

Professor Jean Morrison, University Provost and Chief Academic Officer

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**TO:** Boston University Faculty

**FROM:** Jean Morrison, University Provost and Chief Academic Officer 

**DATE:** September 10, 2020

**SUBJECT:** Temporary Preservation of Video Recordings of Class Sessions

Under the Learn *from* Anywhere model, the University has [encouraged faculty](#) to record class sessions as a way of providing beneficial access to students who may have difficulty – for a variety of reasons – attending sessions in real time. A number of you have noted that you are currently unable to delete recordings within Zoom and have registered concern about this. I am writing to explain why this is the case and to address some of the concerns that have been raised.

As you may know, Boston University is facing five separate class action lawsuits in which BU students seek the return of tuition payments for the spring 2020 semester. The proposed ‘class’ in the five lawsuits consists of all undergraduate and graduate students who were enrolled and paid tuition and fees in the spring 2020 semester. The lawsuits challenge the quality of the education and overall student experience provided after the transition to remote learning in March 2020. Although the lawsuits currently focus on the spring 2020 semester, there is a chance that claims relating to the fall 2020 semester could be added, particularly if the University is forced to transition again to fully remote instruction.

As a result of these lawsuits, the University’s Office of the General Counsel has let us know that as a defendant in the lawsuits BU has a legal duty to preserve any evidence within the University’s possession, custody, or control that is potentially relevant to the claims or defenses in the lawsuits. The attorneys handling the lawsuits have determined that curricular materials, such as recordings of remote class sessions, are relevant to the lawsuits, and that because they are stored on platforms (such as Blackboard) that are in the University’s control, the University has a legal duty to preserve them. ***Therefore, we are obligated to preserve recorded curricular materials, including Zoom classes, from the spring 2020, summer 2020, and fall 2020 semesters.*** If we don’t comply, there may be sanctions or other adverse actions by the court. The attorneys therefore asked IS&T to temporarily disable the delete function for Zoom cloud recordings to preserve potential evidence, having determined that there was no timely or effective way to notify individual faculty of this legal obligation.

It is important to note that the preservation obligation applies only to curricular materials and not to other recordings such as department or other meetings, administrative or operational activities, interviews, or research. We are currently working with IS&T to develop a protocol by which

faculty may delete materials that are clearly outside the scope of the University's preservation obligation.

I imagine that some faculty may be reluctant to record class sessions because they are concerned about how those recordings will be used in the class action lawsuits or otherwise. I can assure you that the University is retaining these recordings solely for the purpose of these lawsuits. They will not be used for any other purpose and are not available to any individuals other than those in the General Counsel's Office and IS&T working on the lawsuits. IS&T can also assist faculty with disabling the sharing settings for recordings so they cannot be viewed by others. The University's need to temporarily preserve these recordings in no way affects faculty's intellectual property rights with respect to their teaching materials.

For the purposes of the lawsuits, at this time the University is simply preserving the class recordings. We do not yet know whether we will be required to produce any of these materials. Before producing any class recordings, the attorneys will seek to protect the privacy of students and faculty to the fullest extent allowed by the court and will ensure that the information produced is indeed relevant to either the plaintiffs' claims or BU's defenses. As is typical in litigation, there are steps that can be taken to protect privacy, and the attorneys will take these steps. In addition, before producing or using any of the recordings, they will ensure that faculty members are made aware of what materials are being produced. Once the litigation is over, there will be no ongoing duty to preserve class recordings and they can be deleted.

I hope that you will continue to offer recordings of your lectures and class sessions to your students, with the understanding that our retention of these recordings is temporary and confined to the purposes outlined above. These materials will inevitably be beneficial to many students and will help to ensure a positive learning experience for all this semester. I appreciate all of your continued efforts and understanding during this challenging time and wish you all the best in the start of the fall semester.

Cc: University Leadership Group