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CENTRE FOR
FREE EXPRESSION

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James L. Turk¹ and Penni Stewart²

Historically, the university has been society's safe space for critical examination of ideas, theories and viewpoints that are new, controversial, threatening to vested interests or simply objects of intellectual curiosity – "safe" in the sense that academic freedom and freedom of expression are rigorously protected within the university.

That understanding of the university's priority is commonly expressed in university statements of purpose, mission, or free expression.

An example is the University of Toronto's statement of purpose:

Within the unique university context, the most crucial of all human rights are the rights of freedom of speech, academic freedom, and freedom of research. And we affirm that these rights are meaningless unless they entail the right to raise deeply disturbing questions and provocative challenges to the cherished beliefs of society at large and of the university itself.

It is this human right to radical, critical teaching and research with which the University has a duty above all to be concerned; for there is no one else, no other institution and no other office, in our modern liberal democracy, which is the custodian of this most precious and vulnerable right of the liberated human spirit.³

Yale University's statement, prepared in 1974 by the Committee on Freedom of Expression at Yale (the "Woodward Committee", describes the university's role:

The primary function of a university is to discover and disseminate knowledge by means of research and teaching. To fulfill this function a free interchange of ideas is necessary not only within its walls but with the world beyond as well. It follows that the university must do everything possible to ensure within it the fullest degree of intellectual freedom. The history of intellectual growth and discovery clearly demonstrates the need for unfettered freedom, the right to think the unthinkable, discuss the unmentionable, and challenge the unchallengeable. To curtail free expression strikes twice at intellectual freedom, for whoever

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³ University of Toronto, "Purpose of the University" <https://www.utoronto.ca/about-u-of-t/mission>

deprives another of the right to state unpopular views necessarily also deprives others of the right to listen to those views.⁴

Not surprisingly, universities' firm commitment to freedom of expression has caused many, especially those comfortable with the status quo, to have misgivings about the university as it serves as a home for critical questioning of conventional wisdom, dominant ideologies, traditional political arrangements, customary medical treatments, longstanding cultural practices and taken-for-granted knowledge. The university has always had to confront challenges from politicians and others eager to fire controversial professors, change curriculum, and redirect the university's focus to "acceptable" initiatives.⁵ These continue today, as does the robust defence of the academic freedom of faculty to use their professional judgment in teaching and research and, equally, to be free to say what they want about the university where they work and the society in which they live.

Over the past fifty years, a primary threat to the university as a place for free expression, critical thought and inquiry has come from those pressuring the institution to be a commercial engine for society and to embrace operating practices of corporations. This means substituting economic considerations of productivity and cost-effectiveness for traditional educational values, academic governance, and a focus on intellectual exploration wherever it may lead. In such a corporatized university, students are customers, faculty are service providers, and the institution comes to reflect dominant ideologies rather than serve as a place that critically examines them.⁶

More recently, reviving concerns strongly voiced in the late 1980's and early 1990's, there has been challenges to the university as a place *for* free expression coming from

⁴ Report of the Committee on Freedom of Expression at Yale ("Woodward Committee"). 1974, pp. 5-6.

<http://yalecollege.yale.edu/deans-office/reports/report-committee-freedom-expression-yale>

Peter Salovey, "Professor Woodward's Legacy after 40 Years: Free Expression at Yale" Address to the Entering Class of 2018. August 23, 2014.

<http://news.yale.edu/2014/08/22/professor-woodward-s-legacy-after-40-years-free-expression-yale>

⁵ See Michiel Horn, *Academic Freedom in Canada: A History*. Toronto: University of Toronto Press, 1999; Richard Hofstadter and Walter P. Metzger, *The Development of Academic Freedom in the United States*. New York: Columbia University Press, 1955; James L. Turk and Allan Manson (eds.), *Free Speech in Fearful Times: After 9/11 in Canada, the U.S., Australia & Europe*. Toronto: James Lorimer & Co., 2007; Ellen W. Schrecker, *No Ivory Tower: McCarthyism & The Universities*. New York: Oxford University Press, 1986.

