Chapter 21

Academic Freedom in Online Learning

Katarzyna Kaczmarska and Corinne Lennox

Introduction

Distance learning, and in particular online learning, has made tertiary education more accessible globally.[1] Examples of "open universities" have proliferated around the world as ways of delivering higher education (HE) more flexibly, affordably, and with the aim to reach remote and marginalized groups.[2] Distance and online learning provision has been pursued both by Global South countries typically seeking to rapidly and efficiently scale up the availability of HE and by Global North countries seeking to extend access to their programs at the national level and to increase access and revenue at the international level, also through the provision of affiliated teaching centers in other countries. This latter form is often termed "transnational education" (TNE), which denotes circumstances where "the learners are located in a country different from the one where the awarding

1 For some examples of research, pedagogy, and policy in online learning, see specialized journals such as *Distance Education* (Taylor and Francis) and *Open Learning: The Journal of Open, Distance and e-Learning* (Taylor and Francis). Please note that in this chapter we use the terms tertiary and higher education interchangeably.

2 Gajaraj Dhanarajan, "Distance Education: Promise, Performance and Potential," *Open Learning: The Journal of Open, Distance and e-Learning* 16 (2001): 61–68.

institution is based"[3]; this includes branch campuses, "fly-in" faculty, and distance or online learning. Data for the UK shows that there are nearly 700,000 students registered in UK programs overseas.[4] This is part and parcel of a broader phenomenon called HE internationalization.[5]

Latterly, the use of digital platforms to deliver distance learning has predominated, enabled by the rapid expansion of internet technology and connectivity and facilitated by a new range of learning management systems for online learning. Teaching and learning strategies such as "flipped learning" have integrated more use of online teaching tools also in campus-based programs. There has been a proliferation of Massive Open Online Courses (MOOCs), which offer varying levels of certification and are often free of charge. There was also a hasty and mass shift to the provision of education through online learning formats during the COVID-19 pandemic, paralleling these existing initiatives.[6] Hybrid forms of learning continue even post-pandemic, with students more accustomed to this practice and HE institutions (HEIs) keen on the cost-saving measures. This includes "virtual mobility," which means offering students international (e.g., "junior year abroad") experiences that take place entirely online. According to a survey carried out by Universities UK, an organization uniting over a hundred universities across the UK, the COVID-19 pandemic prompted 63 percent of British universities to introduce or expand virtual mobility and many of those institutions plan to maintain this form of mobility long term.[7] All of these changes are overseen by new forms of digital educational governance,

3 UNESCO/Council of Europe Code of Good Practice in the Provision of Transnational Education (Riga, June 6, 2001), 2, www.ehea.info/media.ehea.info/file/BFUG_Seminar/21/3/TransnationalEducation-CodeGoodPractice_554213.pdf. Unless otherwise stated, all links last accessed August 9, 2023.

4 Universities UK, "Managing Risks in Internationalisation: Security Related Issues," 2020, 9, www.universitiesuk.ac.uk/what-we-do/policy-and-research/publications/managing-risks-internationalisation.

5 For a discussion of academic freedom and internationalization, see, for instance, the special issue on academic freedom and internationalization in the *International Journal of Human Rights* 26(10), 2022. For a review of challenges to academic freedom and various aspects of globalization, see Michael Ignatieff and Stefan Roch, eds., *Academic Freedom: The Global Challenge* (Budapest: CEU Press, 2018) and the *Free to Think* reports by the Scholars at Risk network.

6 Viktoriya Shevchenko, Nataliia Malysh, and Olena Tkachuk-Miroshnychenko, "Distance Learning in Ukraine in COVID-19 Emergency," *Open Learning: The Journal of Open, Distance and e-Learning* (2021).

7 UUK, "Student Mobility Data 2020–21: Foundations of Recovery," December 20, 2022, www.universitiesuk.ac.uk/universities-uk-international/insights-and-publications/uuki-blog/student-mobility-data-2020-21.

which enable monitoring of online teaching and learning in ways that can affect academic freedom.[8]

While market-related considerations have been an important driver of online learning, this mode of learning has become more prominent also in spaces where academic freedom is severely curtailed by the state or where conflict makes regular tertiary education more difficult or impossible. Technology allowed for connecting learners and educators based in multiple locations, mostly "under the radar" of authoritarian regimes. For example, following the Russian invasion of Ukraine, the Invisible University for Ukraine was established with a view to providing educational opportunities for students residing in Ukraine and in refuge.[9] Examples from Myanmar, Russia, and Turkey, which we will discuss in more detail later, show that technology made it possible to deliver education that—up to a point—is free from authoritarian state interference, with significant implications for how we understand academic freedom.

This brief introduction shows the wide range of contexts in which online learning can be applied. The sum effect is a proliferation of this mode of engagement with learners for reasons of accessibility, pedagogical innovation, marketization, and the need to circumvent political oppression, as well as extraordinary measures in times of crisis, such as war or pandemics.

