MINUTES OF THE T-FACULTY SENATORS COUNCIL MEETING OF SEPTEMBER 11, 2014

The New York University Tenured/Tenure Track Faculty Senators Council (T-FSC) met at noon on Thursday, September 11, 2014 in the Global Center for Academic & Spiritual Life at 238 Thompson Street, 5th Floor Grand Hall.

In attendance were Senators Allgood, Alter, Amkpa, Antoon, Appiah, Backus, Becker, Chan, Diner, Disotell, Garabedian, Goodwin, Jacobs, Jelinek, Kamer, Kane, Klimke (by phone), Ling, Miller, Mincer, Pearce, Porfiri, Rajagopal, Smith, Stanhope, Stokes, Sundaram, Uleman, Van Devanter, Wisniewski, Zwanziger; Active Alternates Archer, Ludvigson; Alternate Senators Kiorpes, Lane, Ospina, Reiss, and Tannenbaum; and Past Chair Magder. FSC Former Chairs Al-Askari, and Former Members Moskowitz and Raiken attended as guests.

REPORT FROM THE CHAIRPERSON: RAGHU SUNDARAM

Chairperson Sundaram welcomed the Council, both new and returning members, to the new academic year and another year of Council activity. He also welcomed the new NYU Abu Dhabi representative, Martin Klimke, who participated by phone.

Committee Assignments, 2014-2015


Sundaram stated the Executive Committee met and discussed the assignments in late August. He commented that last year there was an open membership policy. This resulted in large committees, which made scheduling difficult, led to poor attendance, inadequate accountability by members, and excessive burdens placed on Committee Chairs. This year, the Executive Committee decided to restrict committee size to six or seven members, with a few larger committees upon request of the chair of the relevant committee. For example, the Global Network University (GNU) Committee has nine members with the addition of the NYU Abu Dhabi and NYU Shanghai Senators. Sundaram urged members to attend as many committee meetings as possible so work will be equitably shared amongst all the members on the committee. In addition, two co-chairs (with staggered terms) were appointed for each committee to share the responsibility of committee work and also to ensure the continuity of committee work.

There were over 100 slots to be filled between T-FSC committees, University Senate committees, and University Committees, equaling an average of three committee assignments per person. Committee chairs have fewer assignments due to their extra work as chairs, unless they requested other assignments. Sundaram commented the Executive Committee worked very hard to make the distribution as fair as possible, and he asked Senators to accept these responsibilities and contribute to all assigned committees.

Sundaram stated the Grievance Committee will begin its work immediately. This Committee hears grievances from the faculty. Under the University Bylaws, the Provost forwards the grievance to the T-FSC, which appoints a committee of three faculty members to look into the case. There were two grievances this summer.

Sundaram mentioned the two special committees organized this year. The first was part of the Personnel Policies and Tenure Modifications Committee last year and will operate as a separate committee this
year, entitled: Inclusion, Equity and Diversity. Former Member Charlton McIlwain, who served as co-chair of Personnel Policies and Tenure Modifications last year, will continue his work and serve as co-chair along with Everett Allgood.

The second special committee is the Coordination Committee, which Allen Mincer will chair. This Committee will coordinate activities with the Full-Time Non-Tenure Track/Contract Faculty Senators Council, including possible joint committees, etc.

Committee Agendas, 2014-2015

Sundaram stated every Committee did a significant amount of work on various issues last year, including reviews of policies and data gathering. The Administration & Technology Committee began review of the Social Media Policy and the Governance Committee examined the Faculty Handbook, which are continued agenda items for this year.

The Finance & Policy Planning Committee obtained financial data at the University level over the last 12-14 years regarding revenue sources, expenditure patterns, and capital investment. Sundaram encouraged Council members to visit the T-FSC website to view these reports. He also encouraged Senators to inquire about similar analyses at the school level. For the agenda this year, the Committee will look into school level information on University finances.

Sundaram added that all data received by the Council is given for the purposes of consultative governance, and while it is available to be shared with the faculty, the recipients have been asked not to disseminate it outside of the faculty. If recipients plan to write any public articles or quote segments of the data, the administration requests the opportunity to view these comments and respond.

Sundaram noted the work of the Benefits and Housing Committee last year and their continued discussions with the Office of Benefits, including feedback on new policies, such as medical benefits. Last year, the Committee extended this practice with the Housing Office and collected extensive data on housing costs, housing allocations, and housing decisions. The co-chairs are discussing with the Housing Office the best way to present this sensitive information. On the agenda this year is the issue of housing shortages and tuition remission.

The affirmative action sub-group of the Personnel Policies Committee collected aggregated data on the racial, ethnic and gender diversity of the faculty. As with the finances, the data is aggregated at the University level, and on this year’s agenda is examining data at the school level.

Sundaram presented general goals for this year regarding Committee work: build on the work that has been done, institutionalize processes, and find ways to appropriately disseminate the data/information received.

Sundaram stated he plans for committee reports to be sent to all schools highlighting the main work of the committees over the academic year. Detailed committee agendas for the year were discussed at the Committee Chairs lunch, and Committee Chairs will be adding items to the monthly meeting agendas to create an overall picture of the T-FSC agenda this academic year.

Presidential Search

Sundaram reported the Presidential Search Committee is composed of 24 members, including six faculty members. Sundaram presented on the groundwork done prior to the first meeting, which will be held next week. He noted some of the information is confidential and cannot be discussed in public.
A subcommittee of the Presidential Search Committee has met and interviewed two search firms, both of which Sundaram described as experienced with a strong understanding of the process. They both have worked on the most high profile presidential searches of universities in the last five years. One has more than 30 years of experience with university president and higher level searches; the other has 20+ years. The firms spoke in detail about what they thought NYU needed, and both have worked with NYU in the past on school level appointments and have considerable familiarity with the University. The subcommittee leaned slightly in favor of one search committee over the other.

Both search firms stated this is without question the highest profile position in higher education in America this year and expect no shortage of talented candidates. They each offered five/six very strong examples.

