Meeting of the Academic Senate Executive Committee  
Tuesday, May 12, 2020  
https://calpoly.zoom.us/j/268557683

I. Minutes: April 28, 2020 minutes (p. 2)

II. Communication(s) and Announcement(s):

III. Reports:
A. Academic Senate Chair:
B. President's Office: None
C. Provost: None
D. Statewide Senate: (p. 3-4)
E. CFA: (p. 5)
F. ASI: (p. 6)

IV. Special Reports:
A. [TIME CERTAIN 3:30 p.m.] Facial Recognition during Commencement: Ryan Jenkins, Ethics + Emerging Sciences Group (pp. 7-22)

V. Business Item(s):
A. Appointments to Academic Senate Committees for the 2020-2022 term: (pp. 23-24)
B. Appointments to University Committees for the 2020-2021 academic year: (p. 25)
C. Resolution on the Marketing of Cal Poly’s Educational Identity and Goals: Gary Laver (pp. 26-27)
D. Resolution on Recognizing and Support Faculty Efforts and Activities Towards Diversity, Equity, and Inclusion: Marilyn Tseung, Academic Senate Diversity Committee (pp. 28-29)

VI. Discussion Item(s):

VII. Adjournment:
Meeting of the Academic Senate Executive Committee  
Tuesday, April 28, 2020  
https://calpoly.zoom.us/j/412386620

I. Minutes: M/S/P to approve the April 7, 2020, and April 14, 2020, Academic Senate Executive Committee minutes.

II. Communication(s) and Announcement(s): none.

III. Reports:
A. Academic Senate Chair: Dustin Stegner, Academic Senate Chair, reported that the Power of Doing campaign will come to an end as it has reached its goal. He also announced that the majority of new hires have been frozen for the foreseeable future.
B. President’s Office: none.
C. Provost: none.
D. Statewide Senate: none.
E. CFA: Refer to page 6 of agenda packet.
F. ASI: Refer to page 7 of agenda packet.

IV. Business Item(s):
A. Appointment of substitute for Tom Gutierrez, Physics, to represent CSM on the Academic Senate for the 2020-2021 academic year. M/S/P to appoint Matt Beekman, Physics, as substitute for Tom Gutierrez on the Academic Senate for the 2020-2021 academic year.
B. Resolution on Online Teaching and Learning. Brian Greenwood, Online Teaching and Learning Task Force Chair, proposed a resolution which introduced an updated online teaching policy, including information on quality control, faculty training and technical support. M/S/P to agendize the resolution.
C. Resolution on University Faculty Personnel Policies Subchapter 8.4.5: Student Evaluation Results. Ken Brown, Faculty Affairs Committee Chair, presented a resolution which established guidelines for Subchapter 8.4.5: Student Evaluation Results in the University Faculty Personnel Policies (UFPP). M/S/P to agendize the resolution.
D. Resolution on Posting Accessible Course Materials. John Hagen, Instruction Committee Chair, proposed a resolution requesting faculty upload course materials to the learning management system (LMS) on the Cal Poly Drupal site in order to increase accessibility. The resolution also establishes trainings to help faculty through the process. M/S/P to agendize the resolution.
E. Temporary Suspension of Sections of Executive Order 1037 - Grading Symbols, Minimum Standards Governing the Assignment of Grades, Policies on the Repetition of Courses, Policies on Academic Renewal, and Grade Appeals. Dustin Stegner, Academic Senate Chair, discussed a memorandum to send to the Chancellor’s Office stating the Executive Committee’s stance on how many times students may be allowed to retake a class. The committee decided in favor of sending the memo which will be voted on at the Academic Senate meeting on May 5th, 2020.

V. Discussion Item(s): none.

VI. Adjournment: 5:00 p.m.

Submitted by, 
Katie Terou  
Academic Senate Student Assistant

805-756-1258 ~ academicsenate.calpoly.edu
Statewide Senate Report for Academic Senate Executive Meeting 05/12/20

Gary Laver:

At its next meeting, the CSU Board of Trustees will consider a recommendation from the Chancellor’s Office (CO) on a systemwide requirement in "Ethnic Studies and Social Justice." The CO’s proposal is its response to the statewide Academic Senate’s resolution AS-3403-19 on a systemwide ethnic studies requirement which, in turn, is a response to the state legislature’s bill AB 1460 concerning a CSU ethnic studies graduation requirement. AB 1460 is still under consideration in the legislature.

The Board of Trustees will be taking up the CO proposal as a potential modification of Title V. In its current incarnation, the CO’s proposal would essentially establish a new systemwide, lower-division GE requirement of four quarter units. Instead of increasing overall GE requirements by four units, it would reduce lower-division Area D requirements by four units. However, courses satisfying this new GE requirement would not be limited to Area D disciplines.

The following link is to the agenda for the May 12 meeting of the Board of Trustees’ Committee on Educational Policy. The agenda’s third discussion item contains the CO’s position on this issue as well as a table comparing facets of the three ethnic studies proposals from the state Assembly, the CSU Academic Senate, and the CO.

https://www2.calstate.edu/csu-system/board-of-trustees/past-meetings/2020/Documents/may-12-ED-POL.pdf

As a final note from the statewide plenary (as of three o’clock Thursday, May 7), the senate passed without dissent a resolution advocating faculty participation in and administrative support for ORCID (Open Researcher and Contributor ID) within the CSU. This is congruent with our senate resolution passed earlier this year.

Steve Rein:

For Catherine Nelson on the Occasion of her last Plenary Meeting as Chair (5.7.20)

Methinks not often has there been
A Chair with watchdog sense so keen
To guard against intrusions various,
Claims to Steal our role, nefarious!
And from the Well, a tart response
To interruptions— in a nonce.
Shared Governance is hard to parse—
Some would make of it a farce.
Catherine gavels with steady hand,
She keeps good order, the Home Fires fanned.
For this our gratitude she’s earned
Though for herself some bridges burned.
She danced the dance and walked the walk
Though weary, she did never balk.
Neath Capitol Dome, On Golden Shore
And Closer to home our badge she wore.
And now casts she off her crown
Her burthens, too, she lays them down.