In the context of academic freedom, online learning can present specific challenges. This chapter provides an overview of some key risks to academic staff and students in tertiary education. We will attempt to point to challenges across a range of contexts, from the use of online learning in HEIs that may be otherwise free, to specific threats that arise from the use of online learning in oppressive contexts. Given our focus on learning, we will also briefly outline what we see as the international norms that protect the right of students to academic freedom, which are not always clearly articulated. Finally, the chapter ends with a review of some practices that can be adopted in both democratic and authoritarian states to counter threats to academic freedom in online learning. While online learning presents new

8 See Karran and Kissoon, *this volume*.

9 For more detail, see the university's webpage: "Invisible University," www.ceu.edu/non-degree/Invisible-University.

ethical considerations regarding pedagogy, these go beyond the scope of the present study.[10]

Risks to Academic Freedom in Online Learning

Online learning may seem unrestrained because it takes place "from home" via the internet. And yet, it is affected by the varying sociopolitical contexts in which the learners, teachers, and education providers reside and are registered. For students living under authoritarian regimes, online learning offers opportunities for developing critical thinking skills, accessing a wider range of sources, and discussing themes that may be deemed taboo or outright banned in their home countries. Despite those important benefits, accessing the learning content online does not mean that the academic freedom of learners cannot be compromised.

When students undertake education offered outside of their home country, the risks arise most commonly at the intersection of two different political and regulatory systems—the system of the country that delivers education and provides certification, and that where a student is physically located. For example, UK-based home students and overseas students benefit from UK regulatory protections, inter alia, regarding data privacy and internet freedoms, but might still face threats to their academic freedom because of the topics they study or—in the case of overseas students—restrictions and threats stemming from the legal and political arrangements of their home countries. In authoritarian states, various forms of policing may include one or a combination of the following: surveillance of learners' communication, monitoring of their activities within a virtual classroom, or the censorship of resources available to them. Some of those practices—for instance, regular classroom surveillance—have been developed for in-person education and can be transposed into an online setting.[11] Even if the state does not always interfere with the learners' use of instruments that allow them to bypass local regulations, the very fact of their illegality puts learners at risk.

10 See, e.g., Bill Anderson and Mary Simpson, "Ethical Issues in Online Education," *Open Learning: The Journal of Open and Distance Learning* 22 (2007): 129–138.

11 Tim Pringle and Sophia Woodman, "Between a Rock and a Hard Place: Academic Freedom in Globalising Chinese Universities," *International Journal of Human Rights* 26 (2022): 1792–1793.

Students risk falling out with local legislation when participating in seminars or accessing recorded content online while being physically located in their home countries. For example, this concerns learners accessing material on subjects considered taboo, such as homosexuality or references to alcohol and drug use.[12] Students also could be prosecuted for violating national laws on sedition, blasphemy, or national security as a result of their written or oral expression. For instance, students who are physically located in Russia risk falling out with national law if they take part in an online seminar discussion concerning Russia's aggression on Ukraine or the Soviet Union's role in the outbreak of the Second World War. Any critical remark concerning the Russian military has been—since 2022—punishable under the Penal Code of the Russian Federation, as has been the undermining of the Soviet Union's contribution to the victory over Nazism.[13]

Accessing course material may constitute another challenge impacting academic freedom. Students who are physically located in countries that exercise online censorship may not be able to read specific course content as the governments may block access to selected articles or journals.[14] Certain activities or tasks may be impossible for students to engage with if social media channels, such as YouTube and Twitter, are banned. Teachers may not be aware of the specificities of their students' access to the learning material. On a related note, academic publishing experiences academic freedom constraints and challenges of its own.[15]

Another set of risks arises from covert or targeted monitoring of online learning spaces. In the early days of the move to online learning during the COVID-19 pandemic, the lack of security in online lecturing tools such as Zoom led to a rise of so-called Zoombombing, including in many dem-

12 For a broader discussion of these issues, see cases reported by the Scholars at Risk (SAR) network in *Free to Think 2019: Report of the Scholars at Risk Academic Freedom Monitoring Project* (New York: Scholars at Risk, 2020), 36; and *Free to Think 2015: Report of the Scholars at Risk Academic Freedom Monitoring Project* (New York: Scholars at Risk, 2016), 31.

13 Radio Free Europe/Radio Liberty, "'Discrediting' the Armed Forces: The Russians Caught Up in a Draconian Law," May 30, 2022, www.rferl.org/a/russia-ukraine-war-discrediting-armed-forces-law/31875273.html.

14 Catherine Owen, "The 'Internationalisation Agenda' and the Rise of the Chinese University: Towards the Inevitable Erosion of Academic Freedom?" *British Journal of Politics and International Relations* 22 (2020): 238–255.

15 For a broader discussion of the challenges at the intersection of academic freedom and academic publishing, see Jennifer Wright et al., "Supporting Academic Freedom as a Human Right: Challenges and Solutions in Academic Publishing," *International Journal of Human Rights* 26 (2022): 1741–1760.

ocratic states. This had a chilling effect on teachers and students facing unwanted forms of protest, hate, and harassment from coordinated groups intruding in online lecturing spaces, prompting some universities to issue specific guidelines.[16]

Academic freedom is also threatened when states engage in covert monitoring of their citizens' communications and activities in cyberspace, often in breach of their own legal regulations. Rather than conducting mass surveillance, those states monitor selected individuals, in particular those active in the social and political realms.[17] Even for students physically based outside their home countries, the possibility of being recorded during a seminar discussion and reported to the authorities creates risk and may hamper or impede engagement in an online class discussion. The following example, provided by Emory University researchers, illustrates this point vividly:

