Primer on Privatization in Online Higher Ed

This document is meant as a primer and conversation starter for chapters facing privatization through online education programs and should be used with the planning and strategy documents in the AAUP [Education Not Privatization toolkit](#). To access sample language for resolutions or letters of agreement, please visit this [member-only page](#). For additional support educating and organizing on these issues, feel free to email privatization@aaup.org.

What Is "Privatization"?

Faculty across the country are experiencing the privatization of core academic functions in higher education. For-profit online education corporations like Academic Partnerships, Kaplan, Wiley, Pearson, and Blackboard contract with institutions to provide digital platforms for educational content, recruit students, manage enrollment, facilitate the development of course materials, and more. According to a Century Foundation report, the vast majority of US public colleges and universities that offer online education programs or courses now rely on external companies.

The external companies contracting with higher education institutions to facilitate online offerings typically fall into three categories: online program managers (OPMs), learning management systems (LMSs), and for-profit colleges. OPMs like Pearson or Academic Partnerships can often play a hands-on role in developing course content, marketing, student recruitment, and enrollment. Alternatively, LMS companies like Blackboard may limit their services to overseeing the platform that hosts course content developed by the institution and providing user support. Finally, some for-profit colleges partner with traditional higher education institutions on online education, as in the arrangement between Kaplan and Purdue University.

External companies in all three categories play a role in the privatization of core academic functions in higher education and may introduce problems in areas of interest to faculty. For the purposes of a broad discussion about privatization within online education, all three types are referred to here as for-profit online education corporations.

What's at Stake?

While the use of digital platforms and online teaching tools can enrich higher education, the for-profit nature of these contracts can cause problems for shared governance, academic freedom, educational quality, student privacy, and the reputation and sustainability of the institution. The following is a brief look at what could be at stake and why.

Shared Governance

Faculty participation in the development of online offerings is critical to ensuring that academic freedom, educational quality, student privacy, and reputation of the institution meet the highest standards. Unfortunately, real faculty participation is often lacking. In an informal AAUP online survey, more than 400 respondents spoke up about their experiences with online education at their institutions and over half reported that the contracts were developed and finalized by their administrations without shared governance. Spe-

cifically, 57 percent of respondents disagreed with the statement "faculty exercised oversight of the education components of the contract." This lack of faculty oversight is a departure from the shared governance principles outlined in AAUP's Statement on Government of Colleges and Universities, which states that "faculty has primary responsibility for such fundamental areas as curriculum, subject matter and methods of instruction, research, faculty status, and those aspects of student life which relate to the educational process." Shared governance may be increasingly at stake in online higher education if faculty do not insist on deep involvement in the development of new "methods of instruction," including the selection process for and reviewing contracts with for-profit online education corporations.

Academic Freedom

Many for-profit online education corporations require users, including students and faculty, to sign a Terms of Use or End User agreement for access to the platform. Such agreements often contain an obscenity clause that prohibits material vaguely defined as pornographic or obscene from the online platform and authorizes the editing, modification, or removal of items perceived to be obscene. In their successful efforts to shape quality online education at Rutgers University, AAUP-AFT Rutgers called faculty attention to an obscenity clause contained within Pearson's agreement, arguing that such restrictions to course curriculum undermine academic freedom. Their argument was based on the idea in the 1940 Statement of Principles on Academic Freedom and Tenure, jointly issued by the AAUP and the Association of American Colleges and Universities, that the "common good depends upon the free search for truth and its free exposition" and so "teachers are entitled to freedom in the classroom in discussing their subject." Academic freedom may be at stake in such agreements, especially for faculty in disciplines like art history, literature, or sociology, whose curriculum may include material that some consider obscene, or discuss notions of the obscene. It is up to faculty to remind colleagues and administrators that faculty are not obligated to use a tool or product that restricts their curriculum or ability to discuss their subject in the classroom.

Quality

The for-profit nature of these contracts–which enable online education corporations to collect millions of tuition dollars annually per institution–raises questions about how educational quality could take a backseat to the demands of the market if faculty are not actively involved in the process. For example, could there be an increase in the already mounting pressure at institutions to cut instructional costs to generate more revenue? In its work to actively shape quality online education at Eastern Michigan University, EMU-AAUP has fought against pressure from Academic Partnerships to cut costs by using more part-time instructors. Educators know well that such instructional cost cuts lead to the exploitation of faculty, to part-time, under-resourced positions, and to the erosion of academic freedom. As a result, they diminish the quality of the experience in the classroom. To defend against these cuts, EMU-AAUP proposed a letter of agreement with the administration that includes a clause prohibiting the use of "coaches or teaching assistants employed by Academic Partnerships or its strategic partners for instructional duties regularly performed by tenured or tenure-track faculty." This is the kind of faculty action that can help defend quality. In situations where a for-profit online education corporation plays a leading role in developing, marketing, and running online offerings, and a public institution is faced with shrinking state appropriations, we can expect pressure to increase class sizes, increase tuition, or cut instructional costs in order to generate more revenue. Faculty can help mitigate these situations.

