

Blogging Away Our Privacy?

What is privacy?

It is a question that has dogged society for as long as history has been recorded, and as Daniel J. Solove writes in his book, *The Future of Reputation*, we have to fundamentally rethink how the concept of privacy is to be applicable here in the 21st century.

We now live in an age overflowing with information. The Internet, in particular, has given us an unimaginably powerful tool with which to share information and communicate with others from around the globe. While the Internet has been the catalyst for a tremendous amount of good in the world, there has been a downside to the openness and egalitarian nature of the web.

Perhaps a turning point in the rise of the Internet has been the development and proliferation of weblogs, or blogs. Whereas before, most users of the world wide web used it to obtain information, now with the rise of blogs many of us are *creating* content on the Internet, not merely obtaining it.

Of course, the positive aspects of blogs and other online methods of communication have been well documented. With blogs, anybody with a computer and access to the net could in essence get published online and people from anywhere in the world could then read and respond to their postings. It has allowed people of varied interests, from cooking to politics, to find like-minded people and share information.

But with the opportunity to share information with such a potentially large audience, people have become almost too eager to reveal previously private information on the web. From Xanga to Blogger, from MySpace to Facebook, information that once existed only in the domain of personal journals and small circles of friends is now in many cases viewable to the entire world. And while many people post personal information about themselves on their websites, many more post about *other* people's lives.

In 2002, Ghyslain Raza videotaped himself pretending to be a *Star Wars* character engaging in a lightsaber fight. He, himself, had never intended the video to be seen by anyone, but another schoolmate found the video and posted it online, making Raza an instant celebrity to his dismay (Solove, 44). Being embarrassed is nothing new to anyone, but the key difference with being embarrassed online is the fact that there will always be a permanent record of the incident. No

matter what Raza does, the viral nature of the Internet will ensure that the video will never be expunged from it.

In 2005, a Capitol Hill staffer named Jessica Cutler authored a blog called the *Washingtonienne*, which detailed her sexual exploits with various men. While she had only intended for her friends to view it, its contents were eventually spread to other more popular blogs, which resulted in some of the men she was seeing finding out about her trysts. Eventually Cutler was fired from her job as a result of her blogging (50).

Although Cutler's situation differed from that of Raza in that it was less about embarrassment, as she had posted these tales on her own, the permanence of her presence on the Internet is the same. She tried in vain to delete her blog, but it had already been copied to another site (52). On the other hand, like Raza, the men who were involved with her found personal information about themselves permanently revealed without their permission.

The previous two examples highlight how quickly private information that is first intended only for a small group of friends can quickly proliferate out of control and become an international phenomenon. While it does afford everyday people an opportunity to get their proverbial fifteen minutes of fame, that fame may or may not be at the expense of your or someone else's reputation and dignity.

Also, although these particular cases were only disseminated on the Internet for the purpose of entertainment, and although the people who revealed the personal information of others may not have intended for anyone's reputation to be damaged, we have alternatively seen the Internet be used as a way of actively trying to punish and "shame" people who offend us and our sensibilities.

Case in point, Solove mentions the case of a South Korean woman who took her dog onto a subway, at which point the dog defecated in the subway car. Unfortunately for her, she refused to clean up the mess. Someone offended by her thoughtlessness took a photo of the lady and posted it on a website. Soon, the woman became a reviled figure in South Korea, with Internet users from across the country condemning her rudeness, and "[a]s a result of her public shaming and embarrassment, the dog poop girl dropped out of her university." (2)

Having seen both the promise and the pitfalls of the Internet revolution, we realize that it is difficult to come up with black and white solutions to the downsides, and perhaps the greatest

debate that must be had with regards to sharing information on the Internet is in deciding where to draw the line between the individual's right to privacy and the free speech of others. On the one hand, we want people to be able to freely express their thoughts and opinions on whatever matter is important to them. However, on the other hand, we also don't want our reputations permanently damaged, or even destroyed, by someone online spreading personal, and potentially false, information about us. While in the past, embarrassments were typically limited to a small circle of friends or a local community, today's embarrassments have the potential to be international affairs. In order to find that equilibrium between free speech and privacy, though, we must also determine what privacy even means in today's blog-happy world.

Solove aptly explains the situation we are currently facing: "New technologies rarely give rise to questions we have never addressed before. More often they make the old questions more complex." (105) Case in point, whereas in the past, privacy may have merely implied things that were not public, today's concept of privacy is a bit more complicated (163).

As mentioned earlier, many people now seem almost *too* eager to share information about themselves and the people around them, which begs Solove to ask the question: Do people even care about privacy? (197)

The answer is yes, but perhaps in a much more nuanced way than people did in the past. For instance, in 2006, the social networking site Facebook introduced a "news feed" to the users' front page. Thus, any time a user logged in, they would immediately see a list of the recent goings-on of their Facebook friends. Without having to navigate to a particular person's profile page, you could instantly be informed of who broke up with who, your friends' latest uploaded photos, or what party or other event a particular individual is attending. Facebook undoubtedly believed its new feature was a convenient new service to let its users easily find out what their friends and acquaintances were doing. However, Facebook users quickly began protesting in earnest about the "loss of their privacy." The feature was quickly modified to allow users to edit the amount of information that would be posted on the news feeds of others (169).

