



Discussion Questions for The Future of Reputation

The following questions are designed for use by academic classes and for book reading groups.

- Q1:** What will life be like for the generation coming of age now, with their high school and college gossip preserved in MySpace and Facebook profiles?
- Q2:** Gossip, rumor, and shaming are nothing new. So why does the fact that these things are occurring online make a difference?
- Q3:** Perhaps the generation in high school and college today — what Solove calls “Generation Google” — will no longer expect privacy. Will people just get used to having their private lives exposed online? And if this happens, is there a problem or are we just seeing a transformation in the way people live their lives?
- Q4:** Is there anything that the law can do to protect against what happened to the Dog Poop Girl (*described in Chapter 1 of the book*)?
- Q5:** In Chapter 3, Solove discusses the Washingtonienne case, where a woman working for a Senator blogged about her sex life with a guy she was dating, revealing explicit details about his sexual preferences. He sued. Should he be able to prevent the woman he was dating from writing about her life?
- Q6:** When the law restricts people from spreading gossip and rumors online, this affects free speech. How do you balance privacy and free speech for online expression?
- Q7:** Isn't shaming people online good? If people know that they will be exposed online for acting rudely, then maybe we'll see less rude behavior. Why isn't that a good thing?
- Q8:** Some say that the best remedy for bad information is good information. So perhaps the solution is for victims of online rumor and gossip to put up corrective information online so that it will also pull up in a Google search under their names. Would this solution work?
- Q9:** Solove argues that the laws that protect privacy are very weak. What needs to be fixed?
- Q10:** Solove contends that the law currently has antiquated notions of privacy and that these are holding the law back. What are these notions? What alternatives does Solove

propose? Are these alternatives workable?

Q11: In Chapter 6, Solove argues that the Communications Decency Act (CDA) § 230 should be changed to make ISPs and websites responsible for comments posted by others when they know or should have known that the comments are defamatory or invasive of privacy. How does one know this? Won't this encourage too much takedown since website operators or ISPs might want to avoid being sued?

Q12: Try to rewrite the CDA § 230 by proposing specific statutory language. Can you craft a rewritten version of § 230 that strikes a better balance between reputation protection and free speech?

Q13: In a review of *The Future of Reputation*, Professor Rebecca Tushnet, Georgetown Law Center, compares Solove's proposals about the CDA § 230 to the notice-and-takedown regime under the DMCA. She writes: "Given how easily notice and takedown can be abused, and how rarely posters challenge notices (which must seem very high-stakes indeed to nonlawyers), I am unenthusiastic about this idea unless the procedure was made very transparent and the penalties for ISPs were pretty limited." Does Tushnet's argument support the existing approach? What can you say in support of Solove's argument and Tushnet's objection?

Q14: In Chapter 7, Solove contends that the law should recognize privacy in public. How could such a protection work? Would this prevent people from taking and disseminating photos of others in public? Although there may be instances where people expect some degree of privacy in public, there are also other instances where people can't plausibly have privacy in public. How can such situations be distinguished?