⁶ See Derek Bok, *Universities in the Marketplace: The Commercialization of Higher Education*. Princeton: Princeton University Press, 2003; Ellen Schrecker, *The Lost Soul of Higher Education*. New York: The New Press, 2010; Sheila Slaughter and Gary Rhoades, *Academic Capitalism and the New Economy: Markets, State, and Higher Education*. Baltimore: Johns Hopkins University Press, 2004; James L. Turk (ed.), *The Corporate Campus: Commercialization and the Dangers to Canada's Colleges and Universities*. Toronto: James Lorimer & Co., 2000; Jennifer Washburn, *University Inc.: The Corporate Corruption of Higher Education*. New York: Basic Books, 2005; Howard Woodhouse, *Selling Out: Academic Freedom and the Corporate Market*. Montreal & Kingston: McGill-Queen's University Press, 2009.

students and faculty demanding that the university be a “safe space” that protects them *from* free expression, especially from speech they find offensive or simply unwanted.

Libertarians and conservatives have ridiculed those calling for safety from free expression within the university; while progressives have leapt to the defence of the often marginalized students wanting the university to be a safe space in which they are free from society’s pervasive racism, homophobia and sexism. In this polarized situation, “safe spaces” has become a nuance-destroying term with opposite meanings and implications.

The term merits more careful consideration as some of its apparently contradictory uses are complementary. Universities cannot be universities – that is cannot fulfill their fundamental societal functions of educating students and advancing knowledge -- unless they are a safe space for faculty and students to exercise their free expression and academic freedom rights. Universities must be places where academics are not fired, or jailed or threatened for questioning popular ideas or conventional wisdom; students are encouraged to explore new ideas and express their views; and critical reflection is valued and protected.

At the same time, there is nothing wrong with like-minded individuals getting together to explore ideas, share concerns, and discuss how to advance their ideas publicly in what is essentially a private safe space for the development of thought. Neil Richards has written persuasively about the importance of intellectual privacy and its necessity for free speech – arguing that “a certain kind of privacy is essential if we care about freedom of expression.”⁷ He describes intellectual privacy as “a zone of protection that guards our ability to make up our minds freely. More formally, intellectual privacy is the protection from surveillance or unwanted interference from others when we are engaged in the process of gathering ideas and forming beliefs—when we’re thinking, reading, and speaking with confidants before our ideas are ready for public consumption.”⁸

A key aspect of Canada’s *Charter*-protected right of free association is precisely to allow individuals with common concerns, interests or perspectives to organize themselves into mutually supporting communities – a right that should exist as much within the university as outside it.

It is particularly important for those who are marginalized in society to have spaces where they can organize and share perspectives without being sidetracked, silenced or derided by others. Such spaces have been vital in allowing people to build and sustain virtually every movement for social change. Sometimes these are institutionalized safe

⁷ Neil Richards, *Intellectual Privacy: Rethinking Civil Liberties in the Digital Age*. Oxford: Oxford University Press, 2015, p. 95.

⁸ *Ibid.*

spaces, such as the African-American churches in the U.S. civil rights movement. More often they are informal and occasional, and as such been vital to the history of the feminist movement and the advances of the LGBTQ community. Universities have traditionally supported gatherings of students with similar interests and concerns. There are centres based on religion (for example, Newman Centres for Catholic students or Hillel for Jewish students), clubs based on politics (young Tories or Liberals), and clubs and centres based on identity (such as Black student clubs and women's centres). Students often create their own informal spaces to get-together in dorm rooms or campus coffee shops.

These private safe spaces contribute to more robust free expression in the public realm, as they are places to gather strength, sharpen ideas, deepen understanding and build confidence and resolve. Problems develop, however, when they spawn demands that the public realm be made "safe" too – that individuals have a right to be free from being offended in public spaces as well.

We see the problem, for example, when, at Mount Royal University, a student demands another student remove a hat bearing the slogan of the Donald Trump campaign. Of the incident, the student explained, "I got into an altercation with a guy wearing a 'Make America Great Again' hat. I went up and asked him if he would take the hat off, explaining a university should be a safe space. It was impossible to communicate to him why wearing a hat in support of a movement grown on the seeds of racism, bigotry and exclusion of diversity (sexual and cultural) could make some people afraid." In a subsequent written statement, she said, "'I have diverse friends (culturally and sexually) who would drop a class if the person wearing the hat was sitting in the room with them, because they would feel unsafe.'"⁹ In this incident, a "safe space" is one in which no person has the opportunity or right to articulate a view that others in the space are not willing to entertain, with the guardians of the "safe space" refusing to take up the challenge of engaging with the other in conversation about their difference in views. One party's sense of feeling "unsafe" pre-empts an exchange of ideas.