At first glance, it might seem paradoxical that users of a website on which its users readily share untold quantities of personal information about themselves for the rest of the community to see would care about that information being spread on a news feed. One might ask why an

individual would even join Facebook if they cared so much about their privacy (170).

However, as Solove indicates, the issue highlighted here is the fact that privacy has morphed to a certain extent from its traditional focus on simply keeping personal information secret to the concept of being able to control the flow of it. Thus, Facebook users did not necessarily care that their personal information was out there, but they wanted to be able to decide how and where their information would show up.

Moreover, what the Facebook incident highlights is the fact that the concept of privacy today is much more complicated than merely being the opposite of 'public' (163).

As our definition of privacy has become more nuanced, so have the questions about what should be done to protect privacy and free speech, as the Internet has opened up new avenues through which private information can be released and free speech expressed.

The author describes our tendency to try and boil issues down into matters of choosing one of only two sides. On the issue of privacy and free speech, one can either take the side of unlimited free speech and accept whatever consequences may result as unavoidable (110), or choose to protect privacy above all else regardless of its effect on free speech (112).

Solove, on the other hand, proposes what he calls a "middle ground" approach, of which the primary weapon is the lawsuit (113). He calls the idea of using lawsuits to regulate the conflict between free speech and privacy as "the best among a set of imperfect choices." (190) The other two alternatives he gives are doing nothing and simply accept the loss of privacy as an inevitable fact of life with the Internet, or strictly regulating speech on the Internet to prevent people from using it to expose private information or to defame people, at the expense of free speech rights.

Of course, such a middle-of-the-road choice is riddled with ambiguities, which the author admits to. However, he does come up with some general guidelines we should follow as a society.

First is the issue of who to place the blame on and how to limit the subsequent damage when someone reveals harmful or embarrassing private information about you without your knowledge or consent on the Internet.

Solove's ideal method of conflict resolution is an informal one, or one that avoids involving the law all together: asking the poster of your private information to remove the offending

content. (123) This, of course, is something that can only be suggested, and is not a concrete policy decision. In the case that this course of action fails, the next step would be to contact the ISP of the offending site and ask them to either tell the poster to remove the undesirable information, or remove it themselves.

Up to this point, the primary source of blame is the individual who initially posts the personal or defamatory material. While one might potentially blame the ISP as well for providing the forum for people to post harmful comments, Solove indicates that this would go too far in the direction of restricting free speech, especially since the ISP could not be expected to know what all of its users are writing. However, if the ISP were to not comply with the victim's requests to take down the offending material, the ISP would then be showing itself to be implicitly accepting of the material. At this point, Solove suggests, the ISP could then be held partially responsible with a lawsuit for any further dissemination of private information (154).

If the the parties involved in the dispute do end up having to deal with a lawsuit, Solove mentions ways in which current laws can be modified so as to make them more applicable and helpful in regulating an equilibrium between privacy and free speech.

For one thing, he argues that the current legal definition of what constitutes privacy is too limited, in that it still views privacy in terms of absolutes; something is either completely private, or it is public. Currently, "[m]any courts throw out lawsuits because they do not recognize a privacy violation. As a result, people suing under the privacy torts frequently lose their cases." (119)

Of course, expanding what privacy is will make it more likely that the frequency of lawsuits would increase, which could inadvertently stifle free speech, as people would avoid speaking their minds out of a fear of being sued. Thus as a counterbalance, he suggests that monetary compensation be limited, so as to alleviate some of the concerns of Internet users (124).

Next is the matter of trying to avoid such conflicts in the first place. Solove offers practical advice on how one can help ensure that bloggers and other Internet users can avoid revealing the private information of others without compromising their own right to free speech. Perhaps one of the most important steps one can take is to avoid using real names. When Jessica Cutler was posting entries in her blog, the *Washingtonienne*, she used real initials to identify the men she

was sleeping with. Even that tidbit of information was enough for an eventual identification to be made. Had she taken more precautions, the identities of these men might have remained hidden (192).

In the end, Solove resigns himself to the inherent limitations of using the law to try and change what are in essence the habits of society. Thus, while the threat of a lawsuit might help in providing a slight deterrence to spreading defamatory, slanderous, or otherwise unwanted personal information on the Internet, if people truly want to spread information about themselves and other people, there is only so much the law can accomplish (196).

Thus, he admits that the only true solution to stopping the posting and spread of damaging personal information on the web is to hope that new social norms develop to help keep the relatively new medium of the Internet in check. However, by promoting fair legal recourse for those hurt by privacy invasions and defamations on the web, while at the same time not being overly stifling with regard to the right to free expression, the hope is that such a legal equilibrium can help “encourage the development of norms and spur people to work out their disputes informally.” (122)

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Works Cited:

Solove, Daniel J. *The Future of Reputation: Gossip, Rumor, and Privacy on the Internet*. New Haven, Yale University Press, 2007.