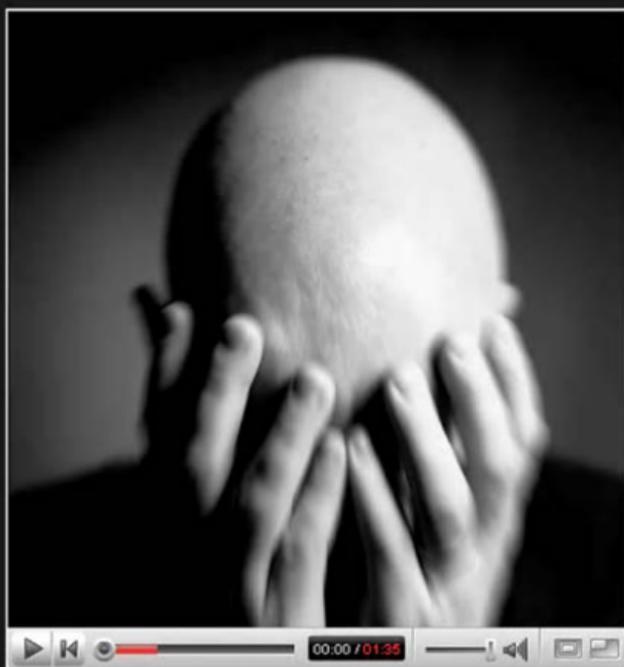


the future of **reputation**

gossip, rumor, and
privacy on the internet



Daniel J. Solove

The Future of Reputation

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The Future of Reputation

Gossip, Rumor, and
Privacy on the Internet

Daniel J. Solove

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Preface

The idea for this book came to me soon after I began blogging in May 2005. I found blogging to be enthralling and invigorating. I was fascinated by the thrill of expressing my thoughts to a broad audience yet acutely aware of how people could be hurt by gossip and rumors spreading over the Internet.

In an earlier book, *The Digital Person: Technology and Privacy in the Information Age*, I explored how businesses and the government were threatening privacy by collecting massive digital dossiers of information about people. In that book, it was easy to take sides. I argued that information collection and use were threatening people's freedom and well-being, and that greater protection of privacy was necessary. When it comes to gossip and rumor on the Internet, however, the culprit is ourselves. We're invading each other's privacy, and we're also even invading our own privacy by exposures of information we later come to regret. Individual rights are implicated on both sides of the equation. Protecting privacy can come into tension with safeguarding free speech, and I cherish both values. It is this conflict that animates this book.

Although I advance my own positions, my aim isn't to hold them out as end-all solutions. The purpose of the book is to explore in depth a set of fascinating yet very difficult questions and to propose some moderate compromises in the clash between privacy and free speech. There are no easy answers, but the issues are important, and I believe that it is essential that we wrestle with them.

Many people helped shape the ideas in this book through conversations and helpful comments on the manuscript: danah boyd, Bruce Boyden, Deven Desai, Tom Dienes, Howard Erichson, Henry Farrell, Bill Frucht, Eric Goldman, Marcia Hofmann, Chris Hoofnagle, Orin Kerr, Ray Ku, David Lat, Jennie Meade, Frank Pasquale, Neil Richards, Paul Schwartz, Michael Sullivan, Bob Tuttle, Christopher Wolf, and David Wolitz. My research assistants, James Murphy and Erica Ruddy, provided helpful research and proofreading. A few passages in this book were adapted from my article "The Virtues of Knowing Less: Justifying Privacy Protections Against Disclosure," 53 *Duke Law Journal* 967 (2003). My agent, Susan Schulman, believed in this book from the start and helped tremendously in bringing it to fruition. I would also like to thank Michael O'Malley at Yale University Press, who also believed in this project and gave me the opportunity to bring it to life, and Dan Heaton, for his thoughtful editing of the manuscript.

When quoting from blog posts, I have occasionally corrected obvious typos and spelling errors.

Chapter 1 Introduction: When Poop Goes Primetime

It all began in realspace, on a subway train in South Korea. A young woman's small dog pooped in the train. Other passengers asked her to clean it up, but she told them to mind their own business. That's when it moved over to cyberspace and became even uglier.