– David Speak

AS3421, a resolution emphasizing the faculty, through their elected representatives in campus senates and the ASCSU have the right to speak on issues of curriculum was passed without dissent. As such, CFA can lobby for something, but they should not represent the union viewpoint an the viewpoint of the faculty on any issue other than bargaining.

May revise will be released May 14 and will likely be a bare-minimum maintenance budget. The real final budget probably won’t be worked out until October. This is because until July 15 we won’t really know the revenues. Furthermore, the later things go on, the better we’ll know the costs of COVID19 and the downturn in the Economy. Already the governor’s office has started preparing people to year the revised budget. This week they let us know that they expect a $50B (with a B) deficit.

There has also been a huge delay in legislation in Sacramento. In terms of CSU-related items, AB1460 looks like it might not pass by the required July 15 due to other legislative priorities. The Board of Trustees will hear a proposal that is closer to the earlier ASCSU proposal on Ethnic Studies than to AB 1460. It gives less local control to campuses, but still greater flexiblility than the ASCSU resolution. There will only be one, lower-division, course (and thus, likely taught by CCCs for about half of CSU graduates). The suggestion from those paying closest attention is that if AB1460 passes, the Governor will veto it in favor of the Board of Trustees/CO proposal.

Chancellor White (I’m not a immunologist or epidemiologist but ...) spent 1.5 hours with us even though scheduled for only 30 minutes:

Largely, he’s expecting that we’ll need to, systemwide, be careful for maybe 2 years. The 1st wave might be done in California, but next Fall they’re expecting a 2nd wave and perhaps a 3rd wave in March or so. Only behaviors (such as social distancing, masks, thoughtful testing, etc.) and a possible vaccine will be tools that we can use to control things.

Different campuses have different abilities to respond to their individual situations. Certainly, most students being within 2 degrees of separation from some 98% of other students on campus and then dining and housing issues (whether on-campus or off-campus) will make these next two academic years just plain different than before.

In terms of financial issues, CA jobless claims are some 4.2M in the last 3 weeks and we should be at 18% unemployment soon. This might cause more to want to enroll in colleges, but with unemployment many might feel as if they are not able to afford it.

An approximate 25% drop in revenues may very well cause the legislature to reduce support to the CSU and to ask for an increase in tuition to partially compensate. (Steve’s guess: we’ll hear “do more with less” pretty soon.)

Chancellor White encouraged flexibility in thinking across the system and within campuses to eliminate artificial barriers to student success. Perhaps thinking thru issues from the point of view of a student and leveraging the strengths across all 23 campuses ... especially for students who might need to remain local to their home which might not be close to their campus of matriculation.
Cal Poly is receiving approximately $14 million under the federal CARES act. Half of this money is going to student financial aid. The University is using other funds to provide supplemental financial aid to CARES-ineligible students, including undocumented students. CFA SLO is encouraging management to use the other $7 million of CARES money to avoid faculty layoffs and reduction of timebase for lecturer faculty, if necessary.

CFA’s statewide officers issued a letter outlining CFA’s plan to defend quality higher education in the CSU during the pandemic. The plan includes maintaining and defending faculty rights (especially health and safety), and defending student access, equity, and safety. The letter is available here: [https://www.calfac.org/post/cfa-way-forward](https://www.calfac.org/post/cfa-way-forward)
ASI President Report for May 12, 2020:

- **Meeting with Governor’s Office** – On May 4th, I was able to be a part of a group of student leaders that met with Lande Ajose, Senior Policy Advisor for Higher Education, on the challenges students are facing with online instruction and suggestions for reopening higher education institutions.

- **CSSA May Plenary** – On May 9th and 10th, the California State Student Association (CSSA) will be meeting. Hot topic items on the agenda are CSSA Executive Officer elections, consideration of opinion on the Supporting Students in Response to Coronavirus Act by Senator Murray, and Approval of the 2020-21 CSSA Budget.

- **Pride Month at Cal Poly** – Due to complications with COVID-19, the Cal Poly Pride Center is recognizing campus pride month in May. I encourage you to look up ways to support students in the LGBTQ+ community.

- **Deferred Action for Childhood Arrivals** – Continues to be a pending decision by the Supreme Court. ASI Student Government is considering a multitude of financial, legal, and educational resources/initiatives to help support DACAmented, undocumented, and mixed-status household students at this time.
MEMORANDUM

May 4, 2020

TO: Dustin Stegner, Academic Senate chair
CC: Keith Abney (PHIL), Ken Brown (PHIL), Bruce DeBruhl (CSSE), Patrick Lin (PHIL), Zachary Rentz (PHIL), Parker Ornellas (PHIL)
FROM: Ryan Jenkins (PHIL)
SUBJECT: Technology ethics review: GradImages facial recognition at graduation ceremony

Executive Summary

Below we present an analysis of the ethical risks presented by GradImages’ facial recognition technology deployed at Cal Poly’s graduation ceremonies. We acknowledge the benefits of such a program. But we also identify several ethical risks:

- GradImages collects photos of Cal Poly students’ faces, which are Level 1 Data according to Cal Poly’s own data classification. However, GradImages’ data protection practices are markedly inadequate.
- GradImages admits to transferring these data to other unspecified third parties and makes these pictures available on a public-facing webpage, searchable by student name.
- Students and other attendees could not reasonably know this is happening and there is no clear way to opt-out, even on GradImages’ website.
- We identify the potential for serious harm, e.g., by stalkers or abusers.
- We suspect the data will also prove attractive for law enforcement, which endangers Cal Poly’s commitment to establishing a safe space for undocumented and other vulnerable students.
- We believe this program poses significant PR risks and, potentially, legal risks.