> It was the last day of class in a course about Chinese society at Emory University—by then, many Chinese international students had already returned home after the transition to online learning in mid-March. Students in the class, 85% of whom were from China, logged on via Zoom, excited to see their classmates and instructors one last time before the semester ended. But when the discussion turned to Chinese politics, the faces of some Chinese students were suddenly replaced by rows of blank avatars, pseudonyms, ceiling fans, and unidentifiable objects. "I was concerned about discussing sensitive topics in China, since the data [transmitted] through local VPN was under possible scrutiny," a student in the class later wrote.[18]

Similarly, the fear of surveillance and breaches in data protection may limit the topics that students choose to study for their coursework or disserta-

16 Tufts University, "How to Respond to a 'Zoombombing' in Real Time," https://diversity.tufts.edu/resources/how-to-respond-to-a-zoombombing-in-real-time/. See also Chen Ling et al., "A First Look at Zoombombing," *IEEE Security & Privacy* 20 (2022): 22–30; Scholars at Risk, *Free to Think 2021 Report*, 30.

17 Justin Sherman, "Russia's Internet Censor Is Also a Surveillance Machine," *Council on Foreign Relations*, September 28, 2022, www.cfr.org/blog/russias-internet-censor-also-surveillance-machine.

18 Hong Li, Levin Arnsperger, and Michael Cerny, "Censorship Fears and Vampire Hours: Chinese International Students, Zoom, and Remote Learning", *The China Project*, June 30, 2022, https://thechinaproject.com/2020/06/30/chinese-international-students-zoom-and-remote-learning/.

tions. Concerns about students' safety may also prompt mentors to discourage students from researching politically sensitive topics—be it for student dissertations or as part of research assistance work, especially if this research involves browsing material available online and if dissertation submission and marking takes place in a virtual setting.

Importantly, the fear of surveillance exists even if published examples of students getting in trouble for following courses online have so far been scarce. At times persecution may be applied for online extracurricular activities, as the following example from Purdue University in the United States shows:

> Kong [Zhihao Kong, a student at Purdue University in Indiana] who goes by the nickname Moody, had already accepted an invitation from an international group of dissidents to speak at a coming online commemoration of the Tiananmen massacre anniversary. Uncertain if he should go through with it, he joined in rehearsals for the event on Zoom. Within days, MSS [the Ministry of State Security in China] officers were at his family's door again. His parents implored him: No public speaking. No rallies. Moody realized it didn't matter where he was. The Chinese government was still watching, and it was still in charge. Just before the anniversary event, he reluctantly decided not to give his speech. "I think that the Zoom rehearsals were known by the Chinese Communist Party," he said. "I think some of the Chinese students in my school are CCP members. I can tell they are not simply students. They could be spies or informants."[19]

The two examples provided earlier show how home states may be monitoring students abroad; they also illustrate the extent of insecurity among the student body. This testifies to the effectiveness of authoritarian coercive tactics that do not need to be proven or visible on a grand scale to be effective in sowing distrust and fear. Similarly, the experience of Zoombombing tactics has exposed the vulnerability of freedom of expression and assembly in online learning spaces.

19 Sebastian Rotella, "Even on U.S. Campuses, China Cracks Down on Students Who Speak Out," *ProPublica*, November 30, 2021, www.propublica.org/article/even-on-us-campuses-china-cracks-down-on-students-who-speak-out.

A recent survey on academic freedom from a student perspective, conducted by the European Students' Union, did not foreground online learning but did nonetheless ask two—out of the total of thirty-eight—questions about the use of proctoring software and other surveillance measures. This suggests that tech security has become a serious concern to students. Research into the strategies adopted by students in response to cyber-related risks is scarce at best, but in conversations with educators, students usually identify several techniques they adopt to increase their security online while undertaking learning activities, including research for their dissertations.[20]

Online learning has also been offered from within nondemocratic states. One of the more recent examples is the Free University (also known as the Free Moscow University), an online tertiary education platform launched in 2020. The same risks described earlier apply but with a caveat that nondemocratic regimes have the means and resolve to clamp down on such initiatives when they are operating in their midst. The Free University was established in response to academic freedom violations and overbureaucratization of the state tertiary education sector. The university cooperated with a number of scholars who left or were made to leave the Higher School of Economics, an erstwhile stellar HEI, which gradually became more and more aligned with the goals of the government and the presidential administration.[21] The Free University Manifesto declared the enjoinment of academic freedom as its key tenet and offered a course on academic freedom.[22] In 2023, however, the Prosecutor General's Office of the Russian Federation declared the Free University an "undesirable organization." Since participation in the activities of such an organization can lead to prosecution, the university suspended its activities on the territory of the Russian Federation.[23]

20 Nascent research into why students turn their cameras off found that the main reasons were "anxiety/fear of being exposed/shame/shyness, desire to ensure privacy of the home/personal space, and chances that other people might walk into the background"; see Vasile Gherheș, Simona Șimon, and Iulia Para, "Analysing Students' Reasons for Keeping Their Webcams on or off during Online Classes," *Sustainability* 13 (2021).