Someone took photos of her and posted them on a popular Korean blog. A blog, short for "Web log," is a running online commentary about one's life or about the issues of the day. Another blogger, Don Park, explains what happened next:

Within hours, she was labeled *gae-ttong-nyue* (dog shit girl) and her pictures and parodies were everywhere. Within days, her identity and her past were revealed. Requests for information about her parents and relatives started popping up and people started to recognize her by the dog and the bag she was carrying as well as her watch, clearly visible in the original picture. All mentions of privacy invasion were shouted down. . . . The common excuse for their behavior was that the girl doesn't deserve privacy.¹

Across the Internet, people made posters with the girl's photograph, fusing her picture with a variety of other images. The dog poop girl

story quickly migrated to the mainstream media, becoming national news in South Korea. As a result of her public shaming and embarrassment, the dog poop girl dropped out of her university.²

The story of the dog poop girl wasn't known in the United States until Don Park wrote about it in his blog, *Don Park's Daily Habit*.³ It became even more popular when the blog *BoingBoing* discussed the story. *BoingBoing* receives nearly ten million visits per month—more than the circulations of many newspapers and magazines.⁴ In no time, newspapers and websites around the world were discussing the story.

The story of the dog poop girl raises a number of intriguing issues about the Internet, privacy, norms, and life in the Information Age. Not picking up your dog's poop is bad behavior in most people's books, but was the reaction to her transgression appropriate? We all have probably engaged in rude behavior or minor wrongdoing. But is it going too far to transform the dog poop girl into a villain notorious across the globe?

The dog poop girl is just one example of a much larger phenomenon taking place across the Internet. Increasingly, people are exposing personal information about themselves and others online. We can now readily capture information and images wherever we go, and we can then share them with the world at the click of a mouse. Somebody you've never met can snap your photo and post it on the Internet. Or somebody that you know very well can share your cherished secrets with the entire planet. Your friends or coworkers might be posting rumors about you on their blogs. The personal email you send to others can readily be forwarded along throughout cyberspace, to be mocked and laughed at far and wide. And your children might be posting intimate information about themselves on the Web—or their friends or enemies might be revealing your family secrets. These fragments of information won't fade away with time, and they can readily be located by any curious individual. Like the dog poop girl, you could find photos and information about yourself spreading around the Internet like a virus.

This is a book about how the free flow of information on the Internet can make us less free. We live in an age drenched in data, and the implications are both wonderful and terrifying. The Internet places a seemingly endless library in our homes; it allows us to communicate with others instantly; and it enables us to spread information with an efficiency and power that humankind has never before witnessed. The free flow of information on the Internet provides wondrous new opportunities for people to express themselves and communicate.



One of the digital posters of the dog poop girl circulating on the Internet

But there's a dark side. As social reputation–shaping practices such as gossip and shaming migrate to the Internet, they are being transformed in significant ways. Information that was once scattered, forgettable, and localized is becoming permanent and searchable. Ironically, the free flow of information threatens to undermine our freedom in the future.

These transformations pose threats to people's control over their reputations and their ability to be who they want to be. Will we enslave ourselves by making it impossible to escape from the shackles of our past and from the stain of gossip and false rumors? How much information should we know about each other? How do we allow people to control their personal information without curtailing free speech or stifling freedom on the Internet?

This book will take a journey through the ways in which private lives are being exposed online, and it will examine the implications. People have profound new ways to communicate, yet the gossip, shaming, and rumors that are being spread online are sometimes having devastating effects on people's lives. Should we do something to stop the exposure of private secrets on the Internet? Can we do anything? In this book I will propose a framework for how we can address these problems—by recognizing a new and broader notion of privacy and by reaching a better balance between privacy and free speech.

THE INTERNET AS A TEENAGER

About a decade ago, the Internet in its early days was greeted with a kind of euphoria. Its potential seemed to be boundless, and people viewed it as a wondrous zone of freedom. A few years later, the giddiness dimmed with foreboding. Commentators began to point out that the Internet wasn't inherently free—it could be transformed into a radically controlled and restricted world. In 1999 the Internet law expert Lawrence Lessig declared in his famous book, *Code*: “We will see that cyberspace does not guarantee its own freedom but instead carries an extraordinary potential for control.”⁵

Today, the Internet is no longer in its infancy. Although developed long ago by researchers, the Internet entered into popular usage in the mid-1990s. It is now maturing into its second decade in mainstream culture—its teenage years. The Internet indeed has proven to be a place of both rigid control and unbounded freedom.