Sundaram countered concerns about the validity of the process and stated this is a legitimate search with much effort and debate put into the process. Marty Lipton has stated that while he thought it was difficult for an outsider to come in and get to know the University well, he did not see a single stand out internal candidate at this point.

A memo was sent concerning listening sessions with the faculty, students, administrators, and other groups. The first listening session is scheduled for September 16th, the second for September 30th. A second memo will be sent from the faculty members on the committee. The Committee will meet to discuss the process with all the school faculty councils and with the heads of departments/divisions at NYU. And, as stated in the memo, the Committee will meet with any group, department, etc. that requests a meeting.

The Committee is gathering information on the qualities University members would like to see in a president and examples of specific candidates.

A Senator asked if the Search Committee has addressed concerns about the size of the University and the new president's position on tackling this issue.

Sundaram stated the full committee has not met, only the sub-committee, so concerns such as this have not been addressed. But the committee is trying to get a sense of peoples’ opinions on important issues facing the University, what the president should focus on, and what kind of president University members want.

A Senator asked how faculty members were chosen to serve on the search committee.

Sundaram responded that Marty Lipton stated last year that only members of elected bodies would be chosen. There was a complaint from the FAS science groups concerning the lack of a science representative on the committee, so a fifth member was appointed from biology to serve as the science representative. Of the five current faculty members on the committee, three are from FAS, one from Stern, and one from Steinhardt. The sixth member will be chosen by the Non-Tenure Track/Contract Faculty Senators Council.

Sundaram encouraged Senators to speak with colleagues and share any ideas on the candidates’ ideal profile and/or specific examples of candidates.

**Name Change**

Sundaram stated the Council’s name has been changed in the bylaws to the Tenured/Tenure-Track Faculty Senators Council. Temporarily, the EC has been using the names TFSC or the FSCT or FSC (T). He welcomed suggestions for an alternative name/abbreviation for the Council.
Executive Committee Introductions

Sundaram introduced the 2014-2015 Executive Committee: Allen Mincer as Vice Chairperson, Mitchell Kane as Secretary, and Ted Magder as Past Chair.

FSC COMMITTEE REPORTS

Administration & Technology: Committee Co-Chairs Arthur Miller & Carol Reiss

Electronic Communications and Social Media Policy and NYU Policy on University Access to Electronic Information

See attached Document C: FSC Review of Electronic Communication and Social Media Policy, Document D: Electronic Communication and Social Media Policy with tracked changes, and Document E: NYU Policy on University Access to Electronic Information

Alternate Senator Reiss first thanked members of the committee, particularly Past Chair Magder, for their work reviewing the Electronic Communications and Social Media Policy.

Reiss reported Document D is a draft dated April 4, 2014, which came out of the General Counsel’s office, with comments added by Magder, following the summer 2014 meetings. These are all constructive changes, concerns, or questions to be addressed by the other stakeholders. The report came out of the collaboration between the General Counsel’s office, Director of Community Standards, Compliance, And Planning: Tom Grace, the Student Senators Council, the Administrative Management Council, and the T-FSC.

Magder added this is not the final set of comments or last conversation on the document and encouraged Senators to communicate any additional comments, clarifications, and/or edits.

Magder stated that since the first document was presented eighteen months ago, the Committee voiced the need for a more general policy on University access to electronic information policy (Document E), which reflects efforts at either oversight or transparency with respect to any institutional process that involves the monitoring of electronic information or other sources of information. The Committee encouraged the University to adopt an oversight committee that would presumably report to the University Senate, would annually review the University’s activities in this area and would produce a report publically available to the entire community. Magder commented he believes the oversight committee is an important recommendation because it guarantees a continual review of how the University is collecting data, using data and acting on data, whether those actions are a result of requests from beyond the University: subpoenas from law enforcement agencies, or from undergraduate advisors, chairs, faculty, or deans, etc.

Reiss stated this document is based on documents that have been developed by peer institutions. She added a specialist in this area of law, Katherine Strandburg, has reviewed and made very constructive comments.

A Senator asked how this subcommittee would be formed. Magder pointed to the last paragraph of the second policy (Document E), which contains a draft paragraph on the oversight committee, including membership and reporting.
A Senator suggested a change to section I.b. “Members of the University Community also may want to be mindful of local customs, norms, and practices with respect to Electronic Communications”. He suggested changing “mindful” to “respectful.” He also asked for clarification on the word “foreseeable” in section II.b. “Engaging in conduct that disrupts NYU operations or creates a foreseeable risk of doing so.”

Reiss commented these policies were developed for the students.

Magder stated he would defer to the legal experts, but personally prefers the word mindful over the word respectful because it might imply it is the University’s responsibility to enforce local customs. This encourages students to be mindful of the rules that exist in the locality they are situated in.

A Senator asked if the policy applies to all members of the University community, including the School of Medicine, which has a largely autonomous IT department. Reiss responded the policy is meant to apply to all schools, including Shanghai and Abu Dhabi.

Senator Miller supported the idea for the oversight committee and ensuring the policy is consistently honored and enforced university wide. He questioned how it would be enforced in Abu Dhabi and Shanghai, which are subjected to local regimes that are not governed by these policies.

A Senator suggested the GNU Committee look at the issue of how all university wide policies apply to global sites that are subject to local law, regulation and conditions.

Magder commented the Committee has worked to slow down the process and expressed many of these concerns.

A Senator suggested a first amendment specialist look at this issue regarding emails and communications.

A Senator asked if the document addresses explicitly or implicitly the rights of the student, for instance, to upload a video of a lecture or a discussion in class without consultation.

Reiss stated all classroom related materials are explicitly included.

A Senator commented on the use of student evaluations and who has access to the qualitative information. It was stated this is a policy that varies school to school. At some schools comments are private to the individual, other schools have more public evaluations.

A Senator asked if this applies to personal accounts (Facebook, twitter, blogs, etc.) Magder stated the policy focuses on social media activities that relate to participation in the NYU community. He referred to section IV. Use of Social Media in an Employment Context, a. Screening Candidates for Employment, which discusses google searches during hiring decisions. The committee added comments to clarify this section.

