The Offensive Internet: Speech, Privacy, and Reputation

Edited by Saul Levmore & Martha C. Nussbaum
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The Offensive Internet: Speech, Privacy, and Reputation is a compilation of essays written by legal scholars, lawyers, and philosophers on how the Internet has been and continues to be an outlet for offensive speech and destroying reputations. The authors of these essays focus on what one author likes to call “cyber-cesspools.”

Cyber-cesspools refer to websites, blogs, and social networking sites and how they are used by young adults to demean their peers, as well as administrators and professors at their academic institutes. The authors analyze U.S. legal code and give their suggestions on what changes need to be made legally and institutionally within universities to mitigate the harm these cyber-cesspools have on individuals.

The essays are broken up into four parts. The first collection of essays focuses on the problems the Internet poses when it comes to offensive speech and how easy it has become to disenfranchise individuals through a quick and easy medium such as the Internet. The second collection of essays focuses on the consequences offensive speech on the Internet has on an individual’s reputation. The third set of essays focuses on the role of free speech and how offensive speech on the Internet is of low moral quality, and argues that—like fighting words or obscenity—it should be regulated to a certain extent. The final compilation of essays focuses on

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1 The Offensive Internet: Speech, Privacy, and Reputation (Saul Levmore & Martha C. Nussbaum eds., 2011).
3 Id.
privacy issues that arise out of social networking sites and how individuals have personal
information posted on the Internet that they never consented to sharing.

In Part I, the authors discuss how Internet websites have evolved into forums for posting
rumors or hate speech about individuals. In, *Speech, Privacy, and Regulation, on the Internet*,
Daniel Solove⁴ discusses websites such as “Autoadmit,” which once was a site for posting advice
on law school admissions, but evolved into a forum to post pornographic material about female
law students. Solove points out how easy it was for law students to tarnish their fellow female
classmate’s reputation, and have it quickly accessible to anyone around the world. In, *The
Internet’s Anonymity Problem*, editor Saul Levmore⁵ argues that the law favors the Internet.
Levmore points out that the Internet has less regulation compared to other media such as
television and radio where they have content-based restrictions. In addition, Levmore makes the
argument that a person on a soapbox who states something defamatory or disturbing in public
can be physically removed, whereas something on the Internet can be kept for a lifetime.

Both Solove and Levmore believe there should be more regulation on obscene Internet
speech and it should start with reforming section 230 of the Communication Decency Act.
Currently, the Act protects Internet service providers from being deemed the publisher or speaker
of the content that is posted on their website.⁶ Both authors suggest that section 230 should be
revised to include a notice and takedown system where the service providers can take down posts
that are deemed inappropriate. Solove does a good job pointing to possible problems with the
policy change, comparing it to the problems faced by Digital Millennium Copyright Act’s
takedown system. Solove counters by suggesting that individuals who abuse the notice and

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⁴ Daniel J. Solove is the John Marshall Harlan Research Professor of Law at the George Washington University Law School. He received his A.B. in English Literature from Washington University, and his J.D. from Yale Law School.
⁵ Saul Levmore is currently a service professor at the University of Chicago Law School and was the Dean of the law school from 2001-2009.
⁶ See Leiter, *supra* note 1, at 23.
takedown system should be penalized. In addition, Solove contends mediation should be required before any case goes to trial, and damages for invasion of privacy should be limited. The policy revision that Solove and Levmore advocate is not too drastic and seems appropriate at a time where it is easy for an individual to get away with publishing false and harassing information.

In *Civil Rights in Our Information Age*, Danielle Citron⁷ points to the very people who have been getting away with harassing and slandering people on the Internet. Citron does a great job of analyzing how cyber mobs terrorize women, people of color, and other minorities. Citron points to how groups of people who have similar interests and viewpoints form cyber mobs and attack women and minorities on their websites and blogs by posting sexual threats, doctored pictures and sending out their addresses, phone numbers, and social security numbers so people can continue to harass them. In response, operators of these sites either change their name, gender, or shut down their site altogether, even if it generates income. Citron believes that it has gotten to a point where online mobs provide more discrimination than cultural interaction.