This book focuses on the free dimensions of the Internet. The future of the Internet involves not only the clash between freedom and control but also a

struggle within the heart of freedom itself. The more freedom people have to spread information online, the more likely that people's private secrets will be revealed in ways that can hinder their opportunities in the future. In many respects, the teenage Internet is taking on all the qualities of an adolescent—brash, uninhibited, unruly, fearless, experimental, and often not mindful of the consequences of its behavior. And as with a teenager, the Net's greater freedom can be both a blessing and a curse.

In the offline world, the dog poop girl would have been quickly forgotten. The incident would have ended when she left the subway train. But the Internet enabled the few witnesses of her transgression to express their outrage to millions. Indeed, the Internet affords people unprecedented new ways to communicate with others. It has blossomed into a fantastic world of free expression, teeming with chatrooms, online discussion groups, and blogs, which are proliferating at a breathtaking rate. Everyday people express themselves to a worldwide audience, something never before possible in the history of humankind.

In May 2005 I became a blogger. Within an instant, I could publish virtual op-eds to the entire world. Billions of people potentially could access my thoughts. The blog I posted on was visited thousands of times a day. A lot of people were reading. What made this so exciting was that I'd never had any success getting an op-ed published. I had tried many a time, but the editors just wouldn't give me a plot of valuable space on their pages. Suddenly I no longer need them. I can get my thoughts out far and wide without their help.

Blogging brings instant gratification. I can quickly work up my thoughts into a post and publish them to the website for the world to read. People then post comments, and I can have a discussion with them. Blogging has allowed me to explore many an idea that might have languished in a forgotten corner of my mind. In fact, this book was inspired by my blog post about the dog poop girl case.

Blogs are everywhere these days. There are blogs about virtually any topic under the sun. Dogs and poop are both popular topics for blogs. A blog called Doggie News gleefully reported the dog poop girl story.⁶ There's a blog purportedly written by dogs called Blogdogs.⁷ There's even a blog about poop called Poop Report.⁸ Needless to say, the dog poop girl story was a big scoop for Poop Report.⁹

It is hard not to get excited about these developments, to see the great freedom and power that the Internet can provide to everyday people. But while many bloggers talk about politics, books, music, dogs, or other topics, a large

number of bloggers enjoy speaking about their personal lives, their sexual experiences, the people they know, and even the girl on the train who wouldn't clean up after her dog. Details about many people's private lives are finding their way onto the Internet, often without the subjects' knowledge and consent. And in a number of cases, the consequences for these people are severe. As people use the freedom-enhancing dimensions of the Internet, as they express themselves and engage in self-development, they may be constraining the freedom and self-development of others—and even of themselves.

THE NORM POLICE

In the dog poop girl case, people harnessed the power of the Internet to enforce a norm—the obligation to clean up after one's dog. Norms are “social attitudes of approval and disapproval,” the law professor Cass Sunstein writes. Norms specify “what ought to be done and what ought not to be done.”¹⁰ Norms bind societies together; they regulate everyday conduct; they foster civility. They are the oil that reduces the friction of human interaction. We need to maintain norms of courtesy so that we can all get along nicely. Imagine if we didn't have norms like first-come, first-served. Fisticuffs would quickly follow. In short, norms are a central mechanism through which a society exercises social control.

To be effective, norms must be regularly followed. If people flout norms and get away with it too often, norms can weaken and lose their influence over behavior. When somebody butts in line, many people usually just grumble under their teeth, but there are a few folks who confront that norm violator. These “norm police” help enforce norms, and they are essential to ensuring that norms remain strong.

The dog poop girl violated a norm that most people would agree with, but were the norm police too harsh in punishing her? Most norm enforcement involves angry scowls or just telling a person off. The blogosphere can be a much more powerful norm-enforcing tool, allowing bloggers to act as a cyber-posse, tracking down norm violators and branding them with digital marks of shame. Having a permanent record of norm violations is upping the sanction to a whole new level.

