

**The Future of Reputation:
Gossip, Rumor, and Privacy in the Internet**

By Daniel J. Solove

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In 1999, the vast reaches of the internet hosted only 50 blogs.¹ By July 2006, that number increased to 50 million.² The emergence of this phenomenon presents many issues. Particularly, these blogs create new legal problems concerning privacy and free speech. For example, what happens when a blogger decides to post confidential information on the internet about another person for the entire world to see? What if a blogger uploads an embarrassing video or picture of a stranger to the world marketplace? These problems are at the center of Daniel J. Solove's³ book *The Future of Reputation: Gossip, Rumor, and Privacy on the Internet*. The book examines the struggle between privacy law on the internet, traditional laws and norms regarding reputation, and free speech in the modern world. Solove's argument explains that the law must adapt to emerging forums (such as blogs) to protect innocent parties from privacy violations online, without overstepping limits on free speech.

Free speech is deeply rooted in this nation's history. The First Amendment to the United States Constitution declares that Congress shall "make no law...abridging the

¹ David Sifry, *The State of the Blogosphere: August 2006*, Sifry's Alerts, Aug. 7, 2006, <http://www.sifry.com/alerts/archives/000436.html>.

² *Id.*

³ Daniel J. Solove is an associate professor at George Washington University Law School in Washington, D.C. He is internationally known in the field of privacy law, and is the author of *THE DIGITAL PERSON: TECHNOLOGY AND PRIVACY IN THE INFORMATION AGE*.

freedom of speech.”⁴ Where this freedom enjoys wide protection, however, the right is not absolute.⁵ Courts refuse to extend protections to free speech where the result damages another party.⁶

That damage can take many different forms. On the internet, however, damage through speech typically appears as posted lies and rumors. To remedy these issues, courts apply two causes of action: defamation and invasion of privacy.

A communication is defamatory if it harms the reputation of another so as to lower him in the view of the community or to deter people from associating or dealing with him.⁷ The defamatory statement must be untrue, and it must cause injury to the defamed’s reputation.⁸ The statement can either be written (libel) or spoken (slander). As detailed in Solove’s book, defamation is easily accomplishable online. Libel runs rampant on blogs, where committing the offense can be as simple as writing a negative comment about another.

Additionally, the courts recognize invasion of privacy torts in a few different situations. This can occur by: (1) unreasonable intrusion into the private life of another, (2) stealing another’s name or likeness, (3) giving unreasonable publicity to another’s private life, or (4) publicity that unreasonably places another in a false light.⁹ The Georgia courts first accepted these invasion of privacy torts were first accepted into law in 1905 in *Pavesich v. New England Life Insurance Co.*, 122 Ga. 190 (1905).¹⁰ After that decision, the majority of US jurisdictions followed the Georgia courts and accepted the

⁴ U.S. CONST. amend. I.

⁵ *Ashcroft v. American Civil Liberties Union*, 535 U.S. 564, 573-574 (2002).

⁶ *Id.*

⁷ REST. 2d TORTS § 559.

⁸ *Id.*

⁹ REST. 2d TORTS § 652A.

¹⁰ REST. 2d TORTS § 652A, Comment a.

torts' existence.¹¹ On the internet, privacy invasions usually lie within the first and third categories. Unfortunately, as Solove highlights, these torts are generally difficult to enforce, and burdensome to prove.

To address these online defamation and invasion of privacy issues, Solove first explains their history and development in the US. He begins with a discussion of recent internet rumor examples including the story of a Japanese girl ridiculed online after refusing to clean up after her dog on the subway. Solove next traces the history of rumor and reputation in the United States from the scarlet letter to the act of dueling through the emergence of the tabloids and the "penny press". Finally, Solove highlights how modern instances of rumor on the internet reflect this history in the present day.

Throughout the first half of the book, Solove consistently reiterates his theme: how can the law strike a balance between free speech and privacy when it comes to the internet? In response to this concern, Solove presents a few solutions.

First, Solove argues that defamation and privacy causes of action (which are largely unused in the court systems) should carry stricter penalties. If the consequences were harsh, more injured parties would apply them in the courts. Additionally, Solove notes that because of evidence and damage burdens, it is often difficult for an injured party to prove a defamation or privacy case. Furthermore, if the case is won, the guilty party often cannot pay the exorbitant monetary rewards. Solove first suggests that the evidentiary requirements should be changed so parties may more easily recover. Moreover, Solove suggests that the rewards for proving an internet defamation or privacy claim should not always be monetary. The author explains that a guilty party can be held liable by means other than an unaffordable verdict.

¹¹ *Id.*

Solove's second solution to the online free speech/privacy problem is for owners of blogs and social network sites to be held responsible for defamation and privacy violations once they are given notice of a harmful statement printed on their site. Presently, the law allows the injured party to bring suit only against the person who wrote the statement. Solove argues that instead, courts should allow the injured party to bring suit against the owner of the website hosting the statement if they had notice of the harmful comment and did nothing to fix it. This would hold bloggers responsible for content (as well as the comments of third parties posted on their sites) and require them to take a more active role in policing their own sites, resulting in fewer privacy violations online.

Overall, this book presents a clear view of modern problems faced online, and the steps necessary to resolve the issues. The author's strongest point is his use of real stories to illustrate his points. From the first page of the book, Solove demonstrates the real effects the internet can have on reputation. He pulls from many sources and situations to clarify his thesis and relate the material to the reader. Solove's approach is effective and leaves the reader with a better understanding of how rumor so easily affects reputation online.

This book is primarily written for a law school or undergraduate audience. It speaks directly to a younger generation by relating the content and problems to those faced by the audience. Particularly, the book teaches this audience that not every piece of information should be shared with the world and that sometimes the repercussions can be grave and extreme. This book should be on the desk of every blogger as a guide to

navigating the continuous, sometimes extreme flow of personal information that is published for the world to see each and every day.