

# HOW WOMEN ARE RUINING THEIR REPUTATIONS ONLINE: PRIVACY IN THE INTERNET AGE

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## I. INTRODUCTION

Today a large percentage of social interaction occurs online.<sup>1</sup> In one regard, these social networking websites allow access to information that was previously impossible. Relationships are no longer limited by geographical distance, and a large amount of data is freely available. But in another sense, this freedom to share information can have serious privacy implications. Women today are posting behavior online that would shock prior generations.<sup>2</sup> And yet, this private information is still posted on websites even with older generations—including family members, future employers, and colleagues—logging online at an increasing rate.<sup>3</sup> When this social behavior is viewed by an older generation, it often leads to reputational harm, particularly for women, because of the double standard that still exists.<sup>4</sup> As the Internet evolves, so do societal concepts of what is private and what is public—just ask Karen Owens, the Duke graduate whose sexual exploits went viral for the world to see.<sup>5</sup> Or try Googling

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1. LAURA SESSIONS STEPP, UNHOOKED: HOW YOUNG WOMEN PURSUE SEX, DELAY LOVE, AND LOSE AT BOTH 50 (2007) (“[A] significant majority of young people now make most of their social engagements through digital means.”); Jonathon N. Cummings et al., *The Quality of Online Social Relationships*, 45 COMM. ASS’N COMPUTING MACHINERY 103, 103 (2002) (In a 2000 national survey, people “reported spending less time with friends and family since going online.”).

2. Eve Fairbanks, *Washington Diarist: The Porn Identity*, SINGLE ARTICLES, <http://www.singlearticles.com/the-porn-identity-a1701.html> (last visited Apr. 9, 2011). Young adults “blog details, true or made up, about their personal lives that their elders would have blushed to put in their diaries.” *Id.*

3. See, e.g., Alan Finder, *For Some, Online Persona Undermines a Résumé*, N.Y. TIMES, June 11, 2006, [http://www.nytimes.com/2006/06/11/us/11recruit.html?\\_r=1](http://www.nytimes.com/2006/06/11/us/11recruit.html?_r=1) (explaining how employers are not doing online research on potential candidates).

4. See discussion *infra* Part III.C.

5. See Katharine Q. Seelye & Liz Robbins, *Duke Winces as a Private Joke Slips Out of Control*, N.Y. TIMES, Oct. 7, 2010, <http://www.nytimes.com/2010/>

(yes, Google is now a verb)<sup>6</sup> “Facebook goes viral,” and see how many instances of seemingly “private” behavior quickly became an overnight Internet sensation.<sup>7</sup> Thus, if everyone is online, how can people, particularly women, protect themselves from long-term reputational consequences?

This Note addresses how females,<sup>8</sup> particularly young women, suffer long-term reputational harm stemming from their Internet activity. Part II discusses the history of female social behavior on college campuses prior to the advent of the “college hookup culture.”<sup>9</sup> This section focuses on how students historically interacted with each other sexually and how this played into the social norms of the day. It then analyzes how the college culture changed over time. Part III discusses what is happening today, starting with the emergence of social networking websites (hereinafter “websites” or “sites”). It then looks at the current college environment and how social networking sites perpetuate this culture—focusing specifically on the college hookup culture and how this behavior is displayed on the Internet. Part IV examines the privacy implications of this behavior, particularly the long-term reputational harm and the paradox of control. This section analyzes how females are at a greater risk of suffering reputational harm because they are more closely scrutinized for their behavior. Finally, Part V discusses possible solutions. First, it observes how social networking websites are currently handling privacy issues and how they can better protect user privacy. Second, this section discusses the legal response to invasions of privacy, analyzing the two different approaches, authoritarian and libertarian. As

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10/08/us/08duke.html.

6. DANIEL J. SOLOVE, *THE FUTURE OF REPUTATION: GOSSIP, RUMOR, AND PRIVACY ON THE INTERNET* 9, 17 (2007).

7. Facebook Goes Viral—Google Search, GOOGLE, [http://www.google.com/#sclient=psy&hl=en&q=%22facebook+goes+viral%22&aq=f&aqi=gb2&aql=&oq=&pbx=1&bav=on.2,or.r\\_gc.r\\_pw.&fp=87a89c5b1abc39eb](http://www.google.com/#sclient=psy&hl=en&q=%22facebook+goes+viral%22&aq=f&aqi=gb2&aql=&oq=&pbx=1&bav=on.2,or.r_gc.r_pw.&fp=87a89c5b1abc39eb) (last visited Apr. 9, 2011).

8. For the purposes of this paper, I analyzed only females in their late teens and early twenties, focusing specifically on college females. Thus, hereinafter, when I refer to females, women, or girls, I will be referring to this age demographic only, unless specified.

9. See *infra* Part II.

both approaches are unrealistic in the modern, online era, a new approach is needed to protect against reputational harm. Part V suggests tort law as a possible middle ground, specifically public disclosure of private facts. The last solution proposed is self-regulation, suggesting women become informed about the realities of the college hookup culture, as well as the long-term effects of posting private information being on the Internet. The section concludes that women should be doing more to protect their privacy, and in turn, their reputation.

## II. A HISTORY OF COLLEGE BEHAVIOR

Women of previous generations hardly recognize the college culture of today.<sup>10</sup> The media firestorm over Karen Owens's PowerPoint in 2010 merely widened this gap of understanding. Owens, a graduate of Duke University, created a forty-two slide PowerPoint presentation detailing her "education beyond the classroom" in "horizontal academics."<sup>11</sup> Self-dubbed her "fuck list," the presentation included pictures and the full names of her "subjects," as well as commentary about her sexual encounters complete with pros, cons, memorable moments, and a raw score.<sup>12</sup> Subjects were evaluated based on physical attractiveness, size ("length and girth of the Subjects' hardware"), talent, creativity, aggressiveness, entertainment, athletic ability, and an additional bonus category.<sup>13</sup> Slides contain explicit detailed descriptions about the encounter itself,<sup>14</sup> often describing in graphic detail a subject's penis size.<sup>15</sup> Owens

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10. See, e.g., DVD: Spitting Game: The College Hookup Culture (J'Hue Film Productions, LLC 2010) (on file with author) (revealing that all parents of college students interviewed were unfamiliar with the college hookup culture).

11. Karen Owens, An Education Beyond the Classroom: Excelling in the Realm of Horizontal Academics, PowerPoint Presentation, at slide 1 (May 2010) (on file with author).

12. *Id.* at slide 40.