Privacy

Student data, such as academic interests, application history, and contact information, have become increasingly valuable in online education because data can be used to generate leads for new students. As a result, students' privacy may be at risk if their data is funnelled into marketing and recruitment for the online education industry. For example, of the one hundred contracts reviewed by the Century Foundation, several agreements held by Academic Partnerships and 2U include specific clauses enabling the use of student data by the corporation for "targeted marketing" to students who have shared their information with the program

or similar programs. In short, these contracts allow the circulation of student information to help grow the online education market and may result in the selling of student data to for-profit colleges, many of which have engaged in predatory marketing and recruitment practices and false claims to students. Alternatively, the Century Foundation report shows that some contracts do not comment one way or the other about student data privacy while others explicitly offer privacy protections. There are different ways student data can be addressed and there is potential for the exploitation of student privacy in online education. Faculty can help defend student privacy by reviewing the contract for language about student data usage and offering suggested language for stronger protections if needed.

Reputation

Ultimately it is the respected brand of the institution that makes the online offerings marketable, and while for-profit online education companies may generate profit for themselves and revenue for the institution, this may come with costs to the reputation of the institution. As industry leader and head of Academic Partnerships Randy Best has noted,"public universities' brands are the gold standard around the world.'" The danger to universities is that this gold can be tarnished. This danger has been at the core of the Purdue Global controversy. When Purdue University acquired Kaplan University 2017, it acquired a for-profit college with a record of predatory behavior and enabled it to assume the name and trappings of a leading Indiana public research institution. Soon after, Purdue AAUP members and higher education advocates revealed restrictive practices at Purdue Global including nondisclosure agreements and prior restraint against faculty and forced arbitration against students. These for-profit-industry-style practices earned Purdue University national reproach from faculty, students, and advocates, including US Senators Dick Durbin (D-IL) and Sherrod Brown (D-OH). The impact of these practices has not been a net positive for the reputation of the university.

Sustainability

The sustainability of financing online offerings may also be an issue. Steady drops in state funding have created the need for new revenue streams at institutions. As a result, institutions invite more opportunities to contract with for-profit online education corporations to launch or expand online offerings they feel unprepared to develop in-house. To finance these offerings, some companies contract for a flat fee while others bear the cost of development upfront and recoup the expense by a huge margin later through revenue-sharing agreements spanning decades, which collect 50 percent or more of tuition generated through the program. This kind of revenue sharing may prove to be unsustainable in the long term, especially considering how the online education contract may support practices that diminish the quality or reputation of the institution, the eventual drop in cost to develop and run online programming, and the availability of non-proprietary open-source online learning platforms. Faculty have the power to review and propose more sustainable alternatives.

Sources

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Additional Recommended Reading

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Assessing New Online Offerings at Your Institution

If your institution is developing new online offerings, your AAUP chapter will want to make sure that the same quality courses or programs are available online as on campus. Before the chapter can make a plan, get the facts. Here are several important questions to keep in mind.

Get the facts about the contract:

1. Which online education corporation/s is the administration considering to run this course or program?

2. Can the chapter access and review the current contract between the institution and the corporation or similar contracts between the corporation and other institutions?

3. How will the contract be financed, through a flat rate or tuition-sharing?

4. Does the company under consideration use a Terms of Use or End User agreement? If so, does it contain language that could undermine faculty or student rights? (Most online learning platforms require restrictive user agreements but some open-source platforms do not. If the company under consideration does, it's important to review the agreement and understand how it may impact faculty work.)

5. Who will manage hiring and instruction for online course sections, student recruitment and enrollment, and course development?

6. Can the chapter contact faculty at institutions with similar contracts to gather information about the impact on educational quality, student privacy, academic freedom, faculty governance, and the reputation of the institution?

Discuss next steps:

1. Can the chapter investigate and recommend to the administration alternative open-source online learning platforms like Moodle, Canvas, or Sakai?