In an incident earlier in 2016 at Emory University, forty students staged a public protest after pro-Donald Trump for President messages were written in chalk on campus. They chanted to the University administration, "You are not listening! Come speak to us, we are in pain!" One student said, "I'm supposed to feel comfortable and safe [here] ... But this man is being supported by students on our campus and our administration shows that they, by their silence, support it as well ... I don't deserve to feel afraid at my school."

The students were pressing the university administration to respond to the perception that administrative silence about the chalkings was itself creating an unsafe space at the university. In his response, Emory's President indicated that the University would

⁹ Michael Lumsden, "Donald Trump 'Make America Great Again' hat causes stir at MRU" *Calgary Herald*. September 15, 2016.

<http://calgaryherald.com/news/local-news/donald-trump-make-america-great-again-hat-causes-stir-at-mru>

review security camera footage to identify those who had made the chalkings, adding that if they were students, they would be subjected to the conduct violation process, and if there were from outside of the University, trespassing charges would be pressed. In an email to the university community, he wrote that the previous day's chalkings represented "values regarding diversity and respect that clash with Emory's own." In the joint email sent on behalf of Emory College Council and the Student Government Association, representatives wrote that they "remain unapologetically dedicated to inclusion, diversity and equity," and that both institutions would stand in solidarity with any Emory students who have encountered a lack of safety and support.¹⁰ A university administration thus joined with students in treating chalkings in support of a candidate for the office of President of the United States as an act of expression that others needed to fear.

We see an even uglier aspect of the 'safe space' phenomenon in a furor that erupted at Yale when a Yale instructor and partner of the head of one of its colleges, Erika Christakis, wrote an email in response to one sent by the university about the importance of students wearing appropriate costumes on Halloween. Christakis acknowledged that certain Halloween costumes could be hurtful but raised the question of whether it should be the role of a university to tell students how to dress for Halloween. An angry crowd of students first confronted the Dean and then moved to and encircled Christakis' husband. When he started to say he disagreed with protesters' claim that his wife's email contradicted the position to be expected of him as head of the college, an angry student exploded, "Then why the fuck did you accept the position?! Who the fuck hired you?! You should step down! If that is what you think about being a master you should step down! It is *not* about creating an intellectual space! It is *not*! Do you understand that? It's about creating a home here. You are not doing that!" Erika Christakis's email questioning the authority of the university to regulate students' rights of free expression through their choice of Halloween costumes was construed as a threat to the university as students' 'home' in which the voice of the university-as-parent issuing a prohibition was preferred over Christakis's privileging of their democratic rights. Although the Yale President and Dean both expressed support for the Christakis', Erika Christakis cancelled her popular course on early childhood development and subsequently the Christakis' announced they were stepping down from their roles in the college.¹¹

¹⁰ Sam Budnyk, "Emory Students Express Discontent with Administrative Response to Trump Chalkings." *The Emory Wheel*. March 22, 2016.

<http://emorywheel.com/emory-students-express-discontent-with-administrative-response-to-trump-chalkings/>

¹¹ Katy Waldman, "Yale Students Erupt in Anger Over Administrators Caring More About Free Speech Than Safe Spaces" *Slate*. Nov. 7, 2015.

http://www.slate.com/blogs/the_slatest/2015/11/07/yale_students_protest_over_racial_insensitivity_and_free_speech.html

David Shimer and Victor Wang, "Months after controversy, Christakis resigns Silliman posts." *Yale Daily News*. May 25, 2016.

<http://yaledailynews.com/blog/2016/05/25/months-after-controversy-christakis-resign-silliman-posts/>

The idea of the university as a regulator of expression was also at the centre of an incident at Northwestern University where a group of students carrying mattresses and pillows marched to the university's administration offices to protest the lack of administrative reaction to an article written by communications professor Laura Kipnis, a feminist cultural theorist/critic and former video artist.¹² In the *Chronicle of Higher Education* article, Kipnis criticizes the prohibition of faculty and students dating which she characterizes as deriving from views "wrapped in a vaguely feminist air of rectitude."