21 Margarita Lyutova, "Dazhe V Sovetskoye Vremya Takogo Stesnyalis [Even in Soviet Times, They Were Embarrassed about This]," *Meduza*, April 17, 2023, https://meduza.io/feature/2023/04/17/dazhe-v-sovetskoe-vremya-takogo-stesnyalis.

22 The university's website available at https://freemoscow.university/#manifesto.

23 The Free University, "Statement of the Academic Council," https://the.freemoscow.university/en/university/statement-of-the-academic-council/.

Online learning is prominent in situations of exile. The more recent examples include Turkey, Myanmar, and Russia. The Off University was established in 2017 by academics from Turkey living in exile, mostly in Germany, many of whom faced persecution following the failed coup in July 2016 against President Erdogan's government, including some as signatories of the Peace Petition in January 2016.[24] The Off University serves as a hub for collaboration and online learning that now encompasses a very international community of scholars experiencing threats to academic freedom: "Where authoritarian regimes turn the university OFF, we turn it ONLINE again."[25] The invasion of Ukraine in February 2022 prompted or forced many scholars in Russia who opposed the war to leave the country. Some of them continued delivering their teaching online well into 2023. The Russian state, however, was quick to introduce economic measures aimed at limiting this activity, notably by increasing the rate of tax from 13 to 30 percent on income generated in Russia by nonresidents.[26] Income tax—even if at first glance does not look like a measure having anything to do with academic freedom—in effect limits Russian students' right to the type of education they want to pursue as their access to mostly liberally minded educators became curtailed. In Myanmar, after the military coup in February 2021, academic freedom was widely suppressed, particularly for members of the Civil Disobedience Movement (CDM), which included many from the academic community. Dozens of online education institutions have been established in parallel to state-controlled campus HEIs. One of the largest is Spring University, established in May 2021, which has seen rapid growth and now offers more than five hundred courses, employs two hundred CDM teaching staff and where over 15,000 students from across Myanmar have attended online courses.[27] Many of these online learning efforts are coordinated by the Ministry of Education under Myanmar's exiled National Unity Government (NUG).[28]

---

24 Zia Weise, "Turkey Loses Its Brains," *Politico*, January 17, 2017, www.politico.eu/article/turkey-failed-coup-purge-scholars-loses-its-brains/.

25 Off University, "Our Vision," https://off-university.com/en-US/page/about-us.

26 Article 224 of the Tax Code of the Russian Federation; for more details see https://stnkrf.ru/224.

27 See "Spring University Myanmar: Reimagining the Future," www.springuniversitymm.com/; Mizzima, "Spring University Fees to Be Paid Using NUG Pay," January 30, 2023, https://mizzima.com/article/spring-university-fees-be-paid-using-nug-pay.

28 Nilar Aung Myint, "Exiled Government Establishes Alternative HE Programmes," *World University News*, July 24, 2021, www.universityworldnews.com/post.php?story=20210721150221771.

The NUG is committed to the principle of institutional autonomy and has recognized independent Interim University Councils (IUCs).[29]

The surveillance risks described earlier apply to university teachers as well, in both democratic and authoritarian states. However, there are a few specificities worth a broader discussion. An important aspect is the location of the workplace and the modality of work, that is, whether the teacher is mainly campus-based or works—on a regular or intermittent basis—at an overseas teaching center. These "branch campuses" need to abide by local legislation, which in some places may impinge on a free discussion of topics such as gender, religion, or various aspects of politics, including the military and war.

In online settings, teachers' reactions vary and range from attaching a special clarification to the learning content to resorting to various levels of self-censorship. For instance, a professor at the University of Michigan decided to add a disclaimer to the course description informing the students that it contains content the Chinese government may consider sensitive and which therefore could pose a greater risk for students in China or of Chinese nationality.[30] Examples of self-censorship include deciding not to offer a course on a specific subject or cutting out a lecture dedicated to a theme deemed politically sensitive. Some teachers may be more careful with comments that might be seen as directly critical of countries where their students reside or in relation to contentious national issues. Comments made in online learning spaces can have more "permanence" than comments made orally in a physical classroom and are more easily monitored by third parties.[31] Self-censorship in an online setting may be variously motivated. Some academics may wish to remain "politically correct" or "under the radar," considering their risks of harassment or impaired job prospects, or other interests like entering a specific country in the future. At times the key motivation is the concern for the safety of the students undertaking a

29 Nora, "We Are Developing the Ability to Make Changes and Build the Future," *The Irrawaddy*, February 23, 2023, www.irrawaddy.com/in-person/interview/we-are-developing-the-ability-to-make-changes-and-build-the-future.html.

30 Tripti Lahiri and Jane Li, "Universities Teaching Chinese Students Remotely Need to Scale the Great Firewall," *Quartz*, August 23, 2020, https://qz.com/1888595/chinese-censorship-is-challenging-us-universities-online-classes.

31 Jonathan Poritz and Jonathan Rees, "Academic Freedom in Online Education: Bringing AAUP Principles Online," *Academe* 107 (2021).

learning activity; however, teachers have limited ability to assess the risks to student safety, which may result in excessive censoring of the teaching content. Self-censorship also may be dictated by the concern about one's reputation, in case an online lecture is recorded or written comments posted in online discussion forums are captured. A lecture recording can be obtained by malevolent actors and subsequently edited and/or manipulated. It can also be published on social media to shame the author.[32] Both genuine and manipulated recordings can be used to harass or discredit scholars and affect scholars' ability to conduct fieldwork or attend conferences in countries where their views are opposed or censored.