13. *Id.* at slide 39.

14. *Id.* at slide 9 ("Hooking up on the stairs of the packed library. High fiving him while giving him a blow job in the library, because 'this is fucking awesome!'").

15. *Id.* at slide 16 ("That gorgeous, perfect body of his was supporting a penile structure so disproportionately small that I had to take several deep breaths and force a smile before commencing the hookup session, lying every

sent the list to her friends who presumably sent it on to other friends. Eventually, the list went viral, posted on several websites with pictures and full names visible for the world to see.<sup>16</sup> Although the names were eventually redacted, shirtless pictures are still visible, as are the slides containing vivid descriptions of the encounters.<sup>17</sup>

The reaction to the PowerPoint varies, but the Baby Boomer generation is predominantly bewildered by a behavior that is inconsistent with their college experience.<sup>18</sup> In their generation, dating was a precursor to sexual interaction, and students would not dare publicize their sexual exploits.<sup>19</sup> In 1968, for example, a female student at Barnard College was expelled for living with her off-campus boyfriend.<sup>20</sup> In 1969, sixty-eight percent of Americans polled thought premarital sex was wrong.<sup>21</sup> By 1973, the number was down to forty-eight percent.<sup>22</sup> Although by 2000, children under the age of nine knew what hooking up was, their parents either had not heard of it, or “thought it was being used

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few minutes (when asked) about how he was ‘the biggest I had ever seen.’”).

16. See Seelye & Robbins, *supra* note 5.

17. See, e.g., Irin Carmon, *College Girl's PowerPoint "Fuck List" Goes Viral*, JEZEBEL (Sept. 30, 2010 03:00 PM), <http://jezebel.com/5652114/college-girls-power-point-fuck-list-goes-viral-gallery>; A.J. Daulerio, *The Full Duke University "Fuck List" Thesis From a Former Female Student*, DEADSPIN (Sept. 30, 2010 03:01 PM), <http://deadspin.com/5652280/the-full-duke-university-fuck-list-thesis-from-a-former-female-student/gallery>.

18. See Brenda Wilson, *Sex Without Intimacy: No Dating, No Relationships*, NPR (June 8, 2009), <http://www.npr.org/templates/story/story.php?storyId=105008712> (“It is a major shift in the culture over the past few decades.”); Comment to *Duke Winces as a Private Joke Slips Out of Control*, N.Y. TIMES, Oct. 7, 2010, <http://www.nytimes.com/2010/10/08/us/08duke.html#> (“My husband and I didn’t “date” OR hook up in order to find each other. We courted – ie [sic] - got to know each other with the idea that it would lead to marriage.”) (comments on file with N.Y. TIMES archive). *But see id.* (“I guess every generation thinks it has reinvented the wheel, and tends to forget that in terms of human nature and human behavior that there is truly nothing new under the sun. In my day we called sex outside a loving, committed relationship sport f’ing [sic].”) (comments on file with N.Y. TIMES archive).

19. See *supra* note 18.

20. *Sex on Campus, Then and Now*, CHICAGO SUN-TIMES, March 21, 2005, <http://www.suntimes.com> (membership needed).

21. *Id.*

22. *Id.*

in the old sense of ‘meeting’ someone.”<sup>23</sup> As one commenter stated: “Maybe boring traditional marriage people just don’t talk about their sexual exploits as loudly as our liberated younger generation.”<sup>24</sup>

The Baby Boomers may not be correct to assume this behavior is new. For example, in 1977 a sex list similar to Owens’s was published on Massachusetts Institute of Technology’s (MIT) campus. Two MIT juniors created a list called the “Consumer Guide to M.I.T. Men” and published it in a weekly MIT journal.<sup>25</sup> In a ranking system analogous to Owens’s, the students rated their sexual encounters with thirty-six men on campus.<sup>26</sup> Their stated intention was to “turn the tables” on men and show them what objectification felt like.<sup>27</sup> After backlash from several universities, the women were put on probation for ten months and received a notation in their official school file.<sup>28</sup>

There are three key differences between what happened at MIT and what occurred at Duke, and subsequently, these incidents should be viewed differently from a privacy standpoint.

First, the students at MIT were juniors when the list was published, and thus, the school had recourse to handle the problem.<sup>29</sup> Karen Owens, on the other hand, already graduated by the time the list circulated, making her immune to academic sanction.<sup>30</sup> The second difference is the prevalence of the Internet. The MIT students published their exposé in a hard copy of the university paper, while Owens’s exploits reached a far greater audience because her list went viral on the Internet.<sup>31</sup> This leads to the third difference. Karen Owens emailed her list to a few friends, with the expectation that these friends would be

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23. TOM WOLFE, *HOOKING UP* 7 (2000).

24. See *supra* note 17 (comments on file with N.Y. TIMES archive).

25. Jonathan H. Alter, *MIT Women Rate Sex Mates in Article*, HARVARD CRIMSON, May 11, 1977, <http://www.thecrimson.com/article/1977/5/11/mit-women-rate-sex-mates-in/?print=1>.

26. See Seelye & Robbins, *supra* note 5.

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

the only people observing the PowerPoint.<sup>32</sup> The MIT students self-published their list thereby waiving their expectation and right of privacy.<sup>33</sup> As discussed below, these last two differences are crucial in regard to legal and social recourse for women in the Internet age. In terms of culture, however, has much changed from 1977 to today?

Historically, socially normative sexual relationships took on the form of calling on a woman, or dating.<sup>34</sup> Before the 1920s, men would “call” on women for a supervised visit to express their interest.<sup>35</sup> During this period, women were in control—they invited men to call on them.<sup>36</sup> In contrast, after 1920, dating became the norm, and “it was exclusively the man’s right to ask a woman out on a date.”<sup>37</sup> In both scenarios, sexual interaction was minimal, and relationship building took a front seat, with the long-term goal of marriage.<sup>38</sup> Today, “young people are postponing marriage. Age at first marriage is at an all-time high; the typical groom is 27; the typical bride is 25.”<sup>39</sup> In modern interactions between men and women, sexual gratification is often the goal, and “men take on the role of aggressor while women take on the role of gatekeeper.”<sup>40</sup> These changes, along with the emergence of the Internet, dramatically changed the structure and goal of normative interactions between college co-eds.

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32. *Today Show* (NBC television broadcast Oct. 8, 2010), available at [http://today.msnbc.msn.com/id/39552862/ns/todaytoday\\_people/#.Tpc3enNLJW4](http://today.msnbc.msn.com/id/39552862/ns/todaytoday_people/#.Tpc3enNLJW4) (“She feels badly that she unintentionally violated the privacy of her partners.”).

