

Legal requirements for the recording of participants with approved videoconferencing systems at KIT

I. General Information

Recording features in videoconferencing solutions provide an easy and convenient way to make recordings. At the same time, such recordings can violate the rights of the people being recorded. Therefore, if you want to use this feature, there are some aspects to consider before starting a recording. This document summarizes the most important aspects for you and is intended to create an awareness of potential risks and legally compliant behavior. The intention is to support you in acting on your own responsibility and to show you the legal background.

For the use of lecture recordings within the area of studies and teaching, special concepts are available (especially for the use of ZOOM) to avoid the recording of other participants. These are described on the pages of the *Center for Technology-Enhanced Learning (Zentrum für Mediales Lernen (ZML))*: <https://www.zml.kit.edu/english/lecture-recording.php>.

General requirements

This summary of the legal requirements is based on the general provisions of KIT. Therefore, please be aware in particular of the following:

- The relevant works agreement on the introduction and use of videoconferencing systems and other electronic communication systems dated January 11, 2021 (Dienstvereinbarung über die Einführung und Anwendung von Videokonferenzsystemen und weiteren elektronischen Kommunikationssystemen vom 11.01.2021), to find under: <https://www.pse.kit.edu/dienstvereinbarungen.php>
- The Chief Information Security Officer's recommendations regarding online communication services (<https://www.isb.kit.edu/english/132.php>)

If you have any questions regarding the processing of personal data, please contact the Staff Unit Data Protection (<https://www.dsb.kit.edu/>), and if you have any questions regarding non-personal information, please contact the Chief Information Security Officer (<https://www.isb.kit.edu/english/>). For technical questions regarding the videoconferencing systems operated by the SCC, you can contact the SCC service desk (<https://www.scc.kit.edu/en/services/servicedesk.php>).

II. Data protection requirements

When recording, personal data is processed and data protection laws must be complied with. Consequently, the activation of the recording function is tied to preconditions.

Summary of key statements

- Recordings may only be made if there is a legitimate purpose (*more under 1.1*).
- Recordings may be made if all individuals recorded have given their consent prior to the start of the recording. Consent must be given voluntarily (*more under 1.2*).
- The recordings may only be processed for a specific purpose and within narrow parameters (*more under 1.3*).

1.1 Legitimate purposes: Recordings may only be made if there is a legitimate purpose to do so

Before using the recording function, alternatives must be considered. If available, these should be used as a priority. Possible alternatives (not an exhaustive list) include: Transcripts, making documents available, meeting notes, rescheduling appointments, or designating representatives. If, for example, a transcript already serves the purpose of forwarding information, the meeting should not be recorded. Recordings should always be the last choice.

In the absence of a legal basis, in particular business meetings such as project meetings, jours fixes and the like are excluded from recording. Recordings of lectures are possible - subject to the other legal requirements (see further explanations in this document).

1.2 Legal basis: Recordings may be made if all individuals covered by the recording have consented BEFORE the recording starts

Before a recording is made, all individuals covered by the recording must have given their consent. Consent must be informed and voluntary. This means:

- The participants must be informed in advance (before the start of the session) that the meeting may be recorded. They must be asked for their consent. The processing requirements (see 1.3) must also be explained. The persons must be given sufficient time to make a decision. As a rule, asking for consent within the deadline does not meet the legal requirements for a voluntary decision.
- Consent should be obtained in writing for evidential purposes. The intended scope of the recording influences the form. The more intense the impact on the personal rights of the data subjects, the higher the requirements for the demonstration of compliance.
- Refusal of consent and/or withdrawal must be taken into account at any time and usually result in the termination of the recording. A refusal - like consent to recording - must be allowed without influence or coercion.
- Consent defines the scope of what is allowed. No more may be processed than is covered by the consent.

In the case of business meetings, such as project meetings, jours fixes and the like, no legally compliant consent can be obtained or given. This already lacks a legitimate purpose. Corresponding meetings must not be recorded.

1.3 Processing requirements: The data of the recordings may only be processed for a specific purpose and within narrow parameters

Recording involves processing of images and/or audio, which may only be done in compliance with the following aspects:

- Purpose: The recording function may only be used for a previously defined purpose. Any processing operations that follow the recording (e.g. forwarding of the recordings) must also be based on this purpose. The purpose must be defined before recording and may not be changed without the further consent of data subjects. Processing that changes the purpose without renewed consent generally leads to unlawful processing and must be avoided.
- Storage duration: The data must *not* be stored permanently without justification. You must determine the storage duration before recording.
- Recipients: Only those persons whose access is necessary to fulfill the intended purpose may have access to the recording. Storage locations must be chosen accordingly.
- If a recording is made, this must be indicated for the entire duration of the recording. A permanent indicator is not necessary if it is ensured that all participants are aware of the recording and that no one without this knowledge can join the recorded session.
- At any time, recordings may only be stored or edited on end devices or on cloud applications provided by KIT.
- Care must be taken to ensure that no personal data of (uninvolved) third parties or persons who do not wish to be recorded are captured in the recording.

The aspects of *purpose*, *storage period* and *recipients* must be communicated to the persons who are to be recorded as part of the process of obtaining consent.

III. Copyright aspects

Copyright law must also be complied with. As a rule, presentation and lecture materials such as images, textbooks, scripts, software code, logos, videos and audio recordings are protected by copyright.

The author of a work has, among other things, the exclusive right to reproduce her or his work and to reproduce it publicly. Therefore the following must be considered when recording:

- If you are not the author or sole rights holder of the documents shown (e.g. presentation slides, photos, other images) and the sound and/or video recordings shown, you require the corresponding rights of use of the (co-)author or employer or other rights holders before recording, i.e. publication.

If you obtain the rights of use, we recommend that you do so in writing.

- That copyrighted works of third parties are only used if this is permitted by law (e.g. in the case of quotations within the meaning of Section 51 UrhG) or the author has granted corresponding rights of use.
- That the rights of all authors are respected in connection with the records and the documents used. Each author has a right to be named. The author decides whether an author's name must be mentioned in the use and, if so, what it should be. Other holders of rights of use may also have the right to be named.
- That the legal exception for the use of a copyright-protected work of a third party in the context of courses only applies, in particular, if the recording is made in a password-protected area within the university and this area is available exclusively to a restricted group of persons.
- That, in addition to copyright, the personal rights (right to one's own image) of the persons depicted are respected. For this you need a declaration of consent of these persons.

If you have any questions in individual cases, please consult the contact persons for matters of copyright of the administrative unit Legal Affairs (RECHT).