Existing Normative Protections for Academic Freedom of Students

There are two approaches to defining academic freedom. A credentials-based approach sees it as a guild right, that is, a right derived from professional competence. The second approach recognizes academic freedom as a human right, anchored in key human rights norms such as freedom of expression, the right to hold opinions without interference, freedom of association and assembly, the right to education, and the right to share in the benefits of scientific advancement.[33] With regard to online learning, the right to privacy also can be foregrounded here, given the increased scope for privacy breaches arising from online learning technology, some of which may pertain to academic freedom.[34] Under the first approach, students might more easily be excluded from protection if their "professional" status is disputed, whereas the latter approach enables them to claim academic freedom as human rights

32 Emma Pettit, "A Side Effect of Remote Teaching during COVID-19? Videos That Can Be Weaponized," *Chronicle of Higher Education*, March 24, 2022, www.chronicle.com/article/a-side-effect-of-remote-teaching-during-covid-19-videos-that-can-be-weaponized/.

33 See Klaus D. Beiter, Terence Karran, and Kwadwo Appiagyei-Atua, "Yearning to Belong: Finding a 'Home' for the Right to Academic Freedom in the U.N. Human Rights Covenants," *Intercultural Human Rights Law Review* 11 (2016): 107; Sejal Parmar, "Academic Freedom under Pressure," *EJIL Talk*, December 2, 2019.

34 See, e.g., Human Rights Watch, *How Dare They Peep into My Private Life? Children's Rights Violations by Governments that Endorsed Online Learning during the COVID-19 Pandemic* (New York: Human Rights Watch, 2022); Divya Singh and Mashamaite Peterlia Ramutsheli, "Student Data Protection in a South African Open Distance Learning University Context: Risks, Challenges and Lessons from Comparative Jurisdictions," *Distance Education* 37 (2016): 164–179; Poritz and Rees, "Academic Freedom in Online Education."

holders. The Universal Declaration of Human Rights (Article 27 on cultural and scientific advancement rights), the International Covenant on Civil and Political Rights (ICCPR) (Article 19 on freedom of opinion and expression, Article 21 on freedom of assembly, and Article 22 on freedom of association, in addition to Article 17 on the right to privacy as noted earlier), and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) (Article 13 on education and Article 15 on the right to benefits of scientific progress) contain these core provisions. Notably, ICESCR Articles 15.3 and 15.4 further obligate states "to respect the freedom indispensable for scientific research" and to "recognize the benefits to be derived from the encouragement and development of *international* contacts and co-operation in the scientific and cultural fields" (emphasis added). Hence, the treaty contains provisions that could be cited in support of TNE. Yet despite the wide ratification of these treaties and the manifold additional instruments that have been created by states, HEIs, and student and faculty unions, there remains a gap between de jure and de facto protection of academic freedom.[35] Available data shows that half the world's population lives in countries in which academic freedom is in retreat.[36]

Academic freedom in online learning can be protected through laws and policies. For academics, the protection of academic freedom is widely embedded in international standards, national law, and university policies. In contrast, not all legislation will specifically name students as beneficiaries, nor will universities routinely include students within the purview of policy statements in support of academic freedom, creating lacunae. For example, the 1997 UNESCO Recommendation concerning the Status of Higher Education Teaching Personnel constitutes one of the first international attempts at comprehensively defining academic freedom but it does not include students as direct beneficiaries. In contrast, the Committee on Economic, Social, and Cultural Rights has put forward General Comment 13 on the right to education, in which the committee emphasizes "that

35 For a list of those instruments, see Robert Quinn, *From Words to Actions: A Call for International Guidelines on Implementing Academic Freedom* (Barcelona: Global University Network for Innovation, 2022), 143.

36 Katrin Kinzelbach et al., "2023 Academic Freedom Index 2023 Update," *FAU Erlangen-Nürnberg and V-Dem Institute*, 10.25593/opus4-fau-21630.

staff and students throughout the education sector are entitled to academic freedom."[37]

Taking one example at the national level, in England and Wales, there is national legislation that compels universities to protect academic freedom for staff, but provisions for students are limited to freedom of speech. For example, the Education (No. 2) Act 1986 requires education providers to "take such steps as are reasonably practicable to ensure that freedom of speech within the law is secured for members, students and employees of the establishment and for visiting speakers" (section 43). In contrast, the Higher Education Governance (Scotland) Act 2016 does not make an explicit mention of students, prescribing that "a post-16 education body must aim to—(a) uphold (so far as the body considers reasonable) the academic freedom" of persons engaged in the provision of learning and in research (section 23).[38] The UK government has also adopted the Higher Education (Freedom of Speech) Act that introduces several new measures regarding the protection of freedom of speech and academic freedom, although the Act only protects the freedom of speech of students, not their academic freedom per se, which is applied only to "academic staff." Students in the UK still need to rely on the human rights provisions of international law, including the European Convention on Human Rights and its articles on freedom of expression (Article 10) and freedom of assembly (Article 11), which are applied principally through the domestic law of the Human Rights Act (1998) governing the whole of the UK, to widen protection of their academic freedom. Students might also benefit from legal protections under criminal or civil law on unlawful speech that constitutes, inter alia, harassment, fear of violence, or hatred on the basis of protected characteristics.[39]

The challenge concerning online learning is that multiple jurisdictions can be triggered: for example, the jurisdiction of the host university, of the teaching center in another state, or of the state in which the independent learner is based. This raises challenges concerning wide variations in national legal protection for the academic freedom of academic staff and stu-

37 Committee on Economic, Social, and Cultural Rights, "General Comment No. 13 on the Right to Education (Article 13)," UN Doc E/C.12/1999/10 (1999), paras. 38–40.