We judge the case of GradImages to be a “yellow light” for ethical risk. While these risks are substantial, they are not insurmountable. Below, we provide suggestions for how these risks can be managed. In sum, Cal Poly and GradImages should take substantive steps to inform graduates this is taking place, make opting-out easier and effective, and disclose their data stewardship policies, with all deliberate speed. If these steps are impossible system, we recommend Cal Poly consider changing vendors to one who is able to meet a minimal ethical threshold for data collection, transfer, and distribution.
In Appendix A, we provide a general philosophical discussion of the nature and value of privacy as a primer. In Appendix B, we provide background on the accelerating controversies over facial recognition on college campuses nationwide, which Cal Poly would be wise to note.

Our Understanding of the Situation

Our understanding of the situation is this: Cal Poly has contracted with GradImages (https://www.gradimages.com), a third-party vendor who takes photos of students at graduation and makes them available to graduates and the public. GradImages takes photos of students who “cross the stage” to receive their degree, photos of people in the audience, and candid photos of students before and after the ceremony. GradImages uses facial recognition to identify the people in these photos. The photos are then emailed to the people who are identified. Moreover, the photos are made available on a public-facing website, GradImages.com, where anyone can search for a student by last name, university, and graduation year.

What follows is an initial assessment, raising preliminary concerns, premised on this understanding. We do not have investigative powers, though we think these risks — including PR and legal risks — are significant enough that they merit further due diligence by Cal Poly.

Benefits

The benefits of this program are clear, if relatively minor. We believe that the risks of such a system, however, greatly outweigh these benefits.

GradImages boasts that their program makes available PR photos for the university and easily identifiable photos for graduates, family members, etc. Typically, these photos would be “put into a large ‘gallery’ with hundreds of other PR images, and graduates often need to browse through them all in order to find their own.” According to GradImages:

“There are several instances during commencements where this technology is valuable:

1 While we are not charged with rendering legal advice, and nothing in this memo should be construed as such, in our preliminary assessment, there is some risk — and potentially significant risk — of legal exposure through this program under the California Consumer Privacy Act (CCPA), with the possibility of a significant number of harmed individuals. This risk of legal exposure should be carefully weighed against the benefits that Cal Poly stands to gain from implementing this system, which we gauge to be relatively minor. It may be prudent, therefore, to suspend this program awaiting a full and careful legal analysis, and the procurement of guarantees from GradImages that they are in compliance with relevant laws, including CCPA.

• Small group pictures taken of a graduate with family and friends;
• PR images taken during the ceremony, when our photographers must be discrete.”

Analysis of GradImages

In Appendix A, we outline our understanding of the nature and value of privacy. Evaluating the impact of technologies with privacy implications, we suggest, requires answering questions that can be grouped as follows:

1. What particular data are being collected? How sensitive are these data?
2. Do users know — or could they reasonably know — that their data are being taken, stored, and used?
3. Who owns and controls the data, and how responsible are they? How long are the data stored? Could the data be transferred to third parties who are untrustworthy?
4. What are the data used for? What is the risk of unintended harm? Is there a potential for abuse by employees, the public, or the government?
5. How do the most vulnerable users, i.e. those who might have good reasons to conceal their whereabouts, or underrepresented minorities, stand to be affected?
6. Whose personal information might be collected “incidentally,” i.e. who are the bystanders who could also be affected?

An analysis of GradImages with regard to each of these questions follows.

1. **What particular data are being collected? How sensitive are these data?**

   ➢ GradImages is capturing students’ faces and linking them to their names. These data are highly sensitive and count as Level 1 data under Cal Poly’s data classification system.

   GradImages is capturing one of the most sensitive pieces of someone’s identity: facial recognition is highly invasive, since there is no way to simply leave one’s face at home. “Unlike other forms of personal data… facial data lends itself to constant and permanent surveillance.”


---

3 Ibid.
4 In addition, we believe that GradImages is also in possession of student email addresses, in order for them to be able to email photos to students after identifying them.
face counts as biometric data, GradImages is collecting what Cal Poly considers Level 1 data, which it classes as Highly Sensitive and Personally Identifiable Information (PII). According to Cal Poly:

**High** [Level 1 data] - An unauthorized disclosure, compromise or destruction would result in severe damage to Cal Poly, its students, or employees. Violation of statutes, regulations, or other legal obligations, financial loss, damage to Cal Poly’s reputation, and possible legal action could occur.

We agree with Cal Poly’s own determinations that these data are of the highest sensitivity. We concur further below (see question #3) that unauthorized release or irresponsible use of these data could cause severe damage to Cal Poly and its students. For this reason, **we find it extremely troubling that the data collected by GradImages are made freely available to the public.** This should be alarming to Cal Poly, and provides sufficient ethical reason to revisit the terms of their contract with GradImages and the assurances provided by GradImages therein.

- **Manage:** Cal Poly should confirm that GradImages’ capture of student faces is consistent with Level 1 data safeguards. They should also confirm that GradImages’ practices and handling of these data, including the transfer of such data to undisclosed third parties, is consistent with Level 1 data safeguards.

2. **Do users know — or could they reasonably know — that their data are being taken, stored, and used?**

- Students should know their picture is being taken and their name is being read. They **probably do not know** that their picture is being linked to their name and made available on a publicly-facing website.

---

6 Most authors are clear that faces count as biometric data, which Cal Poly labels as highly sensitive. See, for example: “Biometric identifiers are the distinctive, measurable characteristics used to label and describe individuals. Biometric identifiers are often categorized as physiological versus behavioral characteristics. Physiological characteristics are related to the shape of the body.” Biometrics. Wikipedia. [https://en.wikipedia.org/wiki/Biometrics] Accessed 2/21/20. See also Jain, Anil, Lin Hong, and Sharath Pankanti. “Biometric identification.” *Communications of the ACM* 43.2 (2000): 90-98; and Jain, Anil K., Patrick Flynn, and Arun A. Ross, eds. *Handbook of biometrics*. Springer Science & Business Media, 2007. Finally, see the GDPR, which defines biometric data as “personal data resulting from specific technical processing relating to the physical, physiological or behavioural characteristics of a natural person, which allow or confirm the unique identification of that natural person, such as facial images...” GDPR, Article 4 (14). [https://gdpr-info.eu/art-4-gdpr/] Accessed 2/21/20.