33. *See* Alter, *supra* note 25.

34. *See* KATHLEEN A. BOGLE, *HOOKING UP: SEX, DATING, AND RELATIONSHIPS ON CAMPUS 12* (2008).

35. *Id.*

36. *Id.* (“Young women and their mothers controlled the practice of calling. That is, they and only they could invite a young man to come to their home for a calling visit.”).

37. *Id.* at 18.

38. *Id.* at 19 (“As intimate relationships moved away from parental supervision, increasing sexual intimacy entered the equation.”).

39. *Id.* at 2.

40. *Id.* at 8.

## III. COLLEGE BEHAVIOR TODAY

The college culture changed significantly in the last decade and continues to evolve. Starting around 2000, research started to surface about the college hookup culture.<sup>41</sup> In 2002, social networking websites hit their stride, gaining popularity primarily among college students.<sup>42</sup> Combining this emergence of social networking sites with the college hookup culture uniquely fosters an environment where it is the norm to post private sexual behavior on the Internet. But several questions materialize when analyzing female behavior in this context.

First, what is causing women to self-publish this sexual behavior? The answer can be found by examining the context in which this behavior occurs and the motivations of the students. College students live in a fishbowl-like environment—in close proximity to one another, allowing them a front row seat to view their peers' behavior.<sup>43</sup> This close proximity allows for constant observation and scrutiny of others' behavior.<sup>44</sup> Social networking sites magnify this observation by making the behavior and subsequent reaction available to a wider audience.<sup>45</sup> Humans, as social beings, conform their behavior to what they perceive is the norm,<sup>46</sup> and college students are at the most social stage of their lives.<sup>47</sup> Because these students see hooking up as the norm, their

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41. WOLFE, *supra* note 23, at 7. (“In the year 2000, in the era of hooking up, ‘first base’ meant deep kissing (‘tongue hockey’), groping, and fondling; ‘second base’ meant oral sex; ‘third base’ meant going all the way; and ‘home plate’ meant learning each other’s names.”).

42. See Christopher Nickson, *The History of Social Networking*, DIGITAL TRENDS (Jan. 21, 2009), <http://www.digitaltrends.com/features/the-history-of-social-networking>.

43. BOGLE, *supra* note 34, at 57 (“Another aspect of life on campus that contributes to the hookup culture is the proximity of college men and women to one another. Students living on campus reside in dorms and houses filled with fellow students.”).

44. *Id.* at 58 (“A final issue, which makes college campuses an environment conducive to hooking up, is the attention college students pay to what the others are doing.”).

45. See generally Nickson, *supra* note 42.

46. BOGLE, *supra* note 34, at 7 (“[T]he cultural norms that we live by can dictate how people act in a given situation.”).

47. See STEPP, *supra* note 1, at 47 (“Adolescents are the most social of human beings. They adopt the behavior and attitudes of the people closest to



observations dictate their behavior.<sup>48</sup>

In addition, students are naïve about the consequences of posting personal information on the Internet.<sup>49</sup> They either mistakenly believe they know who *can* access their information, or mistakenly believe they know who *is* accessing their information.<sup>50</sup> The combination of this close environment and naïveté about access leads to a perpetual cycle of over-exposure. Students' behavior is dictated by what they perceive as the norm—and they perceive students hooking up and posting their exploits on the Internet. Conforming to this norm requires students to hookup and post about it online, thereby completing the self-perpetuating cycle.

This cycle leads to the inevitable question of whether hooking up is, in fact, normal college behavior. In actuality, hooking up is not the norm on college campuses.<sup>51</sup> However, because of the close living quarters, coupled with the constant sharing of behavior on social networking sites, students misidentify their peers' normative behavior and, in an effort to fit in, ultimately perpetuate this norm. Thus, in order to analyze female behavior on the Internet, we must first examine the college culture in which the behavior occurs, as well as the motivation behind this behavior.

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them.”).

48. BOGLE, *supra* note 34, at 7 (discussing how “the cultural norms that we live by can dictate how people act in a given situation”).

49. SOLOVE, *supra* note 6, at 197 (analyzing how teens and young adults “might not understand the long-term consequences of what they are doing”).

50. See, e.g., danah boyd, *Facebook's Privacy Trainwreck: Exposure, Invasion, and Social Convergence*, 14 CONVERGENCE: INT'L J. RES. NEW MEDIA TECH. 13 (2008) (discussing reactions to the exposure and invasion of privacy users confronted after Facebook took details from personal pages and published them in the News Feed).

51. See *infra* Part III.B.

## A. The Emergence of Social Networking Sites

A decade ago, college students primarily communicated online using AOL instant messenger.<sup>52</sup> Although a few participated in MySpace, the number was relatively small.<sup>53</sup> In 2005, Facebook exploded on college campuses, and now, even “offline” conversations often revolve around the social networking behavior observed.<sup>54</sup> Today, social networking platforms like Facebook and Twitter are “the new form of communication.”<sup>55</sup>

Social network websites are defined as “web-based services that allow individuals to (1) construct a public or semi-public profile within a bounded system, (2) articulate a list of other users with whom they share a connection, and (3) view and traverse their list of connections and those made by others within the system.”<sup>56</sup> As of 2007, there were more than 200 social networking websites.<sup>57</sup> Although these sites started in the 1980s with Bulletin Board Systems,<sup>58</sup> they did not become what we think of today as social networking until 2002, with the creation of Friendster.<sup>59</sup> This was the first website to combine the concept of degrees of separation with the online dating concept of shared bonds.<sup>60</sup> Although still popular in Asian countries, Friendster, for American students, has been replaced by MySpace, Facebook, and Twitter.<sup>61</sup>

MySpace revolutionized the world of social networking by encouraging users to not only connect via their service, but to stay connected by sharing their everyday activities and interests.<sup>62</sup> In addition, MySpace allows users to post a surplus of

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52. See Nickson, *supra* note 42.

53. *Id.*

54. *Id.*

55. Lisa M. McGrath, *Social Media, The Biggest Cocktail Party on the Planet*, 53 THE ADVOC. 33, 33 (2010).

56. danah m. boyd & Nicole B. Ellison, *Social Networking Sites: Definition, History, and Scholarship*, 13 J. COMPUTER-MEDIATED COMM. 210, 211 (2007).

57. SOLOVE, *supra* note 6, at 24.

58. See Nickson, *supra* note 42.

59. *Id.*; boyd & Ellison, *supra* note 56, chart at 212.