38 The Act can be accessed here: www.legislation.gov.uk/asp/2016/15/pdfs/asp_20160015_en.pdf.

39 Equality and Human Rights Commission, *Freedom of Expression: A Guide for Higher Education Providers and Students' Unions in England and Wales* (Manchester: Equality and Human Rights Commission, 2019).

dents.[40] International law can provide some leveling out across jurisdictions, but the monitoring mechanisms are weak in most cases. There are also potential risks to students returning to their home countries after they study abroad, where national laws might be triggered to persecute them for activities undertaken during their studies. The absence of strong protection for the academic freedom of students in international standards and national law underscores their vulnerability when engaging in education of any kind, but may be exacerbated where their learning modality is TNE.

Practices to Support Academic Freedom in Online Learning

There are several options to put in place stronger protections for academic freedom in online learning. This volume has addressed many generally applicable policies, but, in this chapter, we will outline some specific considerations for this learning modality.

Universities can establish clear codes of conduct applicable to online learning. The authors of this chapter have worked with the Academic Freedom and Internationalisation Working Group to draft a "Model Code of Conduct on the Protection of Academic Freedom and the Academic Community in the Context of the Internationalisation of the UK Higher Education Sector."[41] It contains a specific recommendation regarding distance education, which advises UK HEIs to "take steps to protect the academic freedom of these members of the academic community engaged in distance education at a UK HE institution, including through safeguards for personal data, secure use of online discussion platforms, and safe access to online teaching and learn-

40 For examples of comparative European jurisdictions on academic freedom, many of which also do not expressly protect students in national law, see Monika Stachowiak-Kudła et al., "Academic Freedom as a Defensive Right," *Hague Journal on the Rule of Law* 15 (2023): 161–190. See also Klaus D. Beiter, Terence Karran, and Kwadwo Appiagyei-Atua, "Academic Freedom and Its Protection in the Law of European States: Measuring an International Human Right," *European Journal of Comparative Law and Governance* 3 (2016): 254.

41 The Academic Freedom and Internationalisation Working Group was established in 2019 and is composed of academic members, with support from some civil society organizations and the UK All-Party Parliamentary Human Rights Group. It aims to "uphold … academic freedom in the context of internationalisation of UK higher education and promot[e] … a collective and organised response by academic communities and HE institutions in the UK"; see School of Advanced Study, "Academic Freedom and Internationalisation Working Group," https://hrc.sas.ac.uk/networks/academic-freedom-and-internationalisation-working-group.

ing materials."[42] At the institutional level, the Open University in the UK, currently the largest provider focused on distance learning, has adopted a "Statement of Principles on Academic Freedom" (2019).[43] This is an example of a cross-cutting statement that applies to the whole academic community, including staff and students. Student charters can also include specific provisions for academic freedom.

The Model Code of Conduct also recommends improvements in monitoring and reporting on threats to academic freedom and the appointment of a specific contact point to assist any members of the academic community that are affected. This should include protections for independent learners and teachers who are participating in online learning from other countries. The monitoring practice should be supported by introducing academic freedom considerations into the ranking of HEIs.[44] International partnerships concerning TNE should assess risks to academic freedom from the outset, put in place mitigation strategies, and establish "red lines" on violations of academic freedom that would trigger the termination of cooperation agreements.

Another obvious starting point is to review protection measures within information and communication technology (ICT) used for online learning. During the pandemic, when there was a sharp and swift move to use of tools like Zoom to deliver teaching, it quickly became apparent that there were unforeseen security, harassment, and privacy risks with some software used for online learning.[45] General measures for cyber security are being increased in many universities,[46] for example, introducing multifactor authentication for logins, which can also safeguard against hacking into student accounts for covert monitoring of their studies.

---

42 School of Advanced Study, "Model Code of Conduct," https://hrc.sas.ac.uk/networks/academic-freedom-and-internationalisation-working-group/model-code-conduct.

43 The Open University, "Statement of Principles on Academic Freedom," https://help.open.ac.uk/documents/policies/academic-freedom-principles-statement/files/1/statement-of-principles-on-academic-freedom.pdf.

44 For a broader discussion of university rankings and academic freedom, see Katrin Kinzelbach, Ilyas Saliba, and Janika Spannagel, "Global Data on the Freedom Indispensable for Scientific Research: Towards a Reconciliation of Academic Reputation and Academic Freedom," *International Journal of Human Rights* 26 (2022): 1723–1740.

45 Thorsten Benner, *The "Zoomification" of Academia: Addressing Risks to Academic Freedom* (Berlin: Global Public Policy Institute, 2021).