Citron believes that supplementing current criminal and tort law with civil rights laws would be an effective way to punish cyber mobs. According to Citron, the Violence Against Women Act is a good place to start in criminalizing online harassment by cyber mobs. Citron advocates that the Act should be amended to include online communication when addressing punishment against individuals who use a device without revealing their identity with the intent to harass, abuse, or threaten anyone who receives the communication. In addition, Citron proposes that women should be able to bring suits against cyber mob members under Title VII of the Civil Rights Act of 1964 for preventing the women from making a living simply due to their sex. Further details on how cyber mobs impact minorities would have made the essay stronger.

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⁷ Danielle Citron is the Lois K. Macht Research Professor of Law at the University of Maryland School of Law.
because it would have resonated the impact cyber mobs have on a diverse group of people. Her legal reform suggestions, however, were addressed to both women and minorities.

The most lackluster essay in Part I was Martha Nussbaum’s Objectification and Internet Misogyny. Nussbaum explained that the Internet has become a forum for men to continue to objectify women. Although it was interesting to read a different viewpoint behind men’s motives to demean women, her underlying analysis was already covered in the other essays. In addition, her remedy to combat offensive speech on the Internet, by having a cultural change in society, was too far-fetched and not as impactful as the legal reforms suggested by the other authors.

In Part II, the authors mainly focus on the effect the Internet has on the birth of false rumors and their impact on individuals. All the authors in this section come to the consensus that in the era of the Internet it is easy to spread false rumors. In Believing False Rumors, Cass Sunstein believes that people tend to deliberate within themselves to determine if they believe a rumor or not and often they go with the popular viewpoint because they worry about their own reputation. Sunstein makes a good point that celebrities and political figures are able to make a public statement to discount false rumors that is able to reach a large audience, whereas an ordinary person does not have that ability. She suggests letting people who are victims of false rumors on the Internet to instantly correct the information, preserving their reputation.

Frank Pasquale has a similar proposal that I tend to agree with more. In Reputation Regulation: Disclosure and the Challenge of Clandestinely Commensuration Computing, Pasquale suggests an “annotation remedy” that allows people to object to hyperlinks in search results when their names are searched in a search engine. The idea is to allow individuals to put

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8 Martha Nussbaum is a service professor of law and ethics at the University of Chicago Law School.
9 Cass Sunstein is professor of law at Harvard University Law School, and is currently the Administrator of the White House Office of Information and Regulatory Affairs in the Obama administration.
10 Frank Pasquale is the professor of Healthcare Regulation and Enforcement at Seton Hall University School of Law.
an asterisk on an offending hyperlink, directing users to their own comment on the result. I believe this is better than Sunstein’s idea of instantly correcting someone’s comments because it may prevent a plethora of free speech claims that would all deal with the same issue.

In Academic Administrators and the Challenge of Social-Networking Websites, Karen Bradshaw\textsuperscript{11} and Souvik Saha\textsuperscript{12} hit the nail right on the head in identifying the source of most hate speech and defamation. Bradshaw and Saha look to the effect social-networking sites have in academic communities. The authors suggest that Facebook groups are examples of online communities that have been a form of cyber-bullying. The author’s claim that Facebook groups threaten academic settings by bullying or defaming students, faculty, or administrators, which leads to less participation in class as students fear what could be posted online about what they say. I agree with the authors that disconnecting Internet use on campus or during class, as some universities have already implemented, may not be the solution; especially with the access of the Internet on cell phones. Bradshaw and Saha suggest that institutions should educate and encourage students to self-monitor and report instances of cyber bullying. The provision that seems to be most appealing is having academic institutions amend their codes of conduct regarding behavior to include online networking both on and off campus. By amending their code, academic institutions would be able to discipline students when their off-campus speech causes substantial disruption to the educational environment and interferes with another student’s rights. The idea may be a long way from implementation, as courts and legislators would have to define the role academic institutions may play in regulating bullying that does not physically occur on school grounds.