"If this is feminism," she writes, "it's feminism hijacked by melodrama. The melodramatic imagination's obsession with helpless victims and powerful predators is what's shaping the conversation of the moment, to the detriment of those whose interests are supposedly being protected, namely students. The result? Students' sense of vulnerability is skyrocketing."¹³

The students circulated a petition calling for "a swift, official condemnation of the sentiments expressed by Professor Kipnis in her inflammatory article and we demand that in the future, this sort of response comes automatically."¹⁴ Jazz Stephens, one of the march's organizers, described Kipnis' ideas as "terrifying." On a Facebook page the protesters has created for their event, they said they wanted the administration to do something about "the violence expressed by Kipnis' message."¹⁵

What's new in the attack on free expression within the university is reliance on claims that speech with which one disagrees or finds offensive is a threat to "safety" or a form of "violence." The passion and sincerity of the claims, often expressed by people from marginalized groups, have a powerfully silencing effect. White describes this as the "weaponized concept of safe spaces" – the concept of 'safe spaces' used "as a sword, wielded to annex public spaces and demand that people within those spaces conform to their private norms."¹⁶

¹² Olivia Exstrum, "Students carry mattresses, pillows to protest professor's controversial article" *The Daily Northwestern*. March 10, 2015.
<http://dailynorthwestern.com/2015/03/10/campus/students-carry-mattresses-pillows-to-protest-professors-controversial-article/>

¹³ Laura Kipnis, "Sexual Paranoia Strikes Academe". CHE, February 27, 2015
<http://chronicle.com/article/Sexual-Paranoia-Strikes/190351/>

¹⁴ Petition for administrative response to Prof. Kipnis
<https://docs.google.com/forms/d/e/1FAIpQLScr34pXKmDVPSXbi4TQx2Yp01Rar8HOIm0nxxAOUhUSp-6waw/viewform>

¹⁵ Michelle Goldberg, "The Laura Kipnis Melodrama" *The Nation*. March 16, 2015
<http://www.thenation.com/article/laura-kipnis-melodrama/>. See also Laura Kipnis, *Unwanted Advances: Sexual Paranoia Comes to Campus*. New York: Harper, 2017.

¹⁶ Ken While, "Safe Spaces as Shield, Safe Spaces as Sword" *Popehat*. November 9, 2015.
<https://popehat.com/2015/11/09/safe-spaces-as-shield-safe-spaces-as-sword/>

Friedersdorf elaborates on White's concept through a microscopic analysis of what actually happened in the viral video of a group of students at the University of Missouri confronting a student photographer attempting capture their protest for the media. His summary, of the video footage he then dissects is stark:

“In the video of Tim Tai [the student photographer] trying to carry out his ESPN assignment, I see the most vivid example yet of activists twisting the concept of “safe space” in a most confounding way. They have one lone student surrounded. They're forcibly preventing him from exercising a civil right. At various points, they intimidate him. Ultimately, they physically push him. But all the while, they are operating on the premise, or carrying on the pretense, that *he* is making *them* unsafe.”¹⁷

It is not just students who are adopting this language. University administrations have leapt on the safety bandwagon, often initiating adoption of policies regulating space and speech, including student codes of conduct, “use of space” policies as well as those restricting posters and flyers. Together these policies are intended to create a public space, free of contestation, confrontation and discontent. In this bland environment ideas that may cause offense are unwelcome.

Occasionally there are incidents, as at York University where a piece of art was deemed to make the university “unsafe” for some students. The artwork in question was a mural in the student-owned Student Centre entitled “Palestinian Roots”, depicting a young protester holding a rock.¹⁸ In a letter to the university community, York President Mamdouh Shoukri affirmed his commitment to free expression while writing that “It is clear that the subject of the artwork is offensive to some individuals and groups, particularly Jewish members of our community”. Noting that “decisions with respect to the mural's continued display are the responsibility of the governing body responsible for the Student Centre, which is a separate and distinct legal entity from the University” he expressed hope “that they will address the concerns which have been expressed.” He added that “we must do everything we can to ensure that all our students feel comfortable and safe on campus.”¹⁹