Reiss/Magder summarized that they will take these comments back to the General Counsel’s office. They stated the Student Senators Council and Administrative Management Council have approved. They will inquire if Dean’s Council has reviewed/approved.

ADJOURNMENT

The meeting adjourned at 2:00 PM.
## Committee Assignments by Senator: 2014-2015

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# FSC Committee Assignments: 2014-2015

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<td>Victoria Stanhope</td>
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</table>
# Senate Committee | Name                  | School                        | Served in 2013-14 |
1 Academic Affairs | Hasia Diner           | Faculty of Arts and Science   | Yes            |
2                      | Angela R. Kamer      | College of Dentistry         | Yes            |
3                      | Maurizio Porfiri     | Polytechnic School of Engineering | Yes          |

# Senate Committee | Name                  | School                        | Served in 2013-14 |
1 Financial Affairs | David Backus          | Stern School of Business      | Yes            |
2                      | Nick Economides      | Stern School of Business      |               |
3                      | Sydney Ludvigson     | Faculty of Arts and Science   |               |
4                      | Daniel Smith         | Wagner Graduate School        |               |
5                      | Raghu Sundaram       | Stern School of Business      | Yes            |

# Senate Committee | Name                  | School                        | Served in 2013-14 |
1 Judicial Board     | Mark Alter            | Steinhardt                    |                |
2                      | Nick Economides      | Stern School of Business      |               |
3                      | Achiau Ludomirsky    | School of Medicine            | Yes           |
4                      | Arthur Miller        | SCPS                          | Yes           |
5                      | Thomas Wisniewski    | School of Medicine            | Yes           |
6                      | Daniel Zwanziger     | Faculty of Arts and Science   | Yes           |

# Senate Committee | Name                  | School                        | Served in 2013-14 |
1 Public Affairs     | Mark Adelman          | School of Medicine            |                |
2                      | Mark Alter            | Steinhardt School             | Yes           |
3                      | Arthur Tannenbaum    | Division of Libraries         | Yes           |

# Senate Committee | Name                  | School                        | Served in 2013-14 |
1 SCOG                | James Jacobs          | School of Law                 | Yes           |
2                      | Warren Jelinek        | At-Large: School of Medicine  | Yes           |
3                      | Mitchell Kane         | School of Law                 | Yes           |
4                      | Jim Uleman            | Faculty of Arts and Science   | Yes           |
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<td>Hasia Diner</td>
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<td>Anne Ward</td>
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<td>Dan Smith</td>
<td>Standing</td>
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<td>Dale Rejmar</td>
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<td>Presidential Search Committee</td>
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<td>Wen Ling, Achi Ludomirsky</td>
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Tenured/Tenure Track Faculty Senators Council
and University Senate
Calendar of Meetings for Academic Year 2014-2015

T- FACULTY SENATORS COUNCIL

12:00-2:00 P.M. on the following Thursdays:

Thursday, September 11, 2014: Global Center, Grand Hall-Room 573
Thursday, October 16, 2014: Global Center, Grand Hall-Room 573
Thursday, November 6, 2014: Global Center, Grand Hall-Room 573
Thursday, December 11, 2014: Kimmel 914

Thursday, January 29, 2015: Global Center, Grand Hall-Room 573
Thursday, February 19, 2015: Kimmel 905/907
Thursday, March 12, 2015: Global Center, Grand Hall-Room 573
Thursday, April 16, 2015: Kimmel 914
Thursday, May 7, 2015: Global Center, Grand Hall-Room 573

Kimmel Center for University Life is located at 60 Washington Square South.
Global Center for Academic and Spiritual Life is located at 238 Thompson Street.

UNIVERSITY SENATE

2:00-4:00 P.M. on the following Thursdays:

Thursday, October 9, 2014          Thursday, February 12, 2015
Thursday, November 13, 2014        Thursday, March 26, 2015
Thursday, December 4, 2014         Thursday, April 30, 2015

All meetings take place in the Colloquium Room, 5th Floor, Global Center for Academic & Spiritual Life, 238 Thompson Street.
Report to FSC: May 2014

Re: FSC Review of Electronic Communication and Social Media Policy (draft document, 21 January 2014)

From: ________________________________

Review History
The current draft Electronic Communications and Social Media Policy (dated 21 January 2014, hereinafter SMP) was received by the FSC in January 2014 and incorporates all the changes proposed by the Personnel and Tenure and Promotion Committees of FSC after review of an earlier draft, circulated in December 2012.

The other Senate Councils have reviewed and approved the current draft policy.

The University administration advises that there are constant, significant student issues involving electronic communications and social media, it is time-sensitive to post a policy to bring clarity to these issues, and our peer institutions have long had social media policies.

Policy Field
The draft SMP would take its place alongside current policies covering a broad range of IT services and uses, all of which are listed on the ITS webpage (www.nyu.edu/its/policies/) and listed below.

- Policy on Responsible Use of NYU Computers & Data
- Understanding Your Obligations for the Responsible Use of NYU Computers & Data
- Data Classification at NYU
- Guidelines for Account Access and Management at NYU
- IT Security Information Breach Notification Procedure
- ITS NYU-NET Operational Principles
- ITS Scheduled Maintenance Guidelines
- Management of NYU Network Infrastructure Resources Policy
- Policy on Responsibilities of Subscribers or Clients of NYU Telephone Service
- Procedures for Registering and Managing Internet Domain Names Outside NYU.EDU
- Terms of Use for NYU Google Apps for Education
- Use of Call Monitoring for Customer Service Improvement
- World Wide Web Policies and Procedures

Internal IT Document
- Code of Conduct: IT @ NYU (PDF)

Operational - Awaiting Final Approval
- Appropriate Use of E-Mail at New York University
- Data and Computer Security Policy
  - Data and System Security Measures
  - Reference for Data and System Classification
  - Security Guidelines for Desktop and Laptop Computers
  - Security Guidelines for System Administrators
Issues of Concern to FSC (as discussed at April 2014 meeting and afterward)

At the April 2014 FSC meeting, and in email subsequent to that meeting, faculty senators have raised the following concerns:

1: Email from Faculty to University Community

FSC members have raised concerns that the SMP would prohibit certain individual faculty, or faculty groups, such as FASP or the AAUP, from communicating with the NYU community.