60. See boyd & Ellison, *supra* note 56, at 215; Nickson, *supra* note 42.

61. Nickson, *supra* note 42.

62. SOLOVE, *supra* note 6, at 26.

personal information, including photos, videos, “phone numbers, email addresses, hobbies, religion, sexual orientation, political views, favorite television shows, and more.”<sup>63</sup> Launched in 2003, MySpace “surpassed 100 million profiles” by 2006 and by 2007 was growing at a rate of 230,000 new members a day.<sup>64</sup>

Facebook initially emerged as a Harvard-exclusive website targeted specifically to college students.<sup>65</sup> Within a week of its creation, more than half of Harvard’s undergraduates had created an account.<sup>66</sup> By 2005, the year the site officially went public, there were over 11 million accounts, with a growth rate of 20,000 accounts per day.<sup>67</sup> As it was targeted to college students, Facebook remains popular in the campus environment. In one study of a private Northeastern university, a little over ninety-eight percent of the graduating class of 2009 had a Facebook account.<sup>68</sup>

Twitter, the most recent social networking site that launched in 2006, culls the typical social networking site down to a microblog, where users post only a short blurb of information at a time.<sup>69</sup> “[O]f the more than 1.6 billion people that use the Internet every day, 44.5 million use Twitter worldwide.”<sup>70</sup>

Interestingly, most social networking sites often are not utilized for what is traditionally thought of as networking. The majority of people are using social networking sites to “maintain existing offline relationships or solidify offline connections, as opposed to meeting new people.”<sup>71</sup> Ninety-one percent of teens in the United States use social networking websites to connect with

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63. *Id.*

64. *Id.*

65. Nickson, *supra* note 42.

66. SOLOVE, *supra* note 6, at 27.

67. *Id.*

68. Kevin Lewis et al., *The Taste for Privacy: An Analysis of College Student Privacy Settings in an Online Social Network*, 14 J. COMPUTER-MEDIATED COMM. 79, 83 (2008).

69. *See* Nickson, *supra* note 42.

70. McGrath, *supra* note 55.

71. boyd & Ellison, *supra* note 56, at 221. Today, online users “are primarily communicating with people who are already a part of their extended social network.” *Id.* at 211.

pre-existing friends.<sup>72</sup> So essentially, students are using social networking websites not to meet new people, but to memorialize their own behavior and to observe and scrutinize existing peers' behavior.<sup>73</sup>

### B. The College Hookup Culture

Although the publicity surrounding Karen Owens's PowerPoint escalated media attention about sexuality on college campuses, the college hookup culture began garnishing national coverage as early as 2000.<sup>74</sup> A hookup is defined as "a sexual encounter, usually lasting only one night, between two people who are strangers or brief acquaintances."<sup>75</sup> A hookup can mean anything from kissing to sex. For example, in one study, seventy-eight percent of students engaged in at least one hookup, but only thirty-eight percent of these hookups resulted in sexual intercourse.<sup>76</sup>

Sexual behavior plays an increasingly important role in students' lives. Starting in the early 1990s, colleges started seeing student-produced newspapers or magazines revolving exclusively around sex.<sup>77</sup> College students now identify hooking up "as the dominant way for men and women to get together and

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72. *Id.* at 221.

73. See Lewis, *supra* note 68, at 79 (discussing how students use social networking sites to express their offline relationships).

74. *Hooking Up*, TOM WOLFE, <http://www.tomwolfe.com/HookingUp.html> (last visited Apr. 9, 2011) ("Here in the year 2000 we can forget about necking. Today's girls and boys have never heard of anything that dainty.").

75. Elizabeth L. Paul et al., "Hookups": *Characteristics and Correlates of College Students' Spontaneous and Anonymous Sexual Experiences*, 37 J. SEX RES. 76, 76 (2000). For further analysis of how to define "hooking up," see BOGLE, *supra* note 34, at 25.

76. BOGLE, *supra* note 34, at 85.

77. See, e.g., H-BOMB, <http://hbombmag.wordpress.com> (last visited Apr. 9, 2011) (Harvard's website, started in 2004); OUTLET, <http://outletmag.net/> (last visited Apr. 9, 2011) (Columbia's website, started in 2006); SWAY <http://www.sexweekat Yale.com> (last visited Apr. 9, 2011) (Yale's website, started in 2002); VITA EXCOLATUR, <http://vita-excolatur.blogspot.com> (last visited Apr. 9, 2011) (University of Chicago's website, started in 2005). Boston University's magazine BOINK, started in 2005 and Vassar's SQUIRM, started in 1999, are no longer online.

form potential relationships on campus.”<sup>78</sup> In a concentrated study of 555 students, “almost four out of five students had hooked up.”<sup>79</sup> Another study given to 1,000 college women found forty percent of women had hooked up, and one in ten had hooked up more than six times.<sup>80</sup> The hookup has officially replaced the traditional dating relationship.<sup>81</sup>

Adding to the success of the college hookup culture is the context. The environment of a college campus is extremely transparent because students often live in close proximity to each other.<sup>82</sup> This proximity allows for close observation of peer behavior and results in pressure to conform to that behavior.<sup>83</sup> During college, “men and women are highly aware of what their peers are doing sexually.”<sup>84</sup> Students “heavily monitor one another’s actions, gossip about others, and label peers for violating norms.”<sup>85</sup> What emerges from the combination of hooking up and an environment of constant observation is the college hookup culture; a self-perpetuating, socially normative environment.

Essential to the college hookup culture is social pressure to conform to the observed norms.<sup>86</sup> “Perception of what peers do sexually also affects the level of sexual interaction. What students believe is normal within the context of the hookup culture seems to greatly affect how they conduct their own sexual

78. BOGLE, *supra* note 34, at 25.

79. STEPP, *supra* note 1, at 33.

80. INST. FOR AM. VALUES, *HOOING UP, HANGING OUT, AND HOPING FOR MR. RIGHT 4* (2001).

81. See Christy Daniel & Kate Fogarty, “*Hooking Up*” and *Hanging Out: Casual Sexual Behavior Among Adolescents and Young Adults Today*, U. FLA. INST. FOOD & AGRIC. SCI. EXTENSION, <http://edis.ifas.ufl.edu/fy1002> (last visited Apr. 9, 2011) (“Trends show a decline in traditional forms of dating, suggesting that casual sexual interaction, often referred to as ‘hooking up,’ has become an alternative to traditional exclusive sexual relationships.”).