On the one hand, the GradImages system uses photos of students taken during a ceremony they are not required to attend. Students’ names are being called out as they cross the stage, so their identity is already being publicized. Students have little room to complain if, say, someone in the audience is able to recall that they were at the ceremony.

On the other hand, students could not reasonably expect that they would be handing over data indefinitely to a private corporation who then transfers it to others, and who have no effective opt-out policy. In conversations, students called this system “creepy” and “invasive.”

Students might not have realized that these pictures would be made available on a public-facing website, i.e. requiring no authentication before retrieving a picture of any graduate. Thus, there are significant — though not insurmountable — ethical concerns with this system.

- **Manage:** Cal Poly should inform students that their decision to attend graduation will entail their subjection to the use of facial recognition technology. For this notice to be meaningful, students should also be made aware that their data will be made available publicly by GradImages.

- **Manage:** We urge that GradImages should require authentication from users, e.g. in the form of a PIN or password, before allowing users to access college graduation photos. (GradImages’ partner website, TeamPhotoNetwork, which publishes high school class photos, requires users to log in with a “password” or “PIN.”)

3. **Who owns and controls the data, and how responsible are they? How long are the data stored? Could the data be transferred to third parties who are untrustworthy?**

- GradImages’ data stewardship policies, insofar as they are described publicly, are seriously deficient and cause for profound concern. This includes their handling of financial information, location data, and faceprints, among other data. Their data policies are vague, seem to misrepresent their business, and fail to meet industry-standard best practices.

---

8 Anecdotally: When explaining GradImages to students at Cal Poly, many failed to see the benefit, and responded with confusion. Even after explaining that the intention was for convenience, many students doubted that the convenience offered was sufficient justification to use facial recognition. Additionally, GradImages has been used for high school ceremonies that included Cal Poly students. When displaying the technology that GradImages possess to current Cal Poly students, students who were in the system from their high school graduation found it “creepy” or “invasive.”

A company’s privacy policy is intended to disclose their practices for data collection, data sharing, data processing, and data storage. When reviewing GradImages’ privacy policy, we found several aspects that did not meet industry standard best practices, i.e. Fair Information Practices (FIPs).\(^\text{10}\)

First, FIPs encourages collection limitation of data that could be uniquely identifying or identifying in connection with other information. GradImages’s mobile app collects various data including which are surely personally identifying and highly sensitive.\(^\text{11}\) They also provide no explanation for why collecting these data is relevant. This seems like a clear unnecessary overreach of data collection.

There is also a lack of clarity about transparency. It is unclear whether students who are included in the dataset are given any option to opt-out of participating in having their picture taken. It is also unclear how student information is stored prior to them visiting the site and receiving the privacy policy. This seems like a lack of participation and a choice for users.

The use limitation around third party data seems suspect also. GradImages says, “We may also share your credit card information in an anonymized manner with our business partners to create profiles to help us better market to our users.” This is ill-defined, and we have considerable questions about how credit card data can be anonymized appropriately and sold. This seems difficult or downright impossible given current data anonymization techniques.

Furthermore, GradImages’ privacy policy explicitly states that they do not collect certain information that is protected in California. This includes race, physical disability, gender, faceprints, and electronic sensory information. However, in order to have facial recognition, you must have a faceprint. This is simply how facial recognition software works. Furthermore, considerable work has been done in academic literature on using faceprints to predict race and gender. Therefore, GradImages could conceivably process the faceprints they do not claim to have to infer other information they do not claim to have. This is at least a further lack of transparency — at worst: incompetence or simple dishonesty.

\(^\text{10}\) The requirements for privacy policies have varied over time but are becoming more uniform with broad California legislation known as the California Consumer Privacy Act and the EU’s General Data Protection Regulation. Both of these laws lean on, to varying extents, the long-standing fair information practices (FIPs). The OECD lists the FIPs as Transparency, Purpose Specification, Collection limitation, Use Limitation, Individual Participation, Data Quality, Security, and Accountability.

\(^\text{11}\) These include, but are certainly not limited to: geolocation data, mobile device universally unique ID, carrier information, hardware and processor information, and network type. Geolocation data is collected for “certain features” of their mobile application, which are not explicitly identified. Furthermore, this information can be extremely personal and revealing, for example, they could reveal if a user is visiting a medical facility, attorney’s office, or other fiduciary. GradImages does guarantee that they only collect this data while the app is running, but do not provide any clarity on whether this includes applications that continue to run in the background.
The accidental release of data is certainly a serious concern, but it is also the exception to the rule. Mundane occurrences in the corporate world — such as intentional data transfer between partnered companies — can also have consequences that are significant cause for concern. For example, in the event that GradImages goes bankrupt or is acquired, they could transfer of their assets — including these data — to another company, say, one that processes mugshots, or that has lax ethical safeguards. GradImages’ privacy policy explicitly warns users of this:

\[
\text{As we develop our businesses, we might sell or buy businesses or assets. In the event of a corporate sale, merger, reorganization, sale of assets, dissolution, or similar event, the Information [i.e. photos of student faces] may be part of the transferred assets.}^{12}
\]

This underscores the concern that to hand over data to a third party is to effectively surrender control of it forever.