The SMP includes no such prohibitions.

A separate policy, “Appropriate Use of E-Mail at NYU (April 2011),” covers email use, and includes a section on “sending bulk email.” The relevant policy statement is:

Unofficial e-mail communications to large numbers of people should be sent only via a subscription list, from which individuals may unsubscribe. Senders of such unofficial e-mail must recognize their obligation to use the e-mail service responsibly and to abide by all NYU policies and procedures and federal, state, and other applicable laws and regulations.

2: Possible Carve-outs for Shanghai and Abu Dhabi

FSC members have raised concerns that Shanghai and Abu Dhabi may adopt local interpretations of the policy that would be more restrictive than those in the United States, or the other study abroad campuses.

The draft SMP defines NYU as “the schools, colleges, institutes, and other administrative units of NYU, NYU’s Global Network University sites, and all University affiliates, as each term is defined in NYU’s Policy on Policies.”

The policy also says: “Members of the University Community also may want to be mindful of local customs, norms, and practices with respect to Electronic Communications.”

3: Enforcement

FSC members have expressed concern that the enforcement mechanisms are “top-down” and “surveillance-heavy.”

The SMP does not introduce any new enforcement procedures. The SMP references the current NYU policies and procedures related to monitoring and access of electronic communications and social media sites. FSC members and designees have met with Marilyn McMillan, Vice President for Information Technology and Chief Information Technology Officer, and other representatives of the administration to discuss privacy and other data stewardship issues with respect to electronic communications and social media as set forth in the current policies and procedures, but this is outside of the SMP.
At present, ITS monitors and records activity on NYU devices, networks, and systems related to Electronic Communications only in response to a specific request from:

- An NYU employee with the appropriate fiduciary responsibility, such as a Dean or the Vice-president of Student Affairs;
- External law enforcement agencies;
- External IP enforcement requests in accordance with existing legislation, such as the Digital Millennium Copyright Act.

Shared Governance and Timely Review of the SMP

The shared governance principles, approved by the Board of Trustees in December 2012, provide some guidance for the timely review of pending FSC business with the administration.

Consultation

Except under rare, extraordinary circumstances, the University administration will provide a reasonable length of time for FSC consultation and input on all matters that affect faculty in educational and administrative policy. **This means that the administration must plan in advance to allow enough time for at least one regularly-scheduled FSC meeting to occur before the consultation period comes to a close on any particular matter.** (Emphasis added)

For urgent decisions, such as decisions that must be taken during the summer or winter holiday, when the FSC is not in session, the FSC will establish a “provisional review committee” and a set of procedures for timely consultation and input regarding University administration decisions on matters that affect faculty in educational and administrative policy. All decisions reached by FSC’s provisional review committee are subject to full FSC review and approval. The FSC will promptly convey its final decision on the matter to the administration, which in turn will reconsider the provisional policy, based on new or additional advice provided by the FSC. The administration will then promptly convey its final decision to the FSC.

Recommendation to FSC

Recommendation 1
The FSC should, as soon as possible, convene a special meeting of its ‘summer’ committee, as provided for in the FSC rules, to finalize its recommendation on the SMP.

Recommendation 2
The FSC review of the SMP should include the following recommendations:

A. Establish a committee or working group involving relevant University administrators and representatives from each Senate Council to undertake a full-scale review of the University’s current stewardship, monitoring and enforcement procedures for all forms of electronic data;

B. Establish an annual oversight body and/or Annual Report on Data Stewardship, Monitoring and Enforcement.
New York University Policies

Title: Electronic Communications and Social Media Policy

Effective Date: ____________, 2014

Supersedes: Not Applicable

Issuing Authority: Senior Vice President for University Relations and Public Affairs

Responsible Officer: Vice President for Public Affairs

Policy

New York University (the “University”), including the schools, colleges, institutes, and other administrative units of NYU, NYU’s Global Network University sites, and all University affiliates, as each term is defined in NYU’s Policy on Policies (together, “NYU”), supports and encourages open discourse by members of the University Community through the use of Electronic Communications, which encompasses Social Media, while at the same time seeking to address the concerns associated with such use.

Purpose of this Policy

This policy:

- Promotes awareness within the University Community regarding the benefits and risks (including privacy-related risks) of Electronic Communications;
- Helps create a safe learning and working environment at NYU;
- Helps to ensure the confidentiality of personally identifiable information in accordance with applicable laws, regulations, and NYU policies;
- Strives to protect NYU Marks (i.e., NYU’s name, logos, trademarks, service marks, or graphics) and NYU’s reputation;
- Sets certain rules for the use of Electronic Communications for NYU purposes; and
- Reinforces that NYU policies apply to Electronic Communications, as they do to any other types of communications and media, and that such other policies must be consistent with this policy.

Comment [TM1]: General Comment: Should the policy have or refer to a “grievance procedure” for both alleged victim and accused. How does an investigation get started?

The title remains a concern, in part because there are other policies that cover “electronic communications,” such as the Policy on Use of Email. One approach might be to confine this policy to “Social Media” and then review all related E-communication policies with the goal of creating a more comprehensive “E-comm. Policy”.

Comment [TM2]: Is this the proper responsible officer? We haven’t discussed, but should. “Public Affairs” suggests that the primary concern is the University’s public standing and reputation.

Comment [TM3]: Note that NYU already has a number of policies that do the same.
Scope of this Policy

This policy applies to all members of the University Community with respect to their utilization of Electronic Communications. Other pertinent NYU policies also apply to Electronic Communications, some of which are referenced in the Related Policies section below. NYU schools, colleges, institutes, other units, Global Network University sites, and University Affiliates may supplement this policy, provided that such supplementary policies are consistent with this policy in accordance with the NYU Policy on Policies.