Don Park's blog contains some interesting comments by his readers about the dog poop girl.¹¹ Some commentators were sympathetic to her plight, likening the attacks on her to a “witch hunt.” But others celebrated her shaming. One theme is responsibility. In the words of one commentator:

Every once in a while, it's good for someone who is an ass to be shown as an ass. Whether to a small group or large crowd. She needs to learn to be accountable, whether in front of 5 people or 5,000,000 people. It's really all the same. Manners are manners.

Another commentator opined:

In the old days, people conformed to societal expectations and norms based on the feedback they got from those around them. These days, especially in large urban areas where anonymity prevails, most people seem to be afraid to criticize anyone for anything. Maybe now technology will provide a way to reinstate that societal feedback. I doubt this episode would have occurred in a small town where everyone knows everyone and such actions would have resulted in immediate consequences.

Yet another remarked:

Lack of personal responsibility is the problem here. And it's really prevalent these days.

It is certainly true that the Internet better enabled people to hold the dog poop girl responsible for her behavior. People who act inappropriately might not be able to escape into obscurity anymore; instead, they may be captured in pixels and plastered across the Internet. They'll be held responsible for their actions. But perhaps responsibility cuts both ways. Shouldn't the cyberspace norm police also have responsibilities? What if they get out of hand? What if they wrongly accuse somebody? What if their shaming punishes a minor transgression too much?

PRIVACY

A common thread running through the comments about the dog poop girl is that she should expect no privacy because she was in public. One commentator wrote:

The initial blogger. Do I think he had every right to post her? Yep. She was in public, and it really doesn't matter if she was in front of 100 or 1,000,000 people, she was willing to act that way in the public sphere.

Under existing notions, privacy is often thought of in a binary way—something is either private or public. According to the general rule, if something occurs in a public place, it is not private. But a more nuanced view of privacy suggests that this case involved taking an event that occurred in one context and significantly altering its nature—by making it permanent and widespread.

The dog poop girl would have been just a vague image in a few people's memories if it hadn't been for the photo entering cyberspace and spreading around faster than an epidemic. Despite the fact that the event occurred in public, was there a need for her image and identity to be spread across the Internet?

Yet another commentator stated:

I really don't think it matters that it came out on the internet. It happened in a public place so it is excusable to discuss it in a public forum. This isn't going to ruin her life, it might make her clean up her dog's mess for a month though while the story goes around. We are a fickle bunch and she will be forgotten before the end of the season.

But this comment is inaccurate. She will not be forgotten. That's what the Internet changes. Whereas before the girl would have been remembered merely by a few as just some woman who wouldn't clean up dog poop, now her image and identity are eternally preserved in electrons. Forever, she will be the "dog poop girl"; forever, she will be captured in Google's unforgiving memory; and forever, she will be in the digital doghouse for being rude and inconsiderate. The dog poop girl's behavior was certainly wrong, but we might not know the whole story behind the incident to judge her appropriately. And should people's social transgressions follow them on a digital rap sheet that can never be expunged?

The easy reaction is to steel ourselves and chalk it up to life in the digital age. But the stakes are too high for that. We perform an enormous range of activities in public. Do we want to live with the risk that people can snap our picture wherever we are and put it up on the Internet? We expose a litany of personal information as we go about our daily lives. Do we want it to be permanently posted online for the world to see? Consider the thoughts of another commentator to Don Park's blog:

It reminds me of the struggles that editors face when deciding about what pictures to run in the newspaper. Those editors need to make a judgement call based on the value of the picture and its relevance to the story. But here, the person was outraged and ran the picture of the girl. That's totally different. It shows the dangerous flip side of citizen media. Moral outrage is easy to flame. But the consequences can be mortal. Will the ease in inciting moral outrage create a mob driven police state? It may be when the powerful realize how they can use citizen "reporters," to influence mobs. That seems to be one of the real dangers of citizen journalism.