The privacy policy provided by GradImages is not encouraging. Under the heading, “Do Not Sell My Personal Information,” GradImages states:

\[
\text{...Currently, we do not share your personal information in a manner that would be considered a sale under CCPA. We only disclose your personal information to our service providers pursuant to contracts that prohibit the service provider from using your personal information for any purpose other than those services specified in the contract.}^{13}
\]

GradImages says they identify the faces in photos by “partnering with a leading company in the image recognition industry”\(^{14}\) whose identity they do not disclose. Under their privacy policy, GradImages notes that they may “contribute user information to cooperative databases,” whatever that includes; and mentions that their data could be stored or transferred outside the United States, “where the privacy laws may not be as protective as those in your country of origin.”

Our understanding is that GradImages uses facial recognition to email graduation photos to the people who are identified in those photos. If this is correct, then there are significant worries about false positives, i.e. students receiving photos of someone else.\(^{15}\) This is not just creepy, but again raises privacy concerns — and possible identity theft risk, if a malicious actor needed a doppelganger.

---


\(^{15}\) On a related note, it is not clear how GradImages is able to match faces with identities, given that a large database of faces is typically required to do this reliably. Even though Cal Poly has a database of nearly every
Even if our understanding is mistaken, it is also important to note that these photos are easily searchable on the company’s website. At GradImages.com, anyone can, without authentication, search for students who graduated recently. This is disturbing on its own, not to mention these data could be “scraped” (or downloaded in bulk) by malicious third parties.

4. **What are the data used for? What is the risk of unintended harm? Is there a potential for abuse by employees, the public, or the government?**

   - The most concerning aspect of GradImages’ program is placing student photos on a public-facing website where they are easily available, including to malicious parties.

   It is important to reiterate that GradImages makes available these photos on a website where anyone can search for someone who has had their photo taken. We worry this technology could perpetuate serious risks such as stalking, identity theft, and abuse to be perpetuated. Abuse is already disturbingly widespread on college campuses, affecting almost half of college-aged women, and stalking affects over one in eight college-aged women. In the United States, many citizens share concerns regarding the use and abuse of their facial recognition data. These concerns appear to be legitimate due to the sensitivity of the data and the groups that can store and use this data.

---


17 “Over 13% of college women report they have been stalked. Of these, 42% were stalked by a boyfriend or ex-boyfriend.” “Dating and Domestic Violence on College Campuses”. University of Michigan Sexual Assault Awareness and Prevention Center. Accessed 2/24/20.

18 For example, many people were outraged when the tech company, Clearview AI, was exposed for their use of invasive facial recognition. This company utilizes facial recognition technology to obtain faces from many types of social media outlets and then provide them to law enforcement agencies. Hill, Kashmir. “The Secretive Company That Might End Privacy as We Know It.” *The New York Times*, The New York Times, 1/18/2020, [<www.nytimes.com/2020/01/18/technology/clearview-privacy-facial-recognition.html>](http://www.nytimes.com/2020/01/18/technology/clearview-privacy-facial-recognition.html). Accessed 2/21/2020.
5. How do the most vulnerable users, i.e. those who might have good reasons to conceal their whereabouts, or underrepresented minorities, stand to be affected?

- Facial recognition technology can have negative impacts for the most vulnerable members of Cal Poly’s community (1) by functioning less reliably for students of color and (2) by providing an attractive source of data for law enforcement agencies, which endangers Cal Poly’s commitment to create a safe space for undocumented students.

Facial recognition systems have well-documented disparities in their reliability, depending on the race or skin tone of the person being identified, as well as gender and age. The technical reasons for this are not relevant for our discussion. However, this raises the possibility that students of color would be identified less reliably by this system. As a result, they are being asked to endure similar risks while being less likely to enjoy the benefits of the system. Specifically, while false positives raise obvious concerns about misidentification, as discussed above, false negatives could also be important, i.e. students of color would be less likely to receive their graduation photos, which capture a once-in-a-lifetime moment. This raises questions of justice with regard to who is able to enjoy these benefits.

GradImages does not publicize its rate of false positives and false negatives (anywhere that we could find), which is essential for any informed decision to use it, given that benefits need to be balanced against risks.

Second, a database of facial images of students could provide an especially attractive target for law enforcement or immigration enforcement authorities.

Government agencies, including immigration authorities, have an established record of seeking out data like this that might be useful in solving a crime — even when that crime is trivial. Moreover, the companies who hold the data will often comply when they get a subpoena rather than risk the cost of a legal battle. This is to say that simply accumulating the data is not a victimless act: it creates a pool that


is an attractive target for law enforcement, and the mere existence of these data makes them vulnerable to misuse. In technology ethics, this is known as the “If you build it, they will come” principle.

The data gathered by GradImages otherwise wouldn’t exist and are more easily subpoenaed, since a third-party vendor is holding it, or could be available without a subpoena. Once the data are created, Cal Poly is no longer in control, and the presence of these data in the hands of unidentified third parties undermines Cal Poly’s commitment to creating a safe campus for undocumented students. Note, for example, that Cal Poly states:

The information a student shares with a college or university is protected by federal law and CANNOT be shared with anyone, including immigration officials... The school legally cannot share this information with third parties including the Department of Immigration and Naturalization (INS), now the Immigration and Customs Enforcement (ICE).\(^{21}\)

GradImages’ collection of these data could endanger current students if, say, several graduating students that the government knows to be undocumented should pose together with their friends who are underclassmen. This could leak the status of others or imply their undocumented status to ICE. Cal Poly should be prepared to weather a legal or PR storm if ICE subpoenas the faces of students who attended the graduation ceremony.

6. **Whose personal information might be collected “incidentally,” i.e. who are the bystanders who could also be affected?**

- Many others who are not Cal Poly students may have their photos collected, are less likely to expect this is taking place, and have even less opportunity to opt-out.

Finally, many others who are not Cal Poly students may have their information incidentally collected in the background or periphery of these photographs: family, friends, faculty, staff, and so on. These parties are also impacted if they attend graduation. Many of the same concerns that were raised above apply here, especially if GradImages has the means to match faces of non-students with their identities. Some of these people, such as guests or parents, may be undocumented, even if students are not.