\textsuperscript{11} Karen M. Bradshaw received her J.D. in 2010 from the University of Chicago Law School. She was a comment editor of the University of Chicago Law Review.
\textsuperscript{12} Souvik Saha is a masters candidate at Columbia University in the School of International and Public Affairs.
In Part III, the book turns to the quality of speech that is presented on the Internet and how it can be regulated without restraining and individual’s right to free speech. In *Privacy, the First Amendment, and the Internet*, Geoffrey Stone\(^\text{13}\) indicates that the Supreme Court has consistently held that the First Amendment generally forbids restrictions of speech on the ground that it is offensive, insulting, demeaning, or abusive. Geoffrey indicates that although the Supreme Court has not clearly defined low-value speech, case law suggests that low value speech does not advance political discourse or have strong cognitive effect on the audience. Geoffrey continues to explain what he considers low-value speech to be, however, lacks any strong suggestions on how to regulate low-value speech on the Internet as he concludes by generally stating that the law can no longer deal effectively with offensive speech that invades an individual’s privacy.

Similar statements can be made for John Deigh’s\(^\text{14}\) essay, *Foul Language: Some Rumination on Cohen v. California*. Deigh explains that emotive speech that is hateful should not be protected. He compares hate speech on the Internet today. He explains that in *Cohen v. California* the use of “Fuck the draft” was merely an emotional message that did not intend to provoke violence nor was it directed at anyone. Deigh believes that emotive speech that does risk harm should be regulated, yet does not offer any suggestions on what steps need to be done to regulate such offensive speech.

Brian Leiter,\(^\text{15}\) however, in *Cleaning Cyber-Cesspools: Google and Free Speech*, does a great job of explaining a possible solution to prevent harm facilitated by social-networking sites. Leiter points to how Google is one of the problems in dispersing harmful speech as it allows

\(^{13}\) Geoffrey Stone is the Edward H. Levi Distinguished Service Professor of Law at the University of Chicago.

\(^{14}\) John Deigh is a professor at University of Texas Austin and teaches moral and political philosophy.

\(^{15}\) Brian Leiter is the John P. Wilson Professor of Law and director of the Center for Law, Philosophy & Human Values at the University of Chicago.
people to easily find false, misleading, and defamatory information. Leiter suggests Google could prevent dignitary harm by setting up a panel of neutral arbitrators who could evaluate claims by individuals that believe Google is returning search results that constitute tortious or dignitary harm. The panel would then have the authority to offer remedies to the individual if they do find the material to be offensive, such as delisting the information or demoting it to later search pages. In addition, the panel could possibly allow the victim to post a reply similar to Pasquale’s asterisk method. Leiter believes that Google could even implement a small fee for bringing the claim to prevent frivolous complaints. Leiter presents an interesting idea, however, I doubt Google would go for it without some sort of incentive or legislative requirement that would make them liable for the distribution of tortious material.

In Part IV, the issue of privacy on the Internet is discussed in regards to social networking sites such as Facebook, MySpace, and LinkedIn. In Privacy on Social Networks: Norms, Markets, and Natural Monopoly, Ruben Rodrigues discusses how Facebook has rapidly grown compared to MySpace not only because of their ability to promote their platform, but also their privacy policy. Rodrigues fears that Facebook is headed toward a social-network monopoly, which in turn raises switching costs by locking in users. Rodrigues claims that once a monopoly, Facebook would cease past privacy practices in return for financial benefit by exploiting user’s private information for advertising and transactional purposes. Rodrigues suggests that to prevent a social network monopoly there should be more competition between social-networks, leading to competition in privacy protection. To promote competition, Rodrigues suggests that users should able to move between networks freely, which would keep the cost of switching low and prevent social-networking sites such as Facebook from disengaging from user’s privacy needs.

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16 Ruben Rodrigues is an associate with Foley & Lardner LLP and a member of the firm's IP Litigation and Electronics Practices and Emerging Technologies Industry Team.
Rodrigues’ idea of competition is good, but in the end it is in the hands of the user to embrace that competition.

The majority of the essay’s presented in the book offer great analysis, insight, and proposals on how an individual’s reputation, privacy, and well-being can be protected from harassment over the Internet. The authors of the essays do a good job of articulating examples of the different online mediums that have enhanced the ability of a person to post a defamatory comment that can be quickly seen all over the world. The collection of short essays present different viewpoints and ideas that keep the reader engaged. *The Offensive Internet: Speech, Privacy, and Reputation* is a book that I highly recommend to anyone working with the Internet from a legal or policy aspect as I believe it presents ideas that at the very least should be subject to testing.