82. BOGLE, *supra* note 34, at 57.

83. *Id.* at 58. What “makes college campuses an environment conducive to hooking up is the attention college students pay to what the others are doing.” *Id.*

84. *Id.* at 73.

85. *Id.* at 145.

86. *Id.* at 8. Sociologists believe that “sexual behavior is socially learned.” *Id.*

behavior.”<sup>87</sup> One study suggests that “peer approval, more than puberty, defines when—and how—young people become sexually involved.”<sup>88</sup> Emerging adults and adolescents are particularly vulnerable to this socially normative behavior because they are quick to “adopt the behavior and attitudes of the people closest to them.”<sup>89</sup> In sociology, this adoptive behavior often is called a “script” because it “can resemble an actor following a script.”<sup>90</sup> The main script or social norm on college campuses is hooking up.<sup>91</sup> Several females interviewed about the college hookup culture admitted they hook up in order to stick to this script.<sup>92</sup>

Moreover, because gossip is central to social norm enforcement, students spend time discussing who is hooking up even if they are not engaging in this behavior.<sup>93</sup> Combining the pressure of maintaining social norms with the accessibility of information posted on social networking sites creates a dangerous self-perpetuating cycle. Female students perceive hooking up to be the norm based on the behavior they view on social networking sites. They then participate in this behavior because they believe it is normal and expected. Then, to ensure they are seen as conforming to this norm, they post pictures of their participation. Other students see these pictures, and that, in turn, reinforces the perception that hooking up is the norm. Combining the college hookup culture with social networking sites creates a “perfect storm”<sup>94</sup> where students publicly share their most intimate details, often on the Internet.

Although members use social networking sites to stay connected with friends and as a means of self-expression, the

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87. *Id.* at 37.

88. STEPP, *supra* note 1, at 73.

89. *Id.* at 47.

90. BOGLE, *supra* note 34, at 7.

91. *Id.*

92. STEPP, *supra* note 1, at 44. College women admitted hooking up “primarily because their girlfriends do.” *Id.*

93. Lior J. Strahilevitz, *A Social Networks Theory of Privacy* 8 (Berkley Elec. Press, Working Paper No. 42, 2005), available at <http://law.bepress.com/alea/15th/art42>.

94. MERRIAM-WEBSTER DICTIONARY, <http://www.merriam-webster.com/dictionary/perfect+storm> (last visited Apr. 9, 2011) (defining “perfect storm” as “a critical or disastrous situation created by a powerful concurrence of factors”).

typical content, particularly for college women, is sexual in nature.<sup>95</sup> Students “often post risqué or teasing photographs and provocative comments about drinking, recreational drug use and sexual exploits in what some mistakenly believe is relative privacy.”<sup>96</sup> A general Facebook search for photos yielded pictures of women ranging from tame (sitting at a bar drinking with friends), to slightly inappropriate (doing shots, kissing other females’ cheeks, grabbing other females’ behinds, wearing bikinis), to incredibly inappropriate (revealing, barely-there Halloween costumes, making out with males or other females, grinding on males or other females on the dance floor).<sup>97</sup> On one Facebook page, a potential employer found “explicit photographs and commentary about the student’s sexual escapades, drinking, and [marijuana] smoking.”<sup>98</sup> “Under the guise of ‘being social’ and ‘maintaining transparency,’ Facebook friends post anything and everything about themselves on this now omnipresent social network.”<sup>99</sup>

Aside from the college hookup culture, one of the driving forces behind this reckless posting is the disconnect that exists between the actual and the perceived norm. Students consider hooking up to be the “primary means for initiating sexual and romantic relationships.”<sup>100</sup> However, hooking up happens about half as much as students think.<sup>101</sup> One study found that ninety-

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95. See generally FACEBOOK, [www.facebook.com](http://www.facebook.com) (last visited Apr. 9, 2011) (on file with author). Many photos on Facebook observed by the author had sexual overtones. *Id.* Studies show that identity presentation, partner selection, and sexual comments are the most frequent utterances in online chat rooms. Kaveri Subrahmanyam et al., *Online and Offline Social Networks: Use of Social Networking Sites by Emerging Adults*, 29 J. APPLIED DEV. PSYCHOL. 420, 421 (2008).

96. Finder, *supra* note 3.

97. FACEBOOK, [www.facebook.com](http://www.facebook.com) (last visited Apr. 9, 2011) (on file with author).

98. David Hector Montes, *Living Our Lives Online: The Privacy Implications of Online Social Networking*, 5 J.L. & POL’Y INFO. SOC’Y 507, 522-523 (2010).

99. Alison Driscoll, *Facebook Fail: How to Use Facebook Privacy Settings and Avoid Disaster*, MASHABLE (Apr. 28, 2009), <http://mashable.com/2009/04/28/facebook-privacy-settings>.

100. BOGLE, *supra* note 34, at 25.

101. *Id.* at 5.

one percent of college women believed hookups occurred “very often” or “fairly often” on their campus, but only forty percent had personally engaged in a hookup since entering college.<sup>102</sup> Moreover, “most students believe others engage in these hooking-up behaviors primarily because they enjoy doing so, while they see themselves engaging in these behaviors primarily due to peer pressure.”<sup>103</sup> Thus, students not only believe that hooking up is the norm, but also believe that they should want to hook up.<sup>104</sup> Students also assume virginity is abnormal, and if they have yet to engage in sex, they may feel pressured to become sexually active to conform to this norm.<sup>105</sup> Contrary to this perception, a national study concluded that thirty-nine percent of college women are virgins.<sup>106</sup> Another campus study found that eighty-six percent of women and eighty-eight percent of men hooked up in college, but only forty-seven percent of men and one-third of women actually engaged in sexual intercourse.<sup>107</sup> Known as “pluralistic ignorance,” this phenomenon of mistaken social norms refers to a “discrepancy between public behavior and private beliefs.”<sup>108</sup>

Groups all have norms of attitude and behavior which are shared and which help form the identity of the group. Adopting these norms, even if you do not agree with them, is a part of the individual sacrifice that people accept as a price of group membership. Pluralistic ignorance occurs where the majority of individuals in a group assume that most of their [sic] others are different in some way, whilst the truth is that they are more similar than they realize. They thus will

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102. *Id.*

103. Tracy A. Lambert et al., *Pluralistic Ignorance and Hooking Up*, 40 J. SEX RES. 129, 132 (2003).

104. *Id.*

105. BOGLE, *supra* note 34, at 85 (“Despite perceptions, virginity is not a rarity. A national study on college women, conducted in 2001, found a [thirty-nine] percent virginity rate. This study also found that the virginity rate was still [thirty-one] percent among college women in their senior year. Other national data on both college men and women indicates that the virginity rate is approximately [twenty-five] percent. Regardless of the precise number, there are more virgins on campus than most students believe.”).