2. Is it clear that the administration is committed to engaging in shared governance with faculty to choose the option that best serves students and faculty? If not, what needs to happen to get faculty a seat at the table?

3. Does the chapter have enough capacity and interest to invest in a campaign around this issue?

If your chapter would like access to model language for letters of agreement and senate and chapter resolutions, visit this member-only page. If your chapter needs further assistance taking concrete action steps that help shape quality online education at your institution, please email privatization@aaup.org.

Ten Actions Chapters Can Take to Shape Quality Online Education

1. Submit a public records request for the contract.
If a contract already exists at your public institution and your chapter has been unable to get access to it, a good first step is to submit a public records request so that you can review the document and assess its impact on academic freedom, educational quality, shared governance, student privacy, reputation of the institution, and sustainability of the program. To learn about submitting a public records request in your state, review the National Freedom of Information Coalition Map. For help filing your own and examples of previous public records requests, two great resources are the Reporters Committee for the Freedom of the Press and MuckRock. If your chapter is at a private institution and is unable to get access to the contract, a good first step is to review similar contracts at other institutions. For more information about contracts, see the Century Foundation's *The Private Side of Public Higher Education*.

2. Review the Terms of Use or End User Agreement used by the online platform.
Watch out for language that could undermine student and faculty rights or academic freedom principles. Often the agreement will contain an obscenity clause prohibiting material vaguely defined as pornorgraphic or obscene. Call this to the attention of your colleagues, especially those in art history, sociology, literature, linguistics, and other disciplines where such restrictions can limit course curriculum in which obscene terms may be discussed. In 2013, the Rutgers AAUP-AFT organized a successful campaign to defend academic freedom against an obscenity clause in the agreement required by Pearson eCollege. For more on the Rutgers AAUP-AFT campaign, see "Rutgers Professors Fight Deal to Offer Online Degrees, Citing 'Academic Freedom' Concerns." For an example of an obscenity clause, see the Rules for Online Conduct in Purdue University Global's End User Agreement.

3. Educate your colleagues about potential violations of academic freedom.
If the agreement contains problematic provisions, let your colleagues know that they could be signing away their academic freedom by consenting to the Terms of Use or End User agreement and that no faculty should be asked to do so. Remind them that academic freedom should be protected in all higher education classrooms, physical or virtual.

4. Inoculate your colleagues against excuses.
The administration may have or claim to have an indemnity clause shifting responsibility from faculty to the institution in cases where the user agreement is violated by course content. Regardless, no faculty should ever be asked to sign away their academic freedom.

5. Build a committee and create a survey.
Build a committee of colleagues to develop a faculty survey about the impact of the current or proposed contract. Share and discuss your findings in campus forums, one-on-one conversations, or by tabling on campus. For one survey example, see the AAUP privatization survey.

6. Offer faculty proposals.
Using information gathered through one-on-one conversations, the faculty survey, and research, the chapter can develop a set of proposals offering ways to lessen potentially negative impacts of current or future online education contracts. If the institution is still in early planning stages, the chapter can explore, and propose if appropriate, alternatives like the open-source online platforms Moodle, Canvas, and Sakai. These open-source platforms do not require restrictive user agreements or costly tuition-sharing contracts, resulting in more potential for faculty control over course development, curriculum, and quality. In cases where the online offerings are serviced by a for-profit education corporation, proposals can address hiring and instructional costs, faculty intellectual property rights, and academic freedom. For additional guidance on proposals, review numbers seven and eight below and consider contacting the AAUP for model language.

7. Pass a resolution to build power.
Propose resolutions in target departments, schools, the senate, or other faculty bodies in order to raise awareness about your proposals and create an official record of them. Successful resolutions might highlight that the problem is not online teaching but corporate control of online teaching, which undermines the faculty's right and responsibility to decide curricular matters. The AAUP provides model resolution language for chapters and state conferences at this member-only page.

8. Draft a letter of agreement.
The chapter can propose a letter of agreement to the institution to mitigate the negative impacts of the for-profit online education contract. The AAUP provides model letter of agreement language to chapters at this member-only page.

9. Be a watchdog.
Your chapter can monitor all online programs at the institution, paying attention to which programs are expanding and where new pilot programs are cropping up. Provide updates to faculty in chapter meetings, conference calls, one-on-one conversations, and the chapter email listserv.

10. Be a megaphone.
The chapter can speak up about problems that all campus stakeholders experience as a result of the contract. Collect and amplify stories on social media, in chapter and department meetings, in senate and board of trustees meetings, and by encouraging faculty to take the AAUP privatization survey.