Similarly, Howard Reingold, author of *Smart Mobs*, a book about the blistering speed of modern communications, observes: "The shadow side of the em-

powerment that comes with a billion and a half people being online is the surveillance aspect. . . . We used to worry about big brother—the state—but now of course it’s our neighbors, or people on the subway.”¹²

Compounding the problem is the fact that the norms of the blogosphere are just developing, and they are generally looser and less well defined than those of the mainstream media. The author of an article in the *Columbia Journalism Review* declares: “We’ve seen blogs act as media or political watchdogs, but not as aggressive watchdogs of individual violations of social norms. So this seems like a notable step. And, as with the emergence of ‘citizen’ journalism, it is an undefined and unregulated step in a cyberworld that lacks boundaries and standards.”¹³ Thus cyberspace norm police can be extremely dangerous—with an unprecedented new power and an underdeveloped system of norms to constrain their own behavior.

GENERATION GOOGLE

Generation X. Generation Y. These are yesterday’s labels. They don’t really capture who we are today. We are Generation Google.

Google is a search engine, a website that combs through the Internet looking for all other Web pages that contain the term you’re searching for. Without search engines, the Internet would be an endless expanse of digital babble, and finding any particular piece of information would be akin to locating a specific grain of sand in the Sahara Desert. Since its creation in 1998 by Larry Page and Sergey Brin, two students at Stanford University, Google has quickly risen to become the leading search engine.¹⁴ It can search billions of Web pages in just a fraction of a second. Google presents search results in a rank ordering calculated to put the most relevant results at the top of the list.

Want to know about a person? No need to hire a private investigator. Just go to <http://www.google.com>, type a name into the search box, hit the search button . . . and presto, you’ve got a list of Web pages with information about that individual. Google is so popular it has become a verb. To “google” someone doesn’t mean anything kinky—instead, it means to do a search for his or her name on the Web. Everybody’s googling. People google friends, dates, potential employees, long-lost relatives, and anybody else who happens to arouse their curiosity.

Many of us today—especially children and teenagers—are spending more of our lives on the Internet. And the more we’re online, the more likely details about our lives will slip out into cyberspace. This risk is increased because it is



The Google search prompt

not just we ourselves who might leak information—data about us can be revealed by our friends or enemies, spouses or lovers, employers or employees, teachers or students . . . and even by strangers on the subway. We live in an age when many fragments of information about our lives are being gathered by new technologies, hoarded by companies in databases, and scattered across the Internet. Even people who have never gone online are likely to have some personal information on the Internet.

Details about your private life on the Internet can become permanent digital baggage. For example, a story in the *Boston Globe Magazine* discusses the plight of a thirty-four-year-old professional named Michael.¹⁵ Michael was briefly in prison when he was a juvenile. While in prison, he wrote a few articles about it in specialized journals. These articles now come back to haunt him. They are pulled up anytime somebody does a Google search for his name. Michael is single, and his Google baggage travels with him on most dates. On the first or second date, most women start interrogating Michael about his stint in prison. As Michael explains: “When you meet someone . . . you don’t say, ‘I had an affair one time,’ or ‘I was arrested for DUI once,’ or ‘I cheated on my taxes in 1984.’” Even when people don’t ask him about his past, Michael’s digital skeletons continue to affect him. Whenever there’s an awkward silence in a conversation, Michael thinks the worst: “Instead of thinking, ‘Was I curt last week?’ or ‘Did I insult this political party or that belief?’ I have to think about what happened when I was 17.” In one instance, Michael was interviewed several times for a job when, suddenly, the potential employer stopped calling him. “[Michael’s] hunch: Someone Googled him. But the worst part is, he’ll never know.” Michael’s problem is not that he is

embarrassed by his past or wants to escape from it. Rather, he resents having to constantly justify himself and explain his past. Worse still, he is rarely afforded the opportunity to explain.

From the dawn of time, people have gossiped, circulated rumors, and shamed others. These social practices are now moving over to the Internet, where they are taking on new dimensions. They transform from forgettable whispers within small local groups to a widespread and permanent chronicle of people's lives. An entire generation is growing up in a very different world, one where people will accumulate detailed records beginning with childhood that will stay with them for life wherever they go. In Nathaniel Hawthorne's *The Scarlet Letter*, Hester Prynne was forced by her colonial New England village to wear a scarlet letter *A* to represent her sin of adultery. The Internet is bringing back the scarlet letter in digital form—an indelible record of people's past misdeeds. One commentator to Don Park's post about the dog poop girl said it best: "Right or wrong, the internet is a cruel historian." The Internet is indeed a cruel historian. Who wants to go through life forever known as the dog poop girl?