I. General Principles of Electronic Communications

a. Freedom of Expression and the Academic Community

NYU is committed to the principle of academic freedom, as described more fully in the Statement in Regard to Academic Freedom and Tenure in the Faculty Handbook. Nothing in this policy is intended to abridge or interfere with those rights and responsibilities. This policy is intended to support and encourage NYU’s academic mission and specifically NYU’s commitment to a research and teaching environment that is open, robust, and diverse. In addition, nothing in this policy is intended to abridge or interfere with the right of NYU employees to speak about the terms and conditions of their employment pursuant to Section 7 of the National Labor Relations Act.

b. Criminal and Civil Liability with Respect to Electronic Communications

Members of the University Community are always subject to the jurisdiction of applicable local and national governments when they are using Electronic Communications. In addition to the consequences addressed in the Enforcement section below, violations of applicable laws through the use of Electronic Communications can lead to criminal and/or civil sanctions, as well as to private law suits by persons claiming injury. Members of the University Community also may want to be mindful of local customs, norms, and practices with respect to Electronic Communications.

c. Limited Expectations of Anonymity and Privacy

Members of the University Community should not assume that Electronic Communications, including Social Media, are anonymous or private. When composing an Electronic Communication, the author may want to assess the risk and the consequences of communications becoming public. Electronic Communications often are forwarded, posted, or otherwise distributed without the approval or knowledge of the author. Members of the University Community may want to monitor privacy settings on Social Media accounts to maximize their privacy to the extent desired and feasible. Electronic Communications, including e-mails, also can be subject to disclosure, for example in litigation, to regulatory bodies or other persons in connection with NYU business operations, and in response to subpoena.
Pressing the “delete” key does not mean that an Electronic Communication is unrecoverable even where all recipients have “deleted” it. In addition, Internet Protocol addresses (known as IP addresses) normally can be traced to their source (e.g., to NYU) and often to a specific computing device.

NYU reserves the right to monitor and record activity on NYU devices, networks, and systems related to Electronic Communications in accordance with the protections for privacy of such communications as set forth in relevant NYU policies and procedures (including Responsible Use of NYU Computers and Data Policy, http://www.nyu.edu/about/policies-guidelines-compliance/policies-and-guidelines/responsible-use-of-nyu-computers-and-data-policy-on.html), and in accordance with applicable laws.

II. Social Media Overview

a. Appropriate Uses of Electronic Communications

Electronic Communications must be used in accordance with applicable laws and NYU policies, including the Code of Ethical Conduct. NYU encourages members of the University Community to use Electronic Communications in a manner that is consistent with NYU’s academic mission, to employ common sense when using Electronic Communications, to write in a manner that is knowledgeable, accurate, truthful, and professional when using Electronic Communications, and to promptly correct errors where appropriate. Users of Electronic Communications also should be aware of the terms of use that may be imposed on users by the vendors or others involved in specific Electronic Communications, including Social Media accounts.

b. Misuses of Electronic Communications

Misuses of Electronic Communications may subject members of the University Community to disciplinary action pursuant to the Enforcement section below. The list below, while not exhaustive, provides examples of misuses of Electronic Communications. Misuses of Electronic Communications include:

- Threatening, tormenting, defaming, bullying, intimidating, stalking, or performing similar acts that a reasonable person would consider objectionable by its severity, pervasiveness, and/or persistence;
- Engaging in conduct that unreasonably and substantially interferes with a person’s academic or work performance, opportunities or benefits, or a person’s mental, emotional, or physical well-being;
- Engaging in conduct that exploits a person’s known psychological or physical vulnerabilities or impairments;
- Engaging in conduct that reasonably causes or could be expected to reasonably cause a person to fear for his or her physical safety;
- Engaging in conduct that disrupts NYU operations or creates a foreseeable risk of doing so;
- Engaging in conduct that exploits a person’s known psychological or physical vulnerabilities or impairments;
- Engaging in conduct that reasonably causes or could be expected to reasonably cause a person to fear for his or her physical safety;
- Engaging in conduct that disrupts NYU operations or creates a foreseeable risk of doing so;
- Engaging in conduct that disrupts NYU operations or creates a foreseeable risk of doing so;
- Engaging in conduct that disrupts NYU operations or creates a foreseeable risk of doing so;
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- Using Electronic Communications to publish unauthorized digital images or video files depicting another to embarrass, socially ridicule, or defame that person;
- Illegally discriminating on the basis of a Legally Protected Class, or perceived membership in such classification;
- Inciting or attempting to incite violence;
- Engaging in conduct that jeopardizes or could jeopardize the health or safety of a child (including viewing, downloading, or transmitting child pornography);
- Misusing or violating the intellectual property rights of NYU or others (including failure to properly attribute or obtain necessary consent);
- Disclosing without authorization or unlawfully the confidential or proprietary information of NYU or members of the University Community (including, but not limited to, patient and student information protected under the HIPAA Privacy Rule or the Family Education Rights and Privacy Act (FERPA));
- Impersonation, including but not limited to misrepresenting the University Community member’s own identity, capacity, or authority;
- Sending unauthorized bulk e-mail (spam) or otherwise transmitting mass messages in violation of applicable NYU policies (including Appropriate Use of E-mail at New York University Policy, http://www.nyu.edu/its/policies/email.html), unless authorized by NYU;
- Engaging in prohibited electioneering; and
- Engaging in any other conduct prohibited by local, state, federal, or other applicable law or NYU policy.

Actions described in the above list also may violate NYU’s Statement and Response Guidelines on Bullying, Threatening, and Other Forms of Disruptive Behavior, http://www.nyu.edu/content/dam/nyu/compliance/documents/StudentAffairs.StatementAndResponseGuidelinesBullyingDisruptiveBehavior.8.15.13.pdf, or other NYU policies.

c. NYU Name, Marks, and Logos

Use of NYU Marks must (1) be for official NYU business or otherwise have been approved in writing by NYU’s Office of Digital Communications (“DigiComm”), digital.communications@nyu.edu, and (2) follow all NYU rules and policies; provided, however, that members of the University Community may reference their NYU affiliation for identification purposes (e.g., an NYU faculty member or an NYU student), but where it is not clear, they must make it clear that they are acting in a personal (and not official NYU) capacity. Members of the University Community do not have the authority to alter or create their own versions of NYU Marks for use in Electronic Communications.