¹⁷ Conor Friedersdorf, “Campus Activists Weaponize ‘Safe Space’.” *The Atlantic*. November 10, 2015 <http://www.theatlantic.com/politics/archive/2015/11/how-campus-activists-are-weaponizing-the-safe-space/415080/>

¹⁸ Tu Thanh Ha, “Paul Bronfman ‘outraged’ over pro-Palestinian mural at York University.” *Globe and Mail*. January 26, 2016. <http://www.theglobeandmail.com/news/national/education/film-exec-pulls-support-for-york-university-over-pro-palestinian-mural/article28396804/>

¹⁹ Mamdouh Shoukri, “Message from President Shoukri: A Commitment to Inclusive Communities”, January 28, 2016. <http://president.yorku.ca/2016/01/message-from-president-shoukri-a-commitment-to-inclusive-communities/>

A more systematic approach, now used by many university administrations, is the introduction of university civility codes and respectful workplace policies. These policies start with the important fact that harassment and discrimination are illegal and have no place in the university. But the policies then blur the line between harassment and discrimination on the one hand and non-harassing, non-discriminatory “uncivil” or “disrespectful” speech on the other.

Brock University’s *Respectful Work and Learning Environment Policy* does this by declaring that “Personal or psychological harassment do not include *respectfully* expressing disagreement or stating a contrary but *reasonable* point of view. The Policy continues by permitting “the *legitimate* (i.e. not discriminatory, arbitrary or abusive) exercise of academic freedom, freedom of thought and inquiry, and expression in teaching and research which may result in *respectful* disagreements regarding beliefs or principles.”²⁰ [emphasis added]

The University of Toronto’s *Guideline on Civil Conduct* identifies “behaviours that are NOT in and of themselves considered uncivil conduct.” These include: “Differences of opinion or debate conveyed in a *respectful* manner” and “interpersonal conflicts where the parties remain *respectful* of one another.”²¹ [emphasis added]

Ryerson University’s *Workplace Civility and Respect Policy* creates the widest array of disallowed expression from violence to rudeness: “Incivility deals with a broad range of behaviours including, but not limited to, unprofessional behaviour; rudeness; shouting or swearing; intimidation or bullying; threatening comments or behaviours/actions; unsolicited and unwelcome conduct, comment (oral or written including email communication), gestures, actions or contact that cause offense, humiliation, or physical or emotional harm to any individual.”²²

In his famous essay *On Liberty*, John Stuart Mill described as risky and hypocritical the notion that society should allow “the free expression of all opinions on condition that the manner be temperate and does not pass the bounds of fair discussion.” He noted, “Much might be said about the impossibility of fixing where these supposed bounds are to be placed: for if the test be offense to those whose opinion is attacked, I think experience testified that this offense is given whenever the attack is telling and

²⁰ Brock University, *Respectful Work and Learning Environment Policy*.
http://www.brocku.ca/webfm_send/3474

²¹ University of Toronto, *Guideline on Civil Conduct*.
<http://www.hrandequity.utoronto.ca/Assets/HR+Digital+Assets/Policies%2c+Guidelines+and+Collective+Agreements/Guidelines/Human+Resources+Civility+Guideline.pdf>

²² Ryerson University, *Workplace Civility and Respect Policy*.
<http://www.ryerson.ca/policies/board/workcivilitypolicy.html>

powerful, and that every opponent who pushes them hard, and whom they find it difficult to answer, appears to them...an intemperate opponent.”²³

Reflecting on university administrations’ attack on academic freedom and efforts to restrict free expression through respectful workplace and civil discourse policies, one of Canada’s leading experts on free expression law, Jamie Cameron observed:

“When and in what circumstances another person might take offense at things said in a certain way is unpredictable and highly situational. Civility policies necessarily lend themselves to selective enforcement: though most will not, some offenders will be singled out for institutional attention: by definition and in practice, even-handed application of the standard is impossible. Short of a pattern of behaviour that satisfies definitions of harassment and bullying, mere rudeness and a lack of courtesy is just too pervasive and constant to be sensibly regulated.”²⁴

Freedom of expression is a vulnerable right that perishes with restriction. It may not be as robustly protected as the First Amendment right of free expression is in the United States, but, as one of the four “fundamental” rights recognized in the Canadian *Charter of Rights and Freedoms*, free expression in Canada has been protected by the relatively high bar Canadian courts have imposed for speech to be restricted in the public sphere.

