

Adopted:

**ACADEMIC SENATE**  
**of**  
**CALIFORNIA POLYTECHNIC STATE UNIVERSITY**  
**San Luis Obispo, CA**

AS-\_\_\_-03/

**RESOLUTION TO PROMOTE CIVILITY AND A DIVERSITY-FRIENDLY ENVIRONMENT  
THROUGH RESPONSIBLE USE OF COMPUTING RESOURCES**

- WHEREAS: “Information technology resources are provided to support the University's mission of education, research and service.”<sup>1</sup>
- WHEREAS: The present *Information Technology Resources Responsible Use Policy* (RUP) allows for use of University computing resources for incidental, non-University purposes; and.
- WHEREAS: In terms of the incidental, non-University use, Information Technology Services (ITS) currently does not make a distinction between using computing resources to “view adult pornography or doing [one’s] income taxes” if it does not create a hostile working environment by having other people see the offensive images<sup>2,3</sup>; and
- WHEREAS: The present policy has lead to many situations of hostile environments wherein users were utilizing computing resources within the apparent guidelines of the present RUP; and
- WHEREAS: “California Polytechnic State University is committed to creating and maintaining an environment in which faculty, staff, and students work together in an atmosphere of mutual respect...[where] all individuals are entitled to benefit from University programs and activities without having to tolerate inappropriate behavior because of their gender.”<sup>4</sup>; and
- WHEREAS: “Access to Cal Poly's information technology resources is a privilege granted to faculty, staff and students in support of their studies, instruction, duties as employees, official business with the University, and/or other University-sanctioned activities”<sup>5</sup>; and
- WHEREAS: “The University reserves the right to limit access to its resources when policies or laws are violated ...[including] restricting the material transported across the network or posted on University systems.”<sup>6</sup>; and
- WHEREAS: “It is a violation of policy to use electronic means to harass, threaten, or otherwise cause harm to a specific individual(s), whether by direct or indirect reference. It may be a violation of [Cal Poly’s RUP] policy to use electronic means to harass or threaten groups of individuals by creating a hostile environment.”<sup>7</sup>; and
- WHEREAS: As an employer, Cal Poly is obligated by state and federal labor laws to “take all reasonable steps necessary to prevent... harassment from occurring.”<sup>8,9</sup>; and
- WHEREAS: The U.S. Supreme Court recognizes that the State, as an employer, can restrict speech when the speech cannot be fairly considered a matter of public concern.<sup>10</sup> (also, see a related case at reference <sup>11</sup>); therefore, be it

RESOLVED: That the following wording be inserted as “Policy Application” in item 1, section *D.* of the Cal Poly *Information Technology Resources Responsible Use Policy*:

**To promote the University’s commitment to “providing an environment where all share in the common responsibility to safeguard each other’s rights, encourage a mutual concern for individual growth and appreciate the benefits of a diverse campus community”<sup>12</sup>, the University does not permit of the use of its computing resources for non-University purposes that could create a hostile environment, including, but not limited to, transmitting sexually explicit, racially or ethnically degrading material;**

and be it further

RESOLVED: That the terms “sexually explicit” and “transmitting” as defined in the attachment to this resolution would be cited and referenced from the above text in the Cal Poly *Information Technology Resources Responsible Use Policy*; and be it further

RESOLVED: That items currently listed in the Cal Poly *Information Technology Resources Responsible Use Policy*, under section *D.*, Policy Application, items 1 through 4, become items 2-5

Proposed by: L. Vanasupa, M. Pedersen, D. Stearns, and  
“Citizens for a More Civil Campus”

Date: May 13, 2003,

Revised: May 2, 2003<sup>13</sup>

“**Sexually explicit**” is defined as:

(i) any description of or (ii) any picture, photograph, drawing, motion picture film, digital image or similar visual representation depicting sexual bestiality, a lewd exhibition of nudity, as nudity, sexual excitement, sexual conduct or sadomasochistic abuse, coprophilia, urophilia, or fetishism.

Additional relevant definitions:

(1) "Nudity" means a state of undress so as to expose the human male or female genitals, pubic area or buttocks with less than a full opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple, or the depiction of covered or uncovered male genitals in a discernibly turgid state.

(2) "Sexual conduct" means actual or explicitly simulated acts of masturbation, homosexuality, sexual intercourse, or physical contact in an act of apparent sexual stimulation or gratification with a persons clothed or unclothed genitals, pubic area, buttocks or, if such be female, breast.

(3) "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

(4) "Sodomasochistic abuse" means actual or explicitly simulated, flagellation or torture by or upon a person who is nude or clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.

*The following note is not intended to be included as part of the definition of "sexually explicit".*

(Note: These definitions were taken directly from Virginia Code section 2.1-804 -806, upheld in U.S. Court of Appeals for the Fourth Circuit in *Urofsky v. Virginia*, U.S.D.C., E.D. Va. No. 97-701, U.S.C.A. (4th) No. 98-1481. Date: February 10, 1999. The section numbers that were in the Virginia Code have been omitted for clarity).