III. Institutional Social Media Accounts

a. Establishment
Members of the University Community must notify DigiComm, digital.communications@nyu.edu, prior to activating an Institutional Social Media Account. Administrators of existing Institutional Social Media Accounts activated prior to the Effective Date of this policy must promptly notify DigiComm if they have not previously done so.

b. Access, Maintenance, and Ownership

For each Institutional Social Media Account, there must at all times be at least two NYU employees to serve as the Administrators of that Account who have appropriate account access credentials (including usernames, passwords, and answers to security questions) and who have been provided or expressly delegated the authority to administer the account (including editing account settings and content). The personal information of a member of the University Community should not be incorporated into the account access credentials of an Institutional Social Media Account. To ensure the continuity of Institutional Social Media Accounts, anyone who administers such accounts should maintain passwords and all other relevant information necessary to access such accounts in a safe and secure location.

NYU may have an ownership or other interest in the information, files, or data contained in an Institutional Social Media Account; if so, NYU may have the right to control the distribution or publication of that information, separate from any right NYU may have to access the account as described above.

NYU reserves the right to take steps to “freeze” any Institutional Social Media Account that violates this policy or other NYU policies.

c. Guidelines for Administrators

Administrators of Institutional Social Media Accounts should monitor/moderate postings on a frequent basis in accordance with applicable response approaches/strategies to ensure compliance with this policy and other applicable NYU policies.

d. Public Affairs

As with any form of communication that may appear to represent NYU, members of the University Community should exercise good judgment in determining whether an Electronic Communication should be approved in writing by NYU’s Office of Public Affairs prior to transmission through an Institutional Social Media Account.

NYU employees must notify NYU’s Office of Public Affairs if contacted by a media representative about an Institutional Social Media Account, and employees must not respond to a request for information by such a representative without first consulting with NYU’s Office of Public Affairs.
IV. Use of Social Media in an Employment Context

a. Screening Candidates for Employment

Members of the University Community must not use Social Media or other Electronic Communications to (1) search for or screen out candidates for employment at NYU on the basis of any Legally Protected Class or (2) make any pre-employment inquiries otherwise prohibited by law. For example, the Equal Employment Opportunity Commission has cautioned that personal information, such as that gleaned from social media postings, may not be used to make employment decisions on prohibited bases, such as race, gender, national origin, color, religion, age, disability, or genetic information. Members of the University Community intending to use Social Media to screen employee candidates should consult with their Human Resources representatives for guidance.

b. Reviewing Employee Performance

Members of the University Community in their capacity as supervisors should not use Social Media to comment on or display information concerning the work performance of their subordinates. Formal performance reviews and/or recommendations related to the work performance of subordinates should not be made using Social Media without the express consent of such employee. Before supervisors make any informal communications about the job performance of their subordinates using Social Media, supervisors must exercise judgment and discretion and consider whether there is a need to obtain the approval of any colleagues or supervisors.

c. Authority Relationships and Social Media

Maintaining a Social Media account requires careful assessment of the implications of inviting a person to be a “friend” or “connection” or the equivalent or accepting such an invitation from another person. This is particularly true where there is an authority relationship (such as faculty-student, doctor-patient, or supervisor-subordinate) between inviter and invitee; the presence of such an authority relationship necessitates close consideration of the implications of sending and accepting an invitation.

Supervisors should exercise good judgment and caution when inviting subordinates to be a “friend” or “connection” or the equivalent using Social Media; if a supervisor believes there is a possibility a reasonable person similarly situated to the subordinate in question would find an invitation to be inappropriate, the supervisor should not send that invitation. Supervisors should consider whether it is appropriate to decline invitations they receive from subordinates. These cautions also are applicable in other cases involving authority relationships.

d. Protecting Confidential Information
In using Social Media and other Electronic Communications, members of the University Community must ensure the confidentiality of personally identifiable information and other NYU sensitive information in accordance with applicable laws and NYU policies, including, but not limited to, those related to HIPAA, FERPA, and personal identification numbers (see, e.g., the Related Policies section below). Before uploading or sending student, patient, or other NYU information through Social Media, members of the University Community must ensure that such actions are in compliance with applicable laws and NYU policies.

e. Outside Service Providers

Members of the University Community should exercise caution and act within their authority when entering into contractual agreements (including click-through agreements) on behalf of NYU for services related to Institutional Social Media Accounts or distribution of University-generated content over Electronic Communications (e.g., through AddThis or ShareThis). Members of the University Community should pay particularly close attention to the privacy policies of potential service providers.

f. Endorsements and Testimonials

When making an endorsement or a testimonial in one’s NYU capacity, members of the University Community must comply with the Federal Trade Commission’s Guides Concerning the Use of Endorsements and Testimonials in Advertising.

g. Social Media and Teaching

It is recommended that institutional Social Media accounts created by faculty to support courses of instruction include a clear statement on expectations for use of such social media by instructors and students. For example, if desired by a faculty member, the statement might provide that students are prohibited from using the account for any purpose other than their activities for the course, and that no content from the account may be copied or distributed by any student for any other purpose. It also is recommended that the statement note that all Social Media should be used in an appropriate manner and include a link to this policy and to the New York University Code of Ethical Conduct.

h. Disclaimers

If others could reasonably be confused as to whether a publicly-available Electronic Communication by an employee or member of the University Community represents the position of NYU when in actuality the Electronic Communication does not do so, members of the University Community should accompany the Electronic Communication (either directly or if necessary via a link) with a disclaimer such as the following: “The views expressed herein are mine alone and do not represent the views or opinions of New York University.”
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**Enforcement**

As noted in Section II(b) Misuses of Electronic Communications above: (a) employees who violate this policy may be subject to disciplinary action up to and including termination in accordance with applicable NYU policies; (b) students who violate this policy may be subject to disciplinary action up to and including expulsion, in accordance with the disciplinary rules and procedures of NYU and the relevant school, college, and/or other unit; and (c) other members of the University Community who violate this policy, including but not limited to consultants, vendors and contractors, may be subject to termination of their relationship with NYU.