46 Joachim Bjørge Ulven and Gaute Wangen, "A Systematic Review of Cybersecurity Risks in Higher Education," *Future Internet* 13 (2021): 39.

In high-risk security contexts, such as where distance and online learning are pursued in response to war or oppression, universities operating in an online environment can adopt both "high-tech" and "low-tech" strategies for safety in online learning. On the "low tech" side, students (and teachers) at risk may be advised to use a nickname/avatar or a nonpersonal email to participate in discussions without turning on their video camera, to access learning material from separate devices, and to refrain from communicating in parallel spaces with other students. This, however, has multiple downsides. It may pose assessment and certification challenges if learners cannot be legally identified. Avatars and switched-off cameras make it easier for trespassers to enter and participate in a class. They make teaching delivery difficult and introduce excessive anonymity that may prompt participants to share hateful remarks. This makes the establishment of ethical guidelines for online learning essential. In one online program offered to students in Myanmar, the courses begin with sessions specifically on how human rights education manifests itself in the virtual classroom through teaching core principles on academic freedom, freedom of expression, and mutual respect for differences of opinion.

On the "high-tech" side, careful consideration is needed of the pros and cons of different tools. To assist this, Off University provides learners with a detailed matrix on what kind of data is collected by different online learning tools, in order "to create awareness of how internet users can protect their data and defend themselves digitally."[47] At one virtual university operating in Myanmar, students are offered a four-hour training session specifically on security about online learning. The use of a "cloud" for storing learning materials and VPNs is widely advised. The use of VPNs, however, is not a failsafe option, and universities should carefully scrutinize potential security risks that might remain. In specific jurisdictions, VPNs may be illegal. In others, their use may be tolerated, despite constituting a legal offense. Students' use of VPNs may be negotiated between a university and the student's home country. Notably, an argument was made by concerned academics that an internet access agreement concluded by institutions representing UK universities still allowed Chinese government censorship in virtual

47 "Off-University," https://off-university.com/en-US/Blog/Detail/practicing-digital-self-defense.

classrooms.[48] Some universities provide advice "on bandwidth and firewalls" and on "accessing online learning in China."[49] This advice should be explicit about what it means that a VPN is state-approved. This type of information should also either direct students to resources concerning academic freedom or explain how firewalls and specific VPNs intersect with the academic freedom of learners.

The content management policies of the learning management systems, such as Moodle, Blackboard, or OpenEdX, constitute another important area for policy development. Software companies specializing in education technology may be vulnerable to pressure from authoritarian regimes to restrict access to certain materials for online learning within their jurisdiction, a procedure that is well known to international publishers.[50] Companies should review their policies and practices to determine what actions would potentially breach academic freedom. At the Off University, concerns over weaknesses of existing learning management systems prompted them to create an entirely new tool, Coworkingsquares, to provide enhanced security. Academics have also raised concerns about intellectual property rights that may be impinged by the user agreements of learning management systems as lectures, posts, or other teaching materials are uploaded online.[51]

Online learning modalities can be effective tools also to increase knowledge about academic freedom per se. Student inductions can include specific training on what academic freedom means for their studies. For example, Scholars at Risk (SAR) partnered with the University of Oslo to create a Future Learn MOOC on "Dangerous Questions: Why Academic Freedom Matters."[52] Learners are introduced to the concept of academic freedom and taught how to "identify challenges and threats to academic freedom in

48 See, e.g., the use of the Alibaba Cloud service by UK universities, which experts argue cannot adequately prevent monitoring and censorship by the Chinese government. Matthieu Burnay et al., "Internet Access Deal Allows Chinese Government Censorship in Our UK University (Virtual) Classrooms," *USS Briefs*, https://medium.com/ussbriefs/internet-access-deal-allows-chinese-government-censorship-in-our-uk-university-virtual-classrooms-4040a77df25d.

49 See, e.g., University of Edinburgh, "Delivering Teaching to Students Overseas: Advice on Bandwidth and Firewalls," www.ed.ac.uk/information-services/learning-technology/more/teaching-continuity/delivering-teaching-to-students-overseas; University of Bristol, "Accessing Online Learning in China," www.bristol.ac.uk/digital-education/guides/china/.

50 Owen, "The 'Internationalisation Agenda' and the Rise of the Chinese University."

51 Poritz and Rees, "Academic Freedom in Online Education."

52 Future Learn, www.futurelearn.com/courses/academic-freedom.

different contexts."[53] In the UK, an "edtech" company has been commissioned to create "a novel style of micro-courses to support student understanding about the vital importance and principles of freedom of speech and academic freedom" to be delivered via mobile phones in a video format.[54]

Another important step would be to place greater emphasis on academic freedom in online learning in policies and guidelines aimed at managing risks related to the internationalization of HE and crisis response. Universities UK is currently reviewing and updating the "Managing Risks in Internationalisation: Security Related Issues" guidelines.[55] It is important that the language in which such guidelines are constructed foregrounds academic freedom. At present, explicit references are somewhat lacking, with statements emphasizing primarily the security aspect.[56] The guidelines mention "protection from extraterritorial jurisdiction issues—consider carefully the risks faced by academics and students participating in online discussions about issues that some nation states might regard as sensitive and take steps to inform these individuals."[57] Academic freedom should be at the forefront of all crisis response activities undertaken by the HE sector in the future. UK universities supporting those in Ukraine have recognized the need to build "capabilities that will better position UK universities to respond to future crises," and online learning likely will form an important part of creating those capabilities.[58]

Data collection can inform this strategic planning. In the UK, the National Student Survey introduced a change that would allow for collecting data on students' experience of academic freedom.[59] The agreed ques-

53 Future Learn, www.futurelearn.com/courses/academic-freedom.

54 Advance HE, "Advance HE Partners with GoodCourse to Create Micro-courses on Freedom of Speech and Academic Freedom," February 7, 2023, www.advance-he.ac.uk/news-and-views/advance-he-partners-goodcourse-create-micro-courses-freedom-speech-and-academic.