106. *Id.*

107. Lambert, *supra* note 103, at 129.

108. *Id.* at 130.



conform [to] supposed norms. When most people do this, the supposed norm becomes the norm.<sup>109</sup>

In the context of the hookup culture, students conform to the norm of hooking up because of a mistaken belief that “he or she is the only one in the group experiencing conflict between his or her private attitude and his or her public behavior.”<sup>110</sup> The college environment is particularly conducive to this type of mistaken normative reinforcement due to the close environment and the visibility of social behavior posted online.

Historically, college indiscretions were part of a passing phase that could be forgotten when one entered adulthood. However, with the on-set of the college hookup culture and the increasingly central role social networking sites play in students’ lives, this risk-taking behavior can have long-lasting reputational consequences, particularly for women.

#### IV. PRIVACY IMPLICATIONS: THE IMPORTANCE OF REPUTATION

Students are naïve about the amount of privacy and control they have over their personal information posted on the Internet.<sup>111</sup> This misconception about privacy can have permanent reputational consequences, particularly for women because of several factors. First, students are no longer the only ones browsing social networking websites—employers, parents, and peers are all online, viewing students’ private information.<sup>112</sup> Moreover, this information is not like traditional gossip because of its permanence in virtual form and subsequently, its permanent effect.<sup>113</sup> From a gendered perspective, a double standard still persists where women are judged more harshly for

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109. *Pluralistic Ignorance*, CHANGING MINDS, [http://changingminds.org/explanations/theories/pluralistic\\_ignorance.htm](http://changingminds.org/explanations/theories/pluralistic_ignorance.htm) (last visited Apr. 9, 2011).

110. Lambert, *supra* note 103, at 129.

111. See boyd, *supra* note 50; Paul M. Schwartz, *Privacy and Democracy in Cyberspace*, 52 VAND. L. REV. 1609, 1611 (1999).

112. See Finder, *supra* note 3; Montes, *supra* note 98, at 521.

113. Anupam Chander, *Youthful Indiscretion in an Internet Age*, in THE OFFENSIVE INTERNET 124 (Saul Levmore & Martha Nussbaum eds., 2011).

their sexual behavior than their male counterparts.<sup>114</sup> The combination of these factors makes posting private information online, especially sexual information, an act with potentially permanent consequences for women.

### A. The Importance of Reputation

Reputation is important—it affects our ability to interact in basic social settings.<sup>115</sup> Numerous studies suggest that we behave differently in public than in private in order to protect our public image.<sup>116</sup> But what happens when our private behavior becomes public? While the flow of information liberates us by allowing us to share information with large groups of people across many nations,<sup>117</sup> the reputational implications of posting private content online are potentially detrimental.

Everyone is online these days. Peers, family, and future employers are patrolling the same sites students use to post their most intimate behavior.<sup>118</sup> In the context of employment, a 2009 survey found that U.S. employers terminated eight percent of employees for behavior on their personal social networking sites—up from four percent in 2008.<sup>119</sup> Companies who previously checked Google or Yahoo to find background on applicants are now searching social networking sites.<sup>120</sup> “For the first time ever, [employers] suddenly have very public

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114. LYNN PERIL, COLLEGE GIRLS: BLUESTOCKINGS, SEX KITTENS, AND COEDS, THEN AND NOW 352 (2006) (“[T]here’s more than a little of the old double standard afoot here, when girls who go wild face ‘consequences’ while boys who egg them on are seen as exercising a bacchanalian right of passage.”).

115. SOLOVE, *supra* note 6, at 31 (“We depend upon others to engage in transactions with us, to employ us, to befriend us, and to listen to us.”).

116. *Id.* at 68.

117. *Id.* at 17.

118. See Finder, *supra* note 3.

119. *Careful What You Email, Post, Upload and Tweet: US Businesses Embrace Aggressive Preventative Measures*, PROOFPOINT, [http://www.markeitwire.com/mw/rel\\_us\\_print.jsp?id=1027877](http://www.markeitwire.com/mw/rel_us_print.jsp?id=1027877) (last visited Apr. 9, 2011).

120. See Finder, *supra* note 3 (“There are lots of employers that Google. Now they’ve taken the next step.”); Montes, *supra* note 98, at 521 (“Employers have begun using the wealth of information available from online social networking profiles to screen potential employees.”).

information about almost any candidate.”<sup>121</sup> As a result, students looking for a job after college may find themselves hindered by their youthful indiscretions. Even students not affected by professional consequences can potentially suffer reputational harm in some form or fashion, and without a good reputation, the ability to socially interact is severely stunted.

### B. Student Misperceptions of Privacy

Another reason why students post private information online is their naïveté about privacy on the Internet. The current generation has a lesser expectation of privacy and is often comfortable posting intimate sexual details online.<sup>122</sup> Students are unaware of who *can* access their personal information and who *is* accessing this information.<sup>123</sup> Because they do not see their social behavior as private, they do not consider posting to be publication.<sup>124</sup> For students today, the decision to post private information online is an easy one to make because the consequences are rarely, if ever, considered. Moreover, the means by which information is disclosed also plays into students’ expectations of privacy and their assumptions of risk in regard to information sharing. For instance, telling a secret to a friend in private is not considered just as good as telling a secret to this same friend in a crowded, noisy bar full of strangers—in both instances, the sharer feels relatively safe their secret will not be disclosed.<sup>125</sup> The Internet functions in much of the same way; students assume, based on either their personal perceptions or the saturation level of information on the Internet, that only their close friends are accessing their private information. However, as discussed below, this viewpoint is incorrect and this ignorance about privacy has long-lasting consequences, particularly for women.

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121. Finder, *supra* note 3.

122. SOLOVE, *supra* note 6, at 197.

123. Schwartz, *supra* note 111 at 1611. The Internet “can broadcast an individual’s secrets in ways that she can neither anticipate nor control.” *Id.*

124. *See* boyd, *supra* note 50.

125. *Id.* at 14–15; Strahilevitz, *supra* note 93, at 6 (“[W]e are relying on obscurity—our own anonymity or removal of the stranger from our ordinary social circle—to protect the confidentiality of the information.”).