The harms to these secondary parties are less worrisome — since, as far as we know, their photos are not being indexed and linked to their identities online. However, these people are less likely to expect this is taking place — for example, they are not the ones having their names read out publicly while being photographed crossing the stage.

Manage: Attempts to notify Cal Poly students to secure their consent about this program should extend to faculty, staff, family, friends, etc., in short: anyone who attends a graduation ceremony.

Next Steps

- Secure guarantees from GradImages that they will follow data collection and stewardship best practices. Their current practices raise several ethical red flags, including the transfer of data to unspecified third parties which could be outside of the United States. If GradImages is unable to provide these guarantees, consider terminating Cal Poly's relationship with this vendor in the interest of protecting the privacy and safety of their student population.

- Notify all attendees, before the graduation ceremony, that their faces could be collected, connected to their identities, stored, transferred to third parties, and made available in a publicly-accessible website. We suspect the reputational risk and outcry that that would follow from this widespread disclosure would be sufficient to cause Cal Poly to carefully rethink their partnership with GradImages.

- Carefully examine whether the ethical and PR risks of this program are worth the benefits. What is ultimately at issue are our duties to students and other stakeholders, as well as a risk-benefit calculation: whether the benefits of allowing a third-party vendor to collect and distribute these data justify the risks. We agree with Cal Poly’s own policies regarding data protection:

  All University information should be reviewed on a periodic basis and classified according to its use, sensitivity and importance to the University and in compliance with Federal and/or State laws. The level of security required will depend in part on the effect that unauthorized access or disclosure of those data values would have on University operations, functions, image or reputation, assets, or the privacy of individual members of the University community...

  Since these data have no obvious academic or public safety purpose, it is worth considering whether they should be collected and disseminated to third parties — and made publicly available — at all.

- Consider banning the use of facial recognition on campus. Many other universities in the United States have pledged not use facial recognition on their campus. These schools include Boston College, the Massachusetts Institute of Technology, Rice University, New York University,
While we do not yet recommend that Cal Poly abandon this particular use of facial recognition, we do strongly recommend that Cal Poly make students aware of the policy, and take the suggested steps above for mitigating the ethical and PR risks brought by the technology.

> Consider extending shared governance principles to data collection and governance policy to anticipate controversies that may arise in the future. It may be worth asking the Academic Senate formally for such an inclusion in the understanding of shared governance.

> Perform further due diligence to answer the questions about how such a program came to be, in order to better understand the process that led to this vendor relationship arising, and targeting interventions into that process to avoid further controversies arising in part due to negligence of ethical concerns. For example:

  o Did Cal Poly know (or should they have known) that the company they hired was using facial recognition in this way? For example, were proposals submitted in response to an RFP for either campus photography or specifically graduation-related photography, and did this particular vendor disclose that they would be using facial recognition?
  o Was it a Cal Poly employee’s job to do diligence on this particular vendor before hiring them?
  o Was the information that the vendor uses facial recognition technology available at the time that GradImages was retained as a vendor, and did the Poly employee ignore it or miss it?
  o Was it clear at the time that GradImages would be transferring these data to other companies, including possibly those outside the United States, and also posting these pictures publicly?

~ ~ ~

About the Ethics + Emerging Sciences Group

Established in 2007 at California Polytechnic State University (Cal Poly), San Luis Obispo, the Ethics + Emerging Sciences Group is a non-partisan organization focused on risk, ethical, and social concerns related to new sciences and technologies. As a research and educational group, we are involved with

---

ethics and risk assessment, course development, publishing projects, media outreach, public lectures, and other activities to engage policymakers, business, academia, as well as the broader public on key issues in science and society.

**About the Primary Author**

Dr. Ryan Jenkins is an associate professor of philosophy and a senior fellow at the Ethics + Emerging Sciences Group at California Polytechnic State University in San Luis Obispo. He studies the ethics of emerging technologies, especially automation, cyber war, autonomous weapons, and driverless cars. His work has appeared in journals such as *Ethical Theory and Moral Practice*, and the *Journal of Military Ethics*, as well as public fora including the *Washington Post, Slate* and *Forbes*.

This analysis also benefitted from input by Keith Abney (PHIL), Bruce DeBruhl (CSC), Zachary Rentz (PHIL), Patrick Lin (PHIL), and Parker Ornellas (PHIL).

**Contact**

Ryan Jenkins, Ph.D.
Senior Fellow, Ethics + Emerging Sciences Group
California Polytechnic State University
Philosophy Department
San Luis Obispo, CA 93407
Email: ryjenkin@calpoly.edu
Website: [http://ethics.calpoly.edu](http://ethics.calpoly.edu)
Appendix A: Ethical Primer on Privacy

The most fruitful way of understanding privacy is not to ask what data are public and which are private, as if that were the only relevant question, and privacy were a binary property. Rather, privacy concerns “specific norms and expectations that govern communication among various parties at different times and places.”

Thus, whether something is a privacy violation depends on whether it violates norms and expectations which vary by context.

Concern about facial recognition varies broadly among the public and different applications of facial recognition fall along a spectrum of ethical risk. For example, hundreds of millions of users are comfortable using facial recognition to unlock their Apple iPhones with “FaceID.” Somewhere in the middle of this spectrum, runners in a marathon race might be comfortable with a technology that takes their picture along the running route while also being useful for catching cheaters.

On the extreme end of the spectrum, Americans are usually aghast when learning of China’s system of ubiquitous surveillance of citizens, including their digital and physical activities, and Americans, by and large, are wary of efforts to surveil citizens using facial recognition.

In order to evaluate the ethical risk of a technology that has impacts on privacy, to locate a technology along this spectrum of risk, we should consider several questions:

1. What particular data are being collected? How sensitive are these data?
2. Do users know — or could they reasonably know — that their data are being taken, stored, and used?
3. Who owns and controls the data, and how responsible are they? How long are the data stored? Could the data be transferred to third parties who are untrustworthy?
4. What are the data used for? What is the risk of unintended harm? Is there a potential for abuse by employees, the public, or the government?