**V. Review**

In accordance with NYU’s Policy on Policy, every NYU policy is to be reviewed periodically, as necessary to assure that the policy reflects obligations imposed by current laws and best practices. Given the rapidly changing nature of electronic communications and social media, it is particularly important to review this policy periodically.

**Policy Definitions**

“**Electronic Communications**” means any electronic transfer of information between one or more electronic devices and/or electronic networks/systems relating to such devices. Electronic Communications encompass Social Media.

“**Institutional Social Media Account**” means a Social Media site or account appearing to represent or be associated with NYU regardless of whether the site or account is hosted by NYU (e.g., NYU Wikis or NYU Blogs) or a third party, including any site or account using an NYU Mark; provided, however, that where the only association with NYU is that members of the University Community have referenced their NYU affiliation for identification purposes, the site or account is not an Institutional Social Media Account so long as it is clear that the members of the NYU Community are acting in a personal (and not official NYU) capacity.

“**Legally Protected Class**” means race, gender, gender identity or expression, color, religion, age, national origin, ethnicity, disability, veteran or military status, sexual orientation, marital status, citizenship status, and any other class or status that is protected under applicable laws.

“**NYU**” means the schools, colleges, institutes, and other administrative units of NYU, NYU’s Global Network University sites, and all University affiliates, as each term is defined in NYU’s Policy on Policies.

“**Social Media**” means Electronic Communications that provide the user the ability to distribute content quickly to a broad audience, including but not limited to social networking sites (e.g., Facebook, Twitter, LinkedIn, Instagram, MySpace, YouTube, Ask.fm, Google+, Quick Chat, Meetup, tumblr, Flickr, SlideShare, Pinterest), blogging.
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and microblogging, wikis, website creation, website postings and comments, mass text and multimedia messaging, and mass e-mailing, and includes future forms of such communication.

“University Community” means the following persons associated with the University and its domestic and international subsidiaries and affiliated entities: (a) the Board of Trustees, (b) all full-time and part-time employees, including but not limited to faculty members, instructors and researchers, (c) volunteers, (d) fellows, trainees and post-doctoral appointees, (e) students, and (f) others who are performing activities or providing services, including but not limited to consultants, vendors and contractors.

“NYU Marks” means NYU’s name, logos, trademarks, service marks, or graphics.

Related Policies

General Conduct
- Affirmative Action/Equal Opportunity Policy
- Anti-Harassment Policy and Complaint Procedures
- Code of Ethical Conduct
- Compliance Complaint Policy
- Faculty Handbook
- Interaction with Government Officials
- University Policy on Student Conduct

Information Privacy
- Family Educational Rights and Privacy Act (FERPA)
- HIPAA Policies
- Policy on Personal Identification Numbers

Information Technology
- Data Classification at NYU
- Policy on Photocopying Copyrighted Materials
- Policy on Responsible Use of NYU Computers and Data
- World Wide Web Policies and Procedures
Title: NYU Policy on University Access to Electronic Information

Effective Date: _______, 2014

Supersedes: -

Related Policies: -

Issuing Authority: 

Responsible Officer:

Policy

This policy sets out guidelines and processes for University access to electronic information created by members of the University Community that is stored in or transmitted through any University system [MR Note: a definition of “electronic information” will need to be created, per our discussion about “digital footprint”]. This policy applies to all Schools and units of the University.

Scope of this Policy

This policy applies to all members of the University Community with respect to their utilization of, creation of, and generation of electronic information during the scope of their employment, or their other duties at four or under the auspices of NYU. Other pertinent NYU policies also apply to such electronic information, and are referenced in the Related Policies section below. NYU schools, colleges, institutes, other units, Global Network University sites, and University Affiliates may supplement this policy, provided that such supplementary policies are consistent with this policy in accordance with the NYU Policy on Policies.

Background

Members of the NYU community rely on technology in multiple aspects of their work, teaching, research, study, and other activity. In doing so, they use electronic systems, networks, and devices that the University owns, provides, or administers. The University also makes use of electronic systems to provide campus security (such as card-swipe entry to buildings and video cameras), and to gather and maintain employee and student records. The University makes these systems available...
for the purpose of carrying out the University’s various activities. As such each Member of the University Community creates a “digital footprint” within the University that may include electronic stored research data, digital scholarly works, emails, business records, and such personal information like login times, Net ID card swipes, images from building cameras, etc.

The University recognizes that as faculty, staff, and students create, use, and store more information in electronic form, there is growing concern that information the user or creator of a member of the University Community considers private may be more vulnerable to unintended use than information stored in more traditional media. As such, members of the University Community have the right to understand the manner in which their “digital footprint” within the University may be accessed and shared. (See also, the Policy on Responsible Use of NYU Computers and Data to understand individual obligations: http://www.nyu.edu/its/policies/)

Purpose of this Policy

This policy is intended to outline the general principles that define the expectation of privacy of those in the University community. The University affirms that the mutual trust and freedom of thought and expression essential to the academic mission of a University rests on expectation of privacy, and that the privacy of those who work, study, teach, and conduct research and a University setting will be respected. To promote these values within the University community, the University will strive for complete transparency about its policy regarding the circumstances in which it may access electronic information stored in or transmitted through these systems. This policy therefore defines when the University may seek access to such electronic information (“EI”), consonant with the University’s interest in maintaining an environment in which free academic inquiry thrives. This policy is intended to establish internal standards and procedures governing such access by the University; it is not meant to create rights in any individual to seek legal redress for action inconsistent with the policy.