In this book, I discuss a litany of instances like the dog poop girl, in which rumors, gossip, or shaming on the Internet have had poisonous effects. I argue that we must protect privacy to ensure that the freedom of the Internet doesn't make us less free. But to do so, we must rethink our notions of privacy. We must also balance the protection of privacy against freedom of speech. And we must find a workable way for the law to achieve these goals. I shall propose ideas for how these goals can be achieved.

The book has two parts. In the first part I discuss how rumors, gossip, and shaming are being transformed when they take place online. In Chapter 2 I explore the new ways we're disseminating information—through blogs, social network sites, and other means. Increasingly, this information consists of personal details about people's lives. It is far too simplistic to conclude that this is good or bad—it is both. We rely upon information about people to help us assess their reputations. We want to give people some control over their reputations, but not so much that they can deceive or manipulate us. The rapid spread of information on the Internet makes establishing this delicate balance all the more challenging.

Chapter 3 is about gossip. There's a voyeur in all of us, and we often have a gluttonous curiosity about the lives of others. Gossip isn't inherently good or

evil—it has its virtues as well as its vices. On the Internet, however, gossip is being reshaped in ways that heighten its negative effects and make its sting more painful and permanent.

In Chapter 4 I explore a related practice of spreading information—shaming. Like gossip, shaming has long served as a common practice to keep people from violating society’s rules and norms. Shaming helps maintain order and civility. Yet when transplanted to the Internet, shaming takes on some problematic dimensions.

After examining in Part I the good and bad aspects of spreading personal information over the Internet, I turn in Part II to the question of what ought to be done about the problem. What makes the issues so complex is that there are important values on both sides. Protecting people’s privacy sometimes can be achieved only by curtailing other people’s free speech. Some commentators and lawmakers are quick to take sides, strongly favoring privacy or free speech. The difficulty is that we often want both. Unlike many conflicts, in which we can readily pick a side, there is no clear winner in the battle between privacy and free speech. Both are essential to our freedom.

In Chapter 5 I discuss how the law can strike a balance between allowing people to express themselves online and preventing them from revealing personal information about others. The difficulty is finding the proper role for the law to play. Too many legal restrictions or lawsuits will chill speech and stifle freedom on the Internet. On the other hand, if the law is held at bay, there will be little to prevent people from injuring others by releasing their secrets to the world. The law must take a middle path, but there’s another treacherous pitfall in the road: the law can be slow and costly. In this chapter, I suggest a way for law to address the problems productively yet with moderation.

I turn in Chapter 6 to the tension between privacy and free speech. Freedom of speech is a fundamental value, and protecting it is of paramount importance. Yet, as I argue, privacy often furthers the same ends as free speech. If privacy is sacrificed at the altar of free speech, then some of the very goals justifying free speech might be undermined. Current law, unfortunately, tends to side too frequently with free speech, leaving privacy underprotected. I propose a way to balance privacy and free speech that enables them to coexist without making undue trade-offs.

The focus of Chapter 7 is privacy. One of the challenges we face in today’s exposed world is that information is rarely completely hidden. Many of our comings and goings occur in public places, where technology enables them to

be more easily recorded. We often share private information with others who might betray us and spread it online. Is it possible to protect privacy in public? Once we've shared information with others, can it still be private? How much control ought we to have over our personal information? In this chapter I explore these questions and propose a new way of understanding privacy, one that is more fitting to the world we live in.

I conclude the book by examining in Chapter 8 what the law can and cannot do. As important as it is to explore law's potential, it is equally important to recognize the law's limitations. The law alone cannot be the cure-all. While the law can take a more active role in preventing people from revealing the secrets of others, it will have great difficulty in stopping people from exposing details about themselves. Although the law might not be the answer in this situation, there are other ways to make headway in addressing the problem. Nevertheless, any solution will be far from perfect, as we are dealing with a social tapestry of immense complexity, and the questions of how to modulate reputation, gossip, shame, privacy, norms, and free speech have confounded us for centuries. These age-old questions, however, are taking on new dimensions in today's digital era, and it is imperative that we grapple with them anew.

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Notes

CHAPTER 1. INTRODUCTION

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