In the Supreme Court of Canada’s most recent hate speech case, *Saskatchewan (Human Rights Commission) v. Whatcott*, the Court provided direction as to what speech must be to constitute disallowed hate speech:

“...the legislative term ‘hatred’ or ‘hatred or contempt’ must be interpreted as being restricted to those extreme manifestations of the emotion described by the words ‘detestation’ and ‘vilification’. This filters out expression which, while repugnant and offensive, does not incite the level of abhorrence, delegitimization and rejection that risks causing discrimination or other harmful effects... expression that ‘ridicules, belittles or otherwise affronts the dignity of’ does not rise to the level of ardent and extreme feelings constituting hatred required to uphold the constitutionality of a prohibition of expression in human rights legislation.”²⁵

²³ John Stuart Mill, *On Liberty*. London: Crofts Classics, 1947 (1859), 53. Quoted in Walter P. Metzger, “Professional and Legal Limits to Academic Freedom”, *Journal of College and University Law* 20(1), 1993, pp. 3-4.

²⁴ Jamie Cameron, ““Giving and Taking Offense: Civility, Respect, and Academic Freedom.” In James L. Turk (ed.) *Academic Freedom in Conflict: The Struggle Over Free Expression Rights in the University*. Toronto: James Lorimer & Co., 2014, p. 293.

²⁵ *Saskatchewan (Human Rights Commission) v. Whatcott*, [2013] 1 SCR 467, 2013 SCC 11
<http://www.canlii.org/en/ca/scc/doc/2013/2013scc11/2013scc11.html?autocompleteStr=Whatcott&autocompletePos=1>

More broadly, philosopher Ronald Dworkin, writing in the context of the Danish cartoon controversy, argued:

“... in a democracy no one, however powerful or impotent, can have a right not to be insulted or offended.” He added, “That principle is of particular importance in a nation that strives for racial and ethnic fairness. If weak or unpopular minorities wish to be protected from economic or legal discrimination by law—if they wish laws enacted that prohibit discrimination against them in employment, for instance—then they must be willing to tolerate whatever insults or ridicule people who oppose such legislation wish to offer to their fellow voters, because only a community that permits such insult as part of public debate may legitimately adopt such laws. If we expect bigots to accept the verdict of the majority once the majority has spoken, then we must permit them to express their bigotry in the process whose verdict we ask them to accept. Whatever multiculturalism means—whatever it means to call for increased ‘respect’ for all citizens and groups—these virtues would be self-defeating if they were thought to justify official censorship.”²⁶

The Woodward Committee, mentioned above, was established following a faculty resolution to appoint a commission to examine “free expression, peaceful dissent, mutual respect and tolerance” at the university, and has provided useful advice the interplay of these factors:

“Without sacrificing its central purpose, [the university] cannot make its primary and dominant value the fostering of friendship, solidarity, harmony, civility, or mutual respect. To be sure, these are important values; other institutions may properly assign them the highest, and not merely a subordinate priority; and a good university will seek and may in some significant measure attain these ends. But it will never let these values, important as they are, override its central purpose. We value freedom of expression precisely because it provides a forum for the new, the provocative, the disturbing, and the unorthodox. Free speech is a barrier to the tyranny of authoritarian or even majority opinion as to the rightness or wrongness of particular doctrines or thoughts.”²⁷

While it is acceptable for a group in its private space to preclude what it defines as offensive speech, creating the conditions to enter the public realm of free expression more confidently and effectively, it is quite another matter for members of any such group to impose their private speech rules on the public domain, thereby adding them to already existing prohibitions on hate speech, discrimination and harassment. The attempt to extend the limitations acceptable in private safe spaces within universities to

²⁶ Ronald Dworkin, "The Right to Ridicule." *New York Review of Books*. March 23, 2006
<http://www.nybooks.com/articles/2006/03/23/the-right-to-ridicule/>

²⁷ Ibid., pp. 6-7. <http://www.yale.edu/sites/default/files/files/freedom1975.pdf>

the university's public realm undermines the university's purpose in a fundamental way, and is contrary to the interests of those most marginalized. It is precisely the university's free expression and academic freedom traditions that protect marginalized voices' right to speak, as well as protecting the university's educational and knowledge creating mission.