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Internet & Email Use by Faculty: University IT Resources, the Law, and the AAUP Contract

Over the past few months the Chapter office has received several questions relating to faculty use of email and the internet. To help answer questions about faculty rights with regard to use of university-owned resources (i.e., computer servers) to access the internet, and use of university-owned email accounts (i.e., your “uc.edu” email address), I recently asked the Chapter’s attorneys to provide an updated memo on the state of the law and its interaction with the AAUP-UC contract. In addition, our attorneys and I have reviewed the University’s “General Policy on Use of Information Technology” (<http://www.uc.edu/ucit/policies/infotechuse.html>). Related info technology policies can be found at: <http://www.uc.edu/ucit/policies/itpolicies.html>.

To follow is a summary of the general rights and responsibilities of faculty—along with some cautions.

Free Speech and Academic Freedom in the Context of University-owned IT Resources

The national AAUP has espoused and worked to protect faculty’s right to academic freedom since 1917. This principle is encoded in the AAUP-UC contract in Article 2, which includes this statement: “When [faculty] speak or write as citizens, they shall be free from institutional censorship or discipline.”

The contract also provides that “faculty members shall be free in their public utterances or activities to identify their University affiliation so long as no false impression of University sponsorship or endorsement is created.”

This is consistent with the University’s IT policy:

“The rights and responsibilities governing the behavior of members of the University community are the same on both the virtual and physical campuses. . . . The University has a strong commitment to the principles of free speech, open access to knowledge, and respect for a diversity of opinions. The rights as well as the restrictions governing these principles on the physical campus apply fully to the virtual campus.”

This is, again, consistent with the First Amendment rights of all citizens under the U.S. Constitution which protects faculty members from discipline or penalty for expressing their view on matters of public interest. [NOTE: case law issued since January 2008 has greatly complicated this issue. See June 2009 advisory letter on academic freedom and First Amendment rights in the workplace for more information and an updated interpretation.]

What are the limitations?

We are all familiar with the famous “you can’t yell fire in a crowded theater” exception to First Amendment rights. Likewise, there are some restrictions on a faculty member’s use of university-owned information technology, including access to the internet while on campus, and use of “uc.edu” email accounts.

First, the First Amendment does not necessarily protect faculty members who are expressing an opinion on “internal” matters related to the administration of the University, unless an argument can be made that those internal policies affect some broader public interest [NOTE: Again, see 2009 staff advisory letter on First Amendment rights for interpretation of more recent case law].

Of course, this is the beauty of the principle of academic freedom and its encoding in the AAUP-UC contract: where First Amendment protection leaves off, contractual protection picks up. In other words, a faculty member cannot be disciplined for *merely expressing an opinion* that is contrary to administrative decisions or policies.

Second, some types of communications can violate University policies irrespective of First Amendment rights or academic freedom, whether made verbally, on paper or electronically. Policies on sexual or racial harassment or improper relationships with students are examples. The same rules apply whether a faculty member uses electronic or more conventional means of communicating.

Third, the University, as an employer, does have the right to place reasonable limits on the use of its own equipment and resources, including computer systems, email, and internet services. Thus, the University’s policy to enforce through internal discipline all applicable laws with regard to “libel, copyright, trademark, privacy, obscenity and child pornography laws as well as laws that are specific to computers and communication systems, such as the Computer Fraud and Abuse Act and the Electronic Communications Privacy Act” is proper. In addition, the policy statement that “users are expected not to be wasteful of resources whether or not there are specific limits placed on them. Unreasonable use of resources may be curtailed” falls within the employer’s right to limit access to resources.

Finally, while the University’s own policy establishes that it does not routinely monitor or inspect individual accounts, files, or communications, it nevertheless has the right to do so. The policy states the conditions under which the University may monitor individual email and/or internet usage:



- (1) system managers may access user accounts, files, or communications when there is reason to believe that the user is interfering with the performance of a system;
- (2) authorized investigators may access accounts, files, or communications to obtain relevant information when there is a reasonable suspicion that the user has violated either laws or University policies;
- (3) co-workers and supervisors may need to access accounts, files, or communications used for university business when an employee becomes unavailable; and
- (4) when required by law.

In other words, faculty should not *presume* that what they write using “uc.edu” email accounts is private. What’s more, any email message that passes through UC servers (e.g., using your Yahoo account while at your desk on campus) can be examined. We have no reason to believe that UC does this on a regular basis, but faculty should be aware of the possibility.

These are the basic principles that must be used in analyzing specific questions.

Recent Questions

One question that has arisen recently regards the memo dated 9/17/07 which states that “e-mail signature lines have now been branded to follow [this] format” (Governmental Relations and University Communications, “Branding Standards Manual”). This memo further states that faculty messages using UC email accounts should “refrain from using all caps and any additional items such as quotes, slogans, graphics and backgrounds.” While many of us may disagree with this policy (and there

are various ways faculty could explore to have the policy reviewed), such a policy is within the bounds of the employer's right to manage use of its email accounts. In other words, asking faculty to refrain from using quotations in their signature lines in all likelihood does not rise to the level of a restriction of free expression or academic freedom.

Twice within the past two years faculty members have consulted our office with regard to apparent monitoring of their internet usage. In both cases it appeared that there was a *reasonable suspicion* that the faculty member's internet usage was violating the law or university policy. What this points out is that the University is capable of tracking the sites that faculty visit using UC internet access—and it is within their right under the law. Furthermore, in these two cases it did appear that tracking began only after an apparently legitimate concern was raised.

Finally, we have had several instances recently in which faculty members were chastised in various ways—but without any formal discipline charges being filed—for using UC email accounts to make commentary about administrative decisions. As noted above, **so long as it is clear that the content of the faculty member's email does not construe any kind of official university position, any threat of sanction or disciplinary action because University administrators or other representatives disagree with the views expressed in the email is completely inappropriate and would result in a vigorous defense by this AAUP Chapter were discipline to be proposed.**

Even if discipline is not proposed in such cases, the chilling effect of threatening faculty with such action is a serious concern. Faculty are quite adept at the written word. I have every confidence that faculty are capable of writing emails that make it clear that they are not speaking on behalf of the University. And so long as they do so, administrators should obey the law, and the contract, by respecting faculty's right to free expression as citizens of both the University and the society at large.

— Deborah M. Herman, PhD
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