55 Universities UK, "Managing Risks in Internationalisation: Security Related Issues," www.universitiesuk.ac.uk/what-we-do/policy-and-research/publications/managing-risks-internationalisation.

56 Universities UK, "Managing Risks in Internationalisation," 5.

57 Universities UK, "Managing Risks in Internationalisation," 36.

58 The quotation stems from the UK-Ukraine R&I twinning grants scheme webpage, see "Twinning Grants Scheme," www.universitiesuk.ac.uk/topics/international/international-research-collaboration/uk-ukraine-ri-twinning-grants-scheme.

59 The Office for Students undertook a lengthy consultation process on whether to include a new question. It was not uncontroversial; while some agreed it was necessary to monitor the freedom of expression, particularly given existing and emerging regulatory requirements, others felt it was a politicized issue and exaggerated the level of actual concern about these issues on UK campuses. See Office for Students, "Con-

tion is: "During your studies, how free did you feel to express your ideas, opinions, and beliefs?"[60] and will be directed at final-year students. Under this guidance, some universities may integrate a similar question into their surveys for their distance learning students. For example, the University of London Worldwide, which specializes in distance and online learning, will include this question in its biennial Student Experience Survey, which will also encompass independent learners and those learning out of teaching centers in other countries. The narrow focus on freedom of speech may, however, obscure other risks to academic freedom in online learning, such as essay topic selection, security concerns over data sharing on certain learning platforms, access to reading materials that may be locally proscribed, or course choices. One possible avenue of future research would be to compare responses by jurisdiction, home country, or learning modality (i.e., campus, hybrid, or fully online) of students.

Conclusion

Online learning has been on the rise for some time, but it was the COVID-19 pandemic that forced most of the HE sector across the world to switch to the virtual learning environment. Some institutions made the switch only temporarily, others incorporated online learning into specific areas long term, including introducing virtual international mobility for students and online dissertation supervision and marking. Various motivations are behind the preference for online settings, including accessibility, profitability, pedagogical innovation, and the need to circumvent oppression, surveillance, and harassment. There is little doubt that this mode of engagement with learners will continue proliferating. The guiding motivation behind this chapter was that precisely because of how widespread the practice becomes and how profoundly it will reshape the HE sector, it is crucial to discuss how the online mode of learning intersects with challenges to academic freedom.

---

sultation on Changes to the National Student Survey: Analysis of Responses and Decisions," October 28, 2022, www.officeforstudents.org.uk/media/c896af2e-f4b0-400d-a5db-76cdf6b0db86/consultation-on-changes-to-nss_analysis-of-responses-and-decisions.pdf.

60 The question will apply only to the survey in England. The funders of higher education in Scotland, Wales, and Northern Ireland "do not consider that the proposed question has value for providers in those countries"; see "Consultation on Changes to the National Student Survey," 27.

While online learning opens up a number of opportunities, it is not free from old risks and generates new challenges to academic freedom. Risks to academic freedom in online education stem from several principal sources: the technological tools and environment as well as the laws and policies of the country offering online learning and—in the case of online learning taking place transnationally—those laws of the home or resident countries of learners. Even if online learning is offered by HEIs registered in countries with robust de jure and de facto protection of academic freedom, learners and teachers can fall victim to gaps in the security of online learning platforms and are not impervious to practices employed by oppressive governments or hostile social groups.

In this chapter, we proposed several initial steps for strengthening academic freedom in online learning. These measures include the establishment of clear codes of conduct applicable to online learning; the review of protective measures employed by online learning platforms; the introduction of safeguards for personal data, secure use of online discussion platforms, and safe access to online learning materials; training for learners and teachers; and clearly articulated processes of lending support to affected learners and teachers. We also believe that it is vital to incorporate the assessment of academic freedom into the process of establishing international partnerships and to continue improving and extending the monitoring of academic freedom transgressions worldwide, with special emphasis on transgressions taking place in an online environment.[61]

We have not been able to touch on a number of issues related to academic freedom in online learning, for instance, other forms of support that can be offered to academics living under oppression through online networks, such as the Academics in Solidarity program.[62] We aimed to map out this dynamic field. Further research into the teacher and student experiences of online learning and their perceptions of academic freedom in virtual settings will give a more detailed picture of the distinct challenges to academic freedom.

---

61 For more information on the monitoring process currently in place, see the Scholars at Risk, "Academic Freedom Monitoring Project," www.scholarsatrisk.org/actions/academic-freedom-monitoring-project/.

62 For more information, see "Academics in Solidarity," www.fu-berlin.de/en/sites/academicsinsolidarity/index.html.