**"transmitting"** occurs when one accesses, downloads, sends, or copies data.

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<sup>1</sup> Cal Poly's Information Technology Resources Responsible Use Policy under *C. Guiding Principles* at <http://its.calpoly.edu/Policies/RUP-INT/#a>

<sup>2</sup> Statement by Jerry Hanley, recorded in Minutes of College of Engineering Special Department Chair College Working Session, June 7, 2002, Special Guests: Jerry Hanley, Mary Shaffer, Carlos Cordova, Jean DeCosta, Mike Sues: Excerpted from the 6.7.02 CENG Minutes:

Hanley stated he is not going to make a distinction between adult pornography and doing your income taxes at 4:30 pm. Adult pornography is not illegal if it is part private incidental use. Hanley then gave an example. Hanley stated it is not illegal to view pornography if it does not create a hostile work environment. It is not against RUP under three conditions: (1) it is not excessive, (2) it does not interfere with the job; and (3) other people do not see you.

<sup>3</sup> Affirmation of his June 7, 2002 statement by Jerry Hanley, documented in the archived cassette recording of the Academic Executive Committee Meeting, April 1, 2003, Special Guests: Jerry Hanley, Mary Shaffer

<sup>4</sup> *Cal Poly's Policy Against Sexual Harassment*, at [http://www.calpoly.edu/~ocr/eed/sexual\\_harassment.html](http://www.calpoly.edu/~ocr/eed/sexual_harassment.html)

<sup>5</sup> Cal Poly Information Technology Resource Responsible Use Policy under *E. Policy Provisions, Authorized Use/Access*, at <http://its.calpoly.edu/Policies/RUP-INT/#e1>

<sup>6</sup> Cal Poly Information Technology Resource Responsible Use Policy under *D. Policy Application, item 3.*, at <http://its.calpoly.edu/Policies/RUP-INT/#d>

<sup>7</sup> Cal Poly Information Technology Resource Responsible Use Policy under *E. Policy Provisions, 7. Harrassment*, at <http://its.calpoly.edu/Policies/RUP-INT/#e8>

<sup>8</sup> California Government Code Section 12940(k): *It shall be an unlawful employment practice...(k) For an employer, labor organization, employment agency, apprenticeship training program, or any training program leading to employment, to fail to take all reasonable steps necessary to prevent discrimination and harassment from occurring.* The full text can be found at <http://www.leginfo.ca.gov/calaw.html>.

<sup>9</sup> Code of Federal Regulations, Title 29, Section 1604.11: *(f) Prevention is the best tool for the elimination of sexual harassment. An employer should take all steps necessary to prevent sexual harassment from occurring, such as affirmatively raising the subject, expressing strong disapproval, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment under title VII, and developing methods to sensitize all concerned.* The full text can be viewed by entering the title and section numbers at <http://www4.law.cornell.edu/uscode/>.

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<sup>10</sup> Pickering v. Board of Educ., 391 U.S. 563, 574 (1968) at 568 “the State has interests as an employer in regulating the speech of its employees that differ significantly from those it possesses in connection with regulation of the speech of the citizenry in. general. The problem in any case is to arrive at a balance between the interests of the teacher, as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees. “. viewable at <http://www.findlaw.com/casecode/supreme.html> .

<sup>11</sup> “It is well settled that citizens do not relinquish all of their First Amendment rights by virtue of accepting public employment. See *United States v. National Treasury Employees Union*, 513 U.S. 454, 465 (1995); *Connick v. Myers*, 461 U.S. 138, 142 (1983); *Pickering v. Board of Educ.*, 391 U.S. 563, 574 (1968). Nevertheless, the state, as an employer, undoubtedly possesses greater authority to restrict the speech of its employees than it has as sovereign to restrict the speech of the citizenry as a whole. See *Waters v. Churchill*, 511 U.S. 661, 671 (1994) (plurality) (recognizing “that the government as employer ... has far broader powers than does the government as sovereign”); *Pickering*, 391 U.S. at 568 (explaining “that the State has interests as an employer in regulating the speech of its employees that differ significantly from those it possesses in connection with regulation of the speech of the citizenry in. general”). A determination of whether a restriction imposed on a public employee's speech is violative of the First Amendment requires “a balance between the interests of the [employee], as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees.” *Connick*, 461 U.S. at 142 (alteration in original) (quoting *Pickering*, 391 U.S. at 568). This balancing involves an inquiry first into whether the speech at issue touches upon a matter of public concern, and, if so, whether the employee's interest in First Amendment expression outweighs the public employer's interest in what the employer has determined to be the appropriate operation of the workplace. See *Pickering*, 391 U.S. at 568; see also *Connick* 461 U.S. at 146 (noting that if a public employee's speech cannot be characterized “as relating to any matter of political, social, or other concern to the community,” the constitutional inquiry comes to an end.)” quoted *Urofsky v. Virginia*, U.S. Court of Appeals (4<sup>th</sup> Circuit), No. 98-1481 (1999). The full text of the case can be read at <http://www.techlawjournal.com/courts/urofsky/19990210.htm>

<sup>12</sup> Cal Poly Mission Statement, <http://www.calpoly.edu/~communic/univ/mission.html>