General Principles

This policy is grounded on six important principles that are intended to achieve the purpose of this policy:

- Access to EI will be authorized only by an appropriate and accountable person, and through a specific and formal process.
- Access to EI will occur only for a legitimate and important University purpose, as set forth in this policy.
- Except as provided in this policy, there is a presumption that notice will be given when user electronic information will be, or has been, accessed.
- Access to EI will be limited in scope solely to the electronic information needed to accomplish the purpose.
- NYU will maintain sufficient records to enable appropriate review of compliance with this policy.
- Access to EI will be subject to ongoing, independent oversight by a faculty-driven committee that will issue regular reports to the University community.
Reasons for Access

The University does not routinely monitor the content of information transmitted through or stored in University information systems. The University may obtain access to electronic information in some circumstances, but only for a legitimate institutional purpose. The paragraphs below describe certain purposes for which the University may access such information. While this list is expected to cover most instances of access, the list is not intended to be exhaustive. The University may access electronic information for comparable reasons that likewise advance a legitimate institutional purpose, as determined by a person designated to authorize access pursuant to this policy and subject to review by the oversight committee as described below. Although this policy applies to the electronic information of faculty, staff, and students and alumni alike, in evaluating the institutional purpose, the person designated to authorize access should in each case weigh not only the stated reasons for access but also the possible effect of access on University values such as academic freedom and internal trust and confidence.

A. System Protection, Maintenance, and Management
University systems require ongoing maintenance and inspection to ensure that they are operating properly; to protect against threats such as attacks, malware, and viruses; and to protect the integrity and security of information. University systems also require regular management, for example, in order to implement new software or other facilities. To do this work, the University may scan or otherwise access user electronic information. For example...

B. Business Continuity
The University may access electronic information for the purpose of ensuring continuity in its business operations. This need can arise, for example, if an employee who typically has access to the files or business information in question is unavailable.

C. Safety Matters
The University may access electronic information to deal with exigent situations presenting threats to the safety of the campus or to the life, health, or safety of any person.

D. Legal Process and Litigation
The University may access electronic information in connection with threatened or pending litigation, and to respond to subpoenas and similar lawful demands for information in law enforcement investigations, other government investigations, and legal processes.

E. Internal Investigations of Misconduct
The University may access electronic information in connection with investigations regarding claims of harassment, research misconduct by members of the University community, and claims relating to public safety, including as outlined in the following policies: list, such as Social Media Policy, Use of Email, Terms of Use, etc. Access may be authorized only when the authorizing person has determined that the investigation advances a legitimate institutional purpose and that there is a sufficient basis for it.
Authorization of Access

Access to electronic information must be authorized by an appropriate person, pursuant to NYU's Policy on Requests to Information Technology Services (ITS) for Information or to Conduct Investigations. [MR Note: this is a reference to NYU's current Policy (also attached to MR's 5-28-14 email) which also incorporates NYU ITS's “internal” Procedure for handling requests (also attached) – an option would be to incorporate that policy into this policy, but I’ve kept them separate here just so we can more clearly see what we have, and what we don’t have. The companion Procedure document might best remain as a separate document, due to its length and specificity. It has much more “teeth” than the general procedures set forth in the proposed Harvard policy]

Any authorization of access will apply only to the particular situation and user or users/member or members of the University Community. Any other instance of access situation must be separately authorized.

No independent authorization is required for information technology personnel to conduct routine system protection, maintenance, or management purposes in accord with internal protocols and processes. Likewise, requests for access in connection with litigation, legal processes, or law enforcement investigations, or to preserve electronic information for possible subsequent access in accordance with this policy, need no independent authorization if made by the Office of the General Counsel.

In exigent situations involving a threat to campus safety or the life, health, or safety of any person, access may be authorized by the Office of the General Counsel. If emergency conditions do not allow for prior authorization, the matter will be reported to the Office of the General Counsel as promptly as possible.

Notice

When the University intends to access electronic information, and except as otherwise provided in this policy, there is a presumption that notice will be given to the member of the university community to whom the electronic information belongs. All reasonable efforts should be made to give notice at the time of access or as soon thereafter as reasonably possible. The following are examples of situations where notice is not required:

A. System protection, maintenance, and management — Individual notice is not required for ordinary system protection, maintenance, or management. Notice should be given if the access relates specifically to the activity of an individual user.

B. Business continuity — Individual notice is ordinarily not required for access to electronic information for purposes of business continuity, in accordance with established University
practice and the common understanding that individual notice in such cases is typically not practical.

C. Legal restrictions — Individual notice is not required where the University is subject to legal constraints on its ability to give notice.

D. Emergencies and other extraordinary cases — Contemporaneous notice is not required in cases where there is insufficient time, where giving notice would otherwise interfere with an effective response to an emergency or other compelling need (e.g., at a stage of an internal investigation where giving notice may compromise the investigation), or where it is impractical (e.g., in the case of a former employee). The decision not to give contemporaneous notice must be made by the person designated by this policy to authorize the access. In such cases, notice will ordinarily be given as soon as practical.

The person designated by this policy [and under NYU’s Policy on Requests to Information Technology Services (ITS) for Information or to Conduct Investigations] may decide not to give notice. Any such decision, and the reasons for it, will be documented, and available for review by the oversight committee, as set forth in this policy.

Scope of Access

The University will adopt reasonable steps, whenever practicable, to limit access obtained under this policy to electronic information that is related to the University’s documented purpose in obtaining access. These steps will vary depending on the circumstances of the search and may include, by way of illustration, designing searches to find specifically designated items, as opposed to categories of information. Participation in the search, and access to the information, should be limited to those personnel with a reasonable need to be involved.

Records of Process

Any person who authorizes access to electronic information will provide that reasonable records of the decision process and the reasons for the decision are made and preserved.

In all instances of access under this policy, records should be maintained that are adequate to permit effective review as described in the Oversight section of this policy. Records will be maintained for a period of time that is consistent with all legal obligations and with custom and practice.

Oversight Committee

This policy, its implementation, and instances of access under this policy will be subject to review by an oversight committee to be constituted by the University, which will include faculty, senior administrators, and a student representative. The oversight committee will make recommendations to the Provost as to the processes set forth in this policy and possible amendments. The oversight committee will also make periodic non-confidential reports on the implementation of this policy. In carrying out its responsibilities, the oversight committee may
review relevant NYU records described in this policy, subject to redaction as necessary to protect individual users.

Comment [tM16]: New Section
"Grievance Procedure"
How will the University address claims that records are being unfairly or inappropriately searched/monitored, etc.? Could the Oversight Committee also serve as a grievance committee?