct.

A class lecture recording may not be published without the written consent of the instructor, except that it may be shared with university officials or state and federal government officials in connection with a complaint to the university or used as evidence in a criminal or civil proceeding. Violation of this provision may subject the student to disciplinary action by the university and/or to a legal action by a person injured by the publication.

To **publish** means to share, transmit, circulate, distribute, or otherwise provide access to the recording, regardless of format or medium, to another person, or persons, including but not limited to another student in the class. Additionally, a recording, or transcript of the recording, is published if it is posted on or uploaded to, in whole or in part, any media platform, including but not limited to: social media, book, magazine, newspaper, leaflet, picket signs, or any mode of print.

PROPOSED SYLLABUS STATEMENT

(Subject to review and revision by the FSU Faculty Senate beyond Fall 2021.)

Students are permitted to make recordings of class lectures for a class in which the student is enrolled for personal educational use. A class lecture is defined as an educational presentation delivered by the instructor as part of a university course intended to inform or teach enrolled students about a particular subject. Recording class activities other than class lectures, including but not limited to lab or recitation sessions; student presentations (whether individually or part of a group); class discussions (except when incidental to the lecture); clinical practica and presentations involving patient histories and other protected health information; academic exercises involving student participation; test or examination administrations; field trips; and private conversations between students in the class or between a student and the faculty member is prohibited. Recordings may not be used as a substitute for class participation and class attendance and recordings may not be published or shared without the written consent of the faculty member. Failure to adhere to these requirements may constitute a violation of FSU's Student Code of Conduct and possibly have legal consequences. Students who record class lectures are asked to do so in ways that do not make others feel reluctant to ask questions, explore new ideas, or otherwise participate in class. Students must monitor their recording so that they do not include participation by other students without permission. Students with disabilities will continue to have appropriate accommodations for recordings as established by the Office of Accessibility Services.

FAQ FOR FACULTY

What can students record?

Students may audio or video record a class lecture, defined as an educational presentation by the instructor as part of a university course intended to inform or teach enrolled students about a particular subject. A class lecture will occur most often in a course identified by the university

as a lecture-type course, whether online or in-person, as opposed to a lab course or a course identified as a discussion section or seminar.

What are the permitted purposes for students making the recording?

There are three permitted purposes for students making the recording: (1) personal educational use, (2) for use in a complaint to the institution, or (3) for use as evidence in a civil or criminal proceeding. Students may not record for any other purpose without the written consent of the instructor.

Do students have to ask permission to record?

No, students do not need to ask for permission to record the class lecture, as long as they are making the recording for a permitted purpose.

Is there anything that students are not allowed to record?

Students are prohibited from recording class activities other than lectures, including but not limited to lab or recitation sessions, student presentations (whether individually or part of a group), class discussions (except when incidental to a class lecture), clinical practica and presentations that involve patient histories and other protected health information, academic exercises involving student participation, test or examination administrations, field trips, and private conversations between students in the class or between a student and a faculty member.

I allow my students to freely ask questions during my class lectures. Is this back-and-forth exchange considered class lecture or class discussion?

In general, class discussions are not part of the definition of “class lecture” unless the discussion is incidental to a class lecture. If students ask clarifying questions during the class lecture, that back-and-forth exchange would be considered incidental to a class lecture and properly subject to recording. If students ask questions or engage in conversation with the instructor about the lecture topic during a distinct discussion portion of class following a class lecture, that back-and-forth exchange would not be considered part of the class lecture and would not be subject to recording. If faculty question students about course material following, or in lieu of, a class lecture (e.g., Socratic method), these back-and-forth exchanges are not subject to recording.

Are students permitted to share their recording of the class lecture with other students in the class? For example, can students share their recording with a classmate who was sick and missed class?

No. Sharing the recording, even with another student in the class, would be considered publishing the recording and therefore is prohibited, unless the faculty member’s consent is obtained.

Are there any restrictions to the use of the recordings?

Yes. Recordings may not be used to engage in academic dishonesty, may not be used as a substitute for class attendance or participation, and may not be published or shared in any way without the instructor's written consent, unless the student is sharing the recording with university officials or state and federal government officials in connection with a complaint to the university, or as evidence in a criminal or civil proceeding.

Does this law change how students may behave in the classroom?

No; students must adhere to classroom behavioral expectations while recording. Recording that disrupts the learning environment may violate FSU's Student Code of Conduct and is not permitted.

Are there any other reasons a student may record?

Recording a class lecture or other class activity may be a part of an accommodation granted by FSU's Office of Accessibility Services. If that is the case, the student will provide you with documentation from the Office of Accessibility Services about these accommodations.

What are the consequences for a student who publishes a recording without consent?

A student who publishes a recording that is not part of a university complaint or evidence in a criminal or civil legal proceeding could face severe legal and/or disciplinary consequences. Per HB 233, unauthorized use of the recording allows the faculty member to take a student to court for damages, including attorneys' fees, totaling as much as \$200,000.00. Additionally, the student may be referred to FSU's Department of Student Conduct and Community Standards for a potential violation of FSU's Student Code of Conduct.

In closing, I want to thank you for continuing to create classroom environments in which a broad range of ideas may be exchanged, and diverse viewpoints examined. FSU is fortunate to have outstanding faculty and instructors who are committed to promoting academic excellence through these means. If you have any questions about class lecture recordings, please contact the Office of Faculty Development and Advancement (fda-faculty@fsu.edu) and include "class lecture recordings" in the subject line. We will respond to your questions as quickly as possible.