---


5. How do the most vulnerable users, i.e. those who might have good reasons to conceal their whereabouts, or underrepresented minorities, stand to be affected?

6. Whose personal information might be collected “incidentally,” i.e. who are the bystanders who could also be affected?

These questions help us identify points of intervention to mitigate the ethical risk, and also to render an overall judgment on the application of this technology as acceptable or not. A nuanced appraisal of surveillance technology, such as facial recognition, requires answering each of these questions and considering the overall balance of benefits and potential for harm.
Appendix B: Background and Larger Controversy on Facial Recognition

Several cities and college campuses have banned facial recognition over concerns about surveillance and tracking. San Francisco’s ban is perhaps the most notable of these.²⁸ The ordinance, approved by San Francisco’s board of supervisors, reads, in part:

> The propensity for facial recognition technology to endanger civil rights and civil liberties substantially outweighs its purported benefits, and the technology will exacerbate racial injustice and threaten our ability to live free of continuous government monitoring.²⁹

Because San Francisco’s government banned the use of facial recognition by city departments, i.e. public entities, it is worth considering whether their concerns extend to Cal Poly as a public institution. Public institutions plausibly have a greater obligation to consider risks and take precautionary measures before deploying potentially harmful technologies.

Furthermore, several colleges have moved to ban facial recognition, and several have in fact pledged not to use facial recognition on campus³⁰ — including Stanford, Harvard, UCLA, and MIT.³¹ Concern has swelled on college campuses driven by related surveillance technologies, such as mobile apps that track student locations for attendance, mental health or other purported reasons.³²

---

²⁹ Ibid.
Statements of Interest Received for 2020-2022 Academic Senate Committee Vacancies by College
(All appointments are for 2-years unless noted below)

**College of Architecture and Environmental Design**
Budget and Long Range Planning Committee (2020-2022)

*Jason Hailer, Construction Management (4 years at Cal Poly) – Incumbent*
Serving on the BLRP committee has provide a unique insight into the financial and strategic planning of the university from a short-term view as well as long-term. As the chair of the CM department's strategic planning committee, I have found the information and transparency provided by the BLRP as critical to aligning our department goals with those of the college and university. I would hope to continue to serve on the BLRP committee to further my understanding of the university's implementation of the Cal Poly strategic plan, the campus master plan and allocation of resources in order to meet the goals set forth within those organic documents. Thank you for your consideration.

Distinguished Teaching Awards Committee (2020-2022)
Diversity Committee (2020-2022)
Faculty Affairs Committee (2019-2021)
GE Governance Board (2020-2023)
Grants Review Committee (2019-2021)
Instruction Committee (2019-2021)
Research, Scholarship, and Creative Activities Committee (2020-2022)
Sustainability Committee (2019-2021)

**College of Agriculture, Food and Environmental Sciences**
Grants Review Committee (2020-2022)

**College of Engineering**
Distinguished Teaching Awards Committee (2020-2022)
Diversity Committee (2020-2022)
Instruction Committee (2020-2022)

**College of Liberal Arts**
Curriculum Committee (2020-2022)

*Christian Anderson, World Languages & Cultures (7 years at Cal Poly)*
I will complete my second term as a Senator for the CLA this spring. I would like to continue serving in some way on a university-wide level. My selfish reasons for this involve the multi-collegiate nature of the German program, on behalf of which my departmental and college level service activities are concentrated, and for which I frequently advocate and network in order to increase enrollments and custom tailor German course offerings to the needs of the wide range of Cal Poly students interested in learning German and pursuing other topics in German cultural studies.

My general ideological posture could be described as: optimize flexibility and strength within well-defined domains of thought and practice. More concretely, I think most decisions about curriculum belong at the college level, where departments and deans work together to create offerings that make sense within their fields. I was vocally in favor of a new e-learning policy that would have removed the Academic Senate Curriculum Committee from the process of approving online delivery of courses already in the catalog. I think the value of a university wide curriculum committee lies in the way it approves the courses and programs to be added to the catalog. In my opinion, what happens with existing courses (the way we teach them) is beyond the mandate of the Curriculum Committee. The question of quality control of existing courses seems to fall under the responsibilities of departments through teaching evaluations and classroom observations.

Upon re-reading, I wonder if I don't sound like one of those anti-regulation types who hope to become EPA chief in order to open up drilling. That is not the case.
It is my resolute intention to be a positive, energetic force for efficient handling of the important tasks of academic governance managed by the Curriculum Committee.

Distinguished Scholarship Awards Committee (2020-2022)
Research, Scholarship, and Creative Activities Committee (2020-2022)

**College of Science and Math**
Budget and Long Range Planning Committee (2020-2022)
Steven Rein, Statistics (22 years at Cal Poly)
I have been serving on BLRP for some years now. Furthermore, I am on the Corporation Board of Directors and have also been attending the Fiscal and Governmental Affairs Committee at the Statewide Senate. As a former chair of the Senate and the other things mentioned would allow me to provide a lot of continuity to BLRP. I will also be able to be a good conduit of information between other groups and BLRP.