College students have a skewed picture of what is private and what is public. One college administrator summed it up by saying, “I think students have the view that Facebook is their space and that the adult world doesn’t know about it.”<sup>126</sup> As stated above, college co-eds feel they can control who *can* access their information and believe they know who *is* accessing this information.<sup>127</sup> Perceptions about how information is “expected to flow . . . in somebody’s social network should also inform that person’s expectations for privacy of information revealed in the network.”<sup>128</sup> Thus, how a student thinks information is accessed directly influences how much privacy she expects. With these mistaken expectations of privacy and control, students are not careful about the kind of information they post online.

Also affecting this misperception is the fact that social networking sites are not conducive to separating layers of friendship. On these sites, there is only one choice—“friend” or not<sup>129</sup>—and friends can access all of the user’s information (unless manually changed), regardless of how close they are in real life.<sup>130</sup> The problem is that students have varying definitions of what a friend is and most end up allowing access to “anyone who they know and do not actively dislike.”<sup>131</sup> Before a recent basketball game between two Southern colleges, a group of students from one school “friended” players of the rival school. After being granted access to the rival players’ Facebook profiles, the students arrived in the stands with large, poster-size photos of the players’ girlfriends in revealing clothing or swimsuits.<sup>132</sup> That the team members accepted their arch-rivals as friends demonstrates that the “threshold to qualify as a friend . . . is

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126. *Id.*

127. Schwartz, *supra* note 111, at 1611.

128. Ralph Gross & Alessandro Acquisti, *Information Revelation and Privacy in Online Social Networks: The Facebook Case*, 2005 ASS’N COMPUTING MACHINERY WORKSHOP PRIVACY ELECTRONIC SOC’Y 71, 72.

129. *Id.* at 73; SOLOVE, *supra* note 6, at 27 (“Few social network sites allow users to distinguish between close friends and mere acquaintances.”).

130. Gross & Acquisti, *supra* note 128, at 73.

131. *Id.*

132. *Funny Stunt Pulled by College of Charleston Fans*, TIGERNET, <http://www.tigernet.com/forums/thread.jspa?threadID=954520> (last updated Mar. 20, 2011).

low.”<sup>133</sup> Users can have thousands of friends, all of them able to access the user’s private, personal information.<sup>134</sup> Clearly, students are trading (or confusing) meaningful interaction for mere access.<sup>135</sup>

Many students view social networking sites as a safe form of self-expression.<sup>136</sup> But this self-expression is not always self-governed—most social networking sites allow for third-party posting.<sup>137</sup> When a third party posts a comment on another user’s wall, the comment is visible to anyone who can view the wall.<sup>138</sup> Comments can be self-removed from the wall, but not until the user notices and deletes the post.<sup>139</sup> Additionally, when third parties create a photo album, they can “tag” other users in the photo, making the photo viewable by the tagged users’ friends until the user notices and un-tags the picture.<sup>140</sup> This compounds the privacy problem by making not only self-posted material viewable by site users, but also material posted by friends that may be objectionable to the user.

Hacking is another problem for social networking sites.<sup>141</sup> The lack of basic security measures “make[s] it easy for third parties . . . to access participants['] data.”<sup>142</sup> Old school “scammers used email . . . . Today, it’s social networking

133. Gross & Acquisti, *supra* note 128, at 73.

134. *Id.*

135. *Id.*

136. Email from Maggie Mohan, undergraduate student at Saint Louis University, to author (Nov. 9, 2010, 01:52 EST) (on file with author) (“[A]mong my friends, your Facebook page is a description of who you are.”).

137. SOLOVE, *supra* note 6, at 27.

138. *Facebook Definition*, TECH TERMS, <http://www.techterms.com/definition/facebook> (last visited Apr. 9, 2011) (“Each Facebook profile has a ‘wall,’ where friends can post comments. Since the wall is viewable by all the user’s friends, wall postings are basically a public conversation.”).

139. *See Controlling How You Share*, FACEBOOK, <http://www.facebook.com/#!/privacy/explanation.php> (last visited Apr. 9, 2011); *see also How Do I Control My Privacy on MySpace?*, MYSPACE, <http://www.myspace.com/help> (last visited Apr. 9, 2011).

140. *See supra* note 140.

141. Claire Suddath, *The Downside of Friends: Facebook’s Hacking Problem*, TIME (May 5, 2009), <http://www.time.com/time/business/article/0,8599,1895740,00.html>.

142. *See* Gross & Acquisti, *supra* note 128, at 73. In 2003, “Livejournal used to receive at least five reports of ID hijacking per day.” *Id.*

[sites.]”<sup>143</sup> The most common type of hack occurs when a stranger illegally accesses an account and solicits all the friends of the user for money.<sup>144</sup> There are countless other hacks, including a scam where a friend posts a link on the Facebook wall that, once clicked, gives the virus maker the user’s password and a list of their friends.<sup>145</sup> A Google search of “Facebook hack” revealed thousands of websites detailing how to hack a Facebook account.<sup>146</sup> Thus, there is not only the risk of private information posted by the user and their friends, but also the chance that false information will be posted, seemingly without the user’s permission.<sup>147</sup>

Most of us have heard the old adage, “the Internet is forever.”<sup>148</sup> Google is now a verb, and a person’s behavior can be Googled by anyone.<sup>149</sup> When Karen Owens is typed into a Google search, the only results pertain to her PowerPoint.<sup>150</sup> A Google search of Susan Gilbert, one of the two MIT students whose information was posted in print rather than online, does not show her scandal until the third page of results.<sup>151</sup> Social networking websites are “designed to encourage people to expose a lot of information with very little thought about the consequences.”<sup>152</sup> The default setting for both MySpace and

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143. See Suddath, *supra* note 141 (quoting Michael Argast, a security analyst at an antivirus company).

144. *Id.*

145. *See id.*

146. Facebook Hack—Google Search, GOOGLE, [http://www.google.com/#sclient=psy&hl=en&q=%22facebook+hack%22&aq=f&aqi=g5&aql=&oq=&pbx=1&bav=on.2,or.r\\_gc.r\\_pw.&fp=87a89c5b1abc39eb](http://www.google.com/#sclient=psy&hl=en&q=%22facebook+hack%22&aq=f&aqi=g5&aql=&oq=&pbx=1&bav=on.2,or.r_gc.r_pw.&fp=87a89c5b1abc39eb) (last visited Apr. 9, 2011).

147. See SOLOVE, *supra* note 6, at 17 (“This data [posted on social networking sites] can often be of dubious reliability; it can be false and defamatory; or it can be true but deeply humiliating or discrediting.”).

148. L. Gordon Crovitz, *Get Used to It—The Internet is Forever*, NATIONAL POST (Nov. 16, 2010, 7:45 AM), <http://fullcomment.nationalpost.com/2010/11/16/l-gordon-crovitz-embargoed-til-tuesday> (discussing the proposal of an agency to regulate Internet content by the Obama administration).

149. SOLOVE, *supra* note 6, at 9, 17, 30.

150. Karen Owens—Google Search, GOOGLE, [http://www.google.com/#sclient=psy&hl=en&q=%22karen+owens%22&aq=f&aqi=g5&aql=&oq=&pbx=1&bav=on.2,or.r\\_gc.r\\_pw.&fp=87a89c5b1abc39eb](http://www.google.com/#sclient=psy&hl=en&q=%22karen+owens%22&aq=f&aqi=g5&aql=&oq=&pbx=1&bav=on.2,or.r_gc.r_pw.&fp=87a89c5b1abc39eb) (last visited Apr. 9, 2011).

151. *Id.* (search “Susan Gilbert”).

152. SOLOVE, *supra* note 6, at 200.

Facebook allows anyone online to view the user's profile.<sup>153</sup> "[M]ost sites encourage the publication of personal and identifiable personal photos."<sup>154</sup> Facebook requires email verification upon registration, ensuring the use of real names.<sup>155</sup> The culmination of these settings results in a public profile containing personal, private, sometimes false information.

### C. The Double Standard

Another negative consequence women face when posting information online is a double standard. On a basic level, a Facebook profile is, as one student described it, "a description of who you are."<sup>156</sup> In college, "who you are" is often defined by your social life.<sup>157</sup> Thus, if a co-ed's social life consists of drunkenly hooking up, this is how she will portray herself to the world via the Internet. This can have particularly harmful consequences for women because, even with the liberalized sexual context, a double standard still exists.<sup>158</sup> In college, "[w]omen's behavior, in particular, [is] under scrutiny if they [are] too promiscuous. The pressure of social norms leads women to believe they are expected to hookup.<sup>159</sup> However, women are negatively judged and labeled for this behavior.<sup>160</sup>

While it's generally considered OK for today's college women to want sex, it's clearly not OK for them to want it too much. That would make them skanks, sluts, couches or ho's, while male libertines are called players. When a woman makes the morning trek back to the dorm after the previous night's hookup, it's dubbed the "walk of shame." For men, it's the "stride of pride."<sup>161</sup>

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153. *Id.* at 200–01.

154. Gross & Acquisti, *supra* note 128, at 72.

155. *Id.*

156. *See* Mohan, *supra* note 137.

157. *Id.*

158. *See* PERIL, *supra* note 115, at 352 ("[A] girl's reputation is . . . a fragile thing.").

159. *Id.* at 37.

160. *Id.* at 145.

161. Lori Rackl & Andrew Herrmann, *Women Trekking Back to Their Dorm in the Morning After a Hookup Take the 'Walk of Shame.' For Guys, It's the*

Nevertheless, likely because of the pressure to fulfill the hookup script, women are seemingly willing to disregard the scrutiny in exchange for fitting in.<sup>162</sup>

The Internet memorializes this double standard by combining it with long-term preservation of information, allowing behavior to be perpetually viewed and judged.<sup>163</sup> As stated above, reputation can be based on false or third-party posting that was not intended to be public.<sup>164</sup> Moreover, “[h]uman judgment is imperfect; we make judgments based on fragments of information taken out of context.”<sup>165</sup> A reputation can thus be “earned” by one fragment posted on the Internet for indefinite public scrutiny.<sup>166</sup> “While a girl can almost instantly acquire a ‘slut’ reputation, . . . it takes months, if not years, for the reputation to evaporate, if it does at all. With the Internet, however, escaping a bad reputation can be impossible.”<sup>167</sup> Further, the consequence of being a woman with a bad reputation is much harsher given the anonymity of the Internet.<sup>168</sup> At first, feminists thought the Internet had the possibility to “erase sexism” because, theoretically, the user would “be judged on the quality of [their] ideas and not [their] sex” since the identity of the online “speaker” would be unknown.<sup>169</sup> However, some scholars contend that with pornography, sexist blogging, and sexualized avatars in online

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*Stride of Pride.’ College Women Today...*, CHICAGO SUN-TIMES, Mar. 21, 2005, <http://www.suntimes.com> (membership needed).

162. See BOGLE, *supra* note 34, at 145 (arguing that women are more sexual in college, even though they are constantly observed, and contrarily, less sexual after college, when their sexual behavior is not observed).

163. SOLOVE, *supra* note 6, at 33 (“The [i]nternet . . . makes gossip a permanent reputational stain, one that never fades. It is available around the world, and with Google it can be readily found in less than a second.”).

164. *See supra* Part IV.B.

165. *Id.* at 67.

166. *Id.* at 33.

167. *Id.* at 74 (quoting LEORA TANENBAUM, SLUT! GROWING UP FEMALE WITH A BAD REPUTATION (2000)).

168. Ann Bartow, *Internet Defamation As Profit Center: The Monetization of Online Harassment*, 32 HARV. J.L. & GENDER 383, 394-95 (2009) (“[F]emale identifiers were ‘far more likely’ to receive malicious private messages.”).

169. *Id.* at 394.



gaming, sexism may be worse online.<sup>170</sup> Research suggests that “women who violate prescriptive gender roles [online] are disproportionately targeted for harassment.”<sup>171</sup> Additionally, “[a]ggressive and personally abusive discourse found in various spheres of the Internet is disproportionately directed at women and girls.”<sup>172</sup> It appears that a double standard not only exists offline, but it also thrives, perhaps to a greater degree, online as well.

In sum, reputation matters and has long-lasting effects. Women are incurring permanent reputational damage because of the private information they, or others, post online.

## V. POTENTIAL SOLUTIONS

There are three possible solutions to this problem of long-term reputational harm resulting from social networking website use. First, sites should add regulatory procedures that allow users to more effectively control their own privacy. Second, the law should intervene and provide protection, whether in the form of restriction or legal redress for privacy invasion. Third, females should self-regulate what they post on the Internet and who can access this information.

Ultimately, although the law and Internet companies can and should provide privacy protection, it is up to users to self-regulate. Not all information on the Internet can be controlled, as evidenced by Karen Owens’s PowerPoint going viral without her permission.<sup>173</sup> However, the initial decision to send or