Research, Scholarship, and Creative Activities Committee (2020-2022)

**Orfalea College of Business**
Distinguished Scholarship Awards Committee (2020-2022)
Distinguished Teaching Awards Committee (2019-2021)
Diversity Committee (2020-2022)
Fairness Board (2019-2021)
GE Governance Board (2020-2023)
Instruction Committee (2020-2022)
Sustainability Committee (2020-2022)

**Professional Consultative Services**
Budget and Long-range Planning Committee (2019-2021)
Distinguished Scholarship Awards Committee (2019-2021)
Distinguished Teaching Awards Committee (2019-2021)
Fairness Board (2020-2022)
Research, Scholarship and Creative Activities Committee (2020-2022)
Sustainability Committee (2019-2021)

Athletics Advisory Board: One vacancy: (2020-2023)

Campus Parking & Transportation Advisory Committee: Two vacancies (2020-2022)
Ryan Walter, Physics (6 years at Cal Poly)
For the past four years, my wife (who also works on campus) and I have participated in a variety of alternative transportation programs. For the past three years, both of us rode the local RTA bus to work. For the past year, after the birth of our son and need to have a car on campus in case of an emergency, we have been charging our electric vehicle on campus. I know firsthand the importance and value of these alternative transportation programs to the campus and the community; however, I also know that there are many improvements that can be made to make the program more efficient and better utilized, with an aim towards reducing traffic on campus and the collective carbon footprint of the University. I hope that my experience utilizing, and desire to improve, these programs will be a valuable contribution to the Campus Parking & Transportation Advisory Committee.

Campus Safety and Risk Management Committee: One vacancy (2020-2022)

Conflict of Interest in Research Committee: One vacancy (2020-2021)

Disability Access and Inclusion Committee: Two vacancies DACC (2020-2022) AND ARB (2020-2022)


CAED (2020-2022)
CENG (2019-2021)
CLA (2020-2022)
OCOB (2020-2022)
PCS (2020-2022)


Sustainability Advisory Committee: One vacancy (2020-2022)
Nicholas Babin, Natural Resources and Environmental Sciences (2 years at Cal Poly)
I have over ten years of experience in both temperate and tropical landscapes teaching and doing applied research on the science and policy of sustainable agriculture and water resource management. I have extensive experience supervising and mentoring student independent research projects and community-based student internships. I have helped design new undergraduate majors in sustainability and sustainable development during prior academic positions. As Director of Sustainability at Sierra Nevada University, I was the chair of a campus committee aimed at further embedding sustainability and service learning across the broader campus community. I envision leveraging my experiences in evaluating and promoting sustainability with both students and administrators into my work with the Cal Poly Sustainability Advisory Committee. This could take several forms and directions, depending upon the interests of the existing committee.

University Union Advisory Board: One vacancy (2020-2021)
WHEREAS, The voice of the faculty is integral to framing Cal Poly’s educational identity and goals; and

WHEREAS, The WASC Commission Action Letter from 2010 asked that Cal Poly “identify more clearly the aspirational goals of the institution, and the role of faculty in helping to shape possible changes in the institution’s identity”; and

WHEREAS, The Report of the WASC Visiting Team: Capacity and Preparatory Review from the last full accreditation review by WASC in 2010 cited the “need for a measurable definition of the signature pedagogy of Cal Poly, that of Learn-by-Doing”; and

WHEREAS, The Report of the WASC Visiting Team in 2012, “recommended that additional attention be given to clearly: a) defining what is meant by the term “comprehensive polytechnic university””; and

WHEREAS, Cal Poly’s faculty have spoken through Academic Senate resolutions on the definition of Learn by Doing (AS-727-11) and the adoption and definition of Cal Poly’s identity as a comprehensive polytechnic (AS-650-06); and

WHEREAS, In our WASC Capacity and Preparatory Review Report (December 2009), Cal Poly recognized the combination of our Learn by Doing pedagogy, our adoption of the teacher-scholar model, our intention to provide “a meaningful reply to the fractured nature of higher education,” and our commitment to the “development of vigorous programs in the arts, science, and humanities” in reaffirming our identity as a “comprehensive polytechnic university”; and

WHEREAS, One foundation of President Armstrong’s Vision 2022 affirms Cal Poly as a “comprehensive polytechnic university”; and

WHEREAS, Recently developed Cal Poly marketing/branding policies and documents, though since corrected after feedback from the Academic Senate, originally contained a description of Cal Poly as a “holistic polytechnic” and a definition of Learn by Doing that differed from and ignored previously adopted definitions of these concepts; therefore, be it

RESOLVED: That Cal Poly’s marketing/branding policies and materials include references to and definitions of Cal Poly’s educational identity and goals based only on those documents which have received both faculty endorsement via the Academic Senate and approval by the President; and be it further
RESOLVED: That Cal Poly’s Academic Senate be consulted through all stages of future efforts to modify marketing/branding policies and materials intended to promote Cal Poly’s educational identity.

Proposed by: Academic Senate Executive Committee
Date: April 28, 2020
WHEREAS, diversity, equity, and inclusion are critical aspects of Cal Poly’s Vision and among the priorities in the Strategic Plan guiding Cal Poly’s growth and evolution; and

WHEREAS, Cal Poly has demonstrated its prioritization of the values of diversity, equity, and inclusion through changes in the leadership structure, changes in hiring decisions and evaluation processes, the provision of resources to support campus-wide scholarly activities, discussions, and mentoring, and provision of resources to support faculty professionally and personally in these areas; and

WHEREAS, a large number of faculty at all levels engage in these efforts through their teaching, research, and service to the University; and

WHEREAS, not all academic programs formally recognize these efforts in personnel policies; and

WHEREAS, personnel policy documents are periodically updated to reflect changes in university priorities; and

WHEREAS, increasing recognition of the value of efforts towards diversity, equity, and inclusion is already evident in individual College Peer Review Committee deliberations and individual faculty members’ Professional Development Plans; therefore, be it

RESOLVED that the Academic Senate urges Cal Poly to continue facilitating and supporting efforts and committing the resources needed to promote diversity, equity, and inclusion among the campus community; and be it further

RESOLVED that the Academic Senate recommends that all colleges incorporate formal recognition of professional development efforts in diversity, equity, and inclusion
as applied to teaching, research, and service in their personnel policies, procedures, and criteria for retention, promotion, and tenure; and be it further

RESOLVED that the Academic Senate encourages colleges and individual faculty members to acknowledge efforts in diversity, equity, and inclusion during review procedures for retention, promotion, and tenure even when such efforts have not yet been incorporated into official personnel policies.

Proposed by: Academic Senate Diversity Committee
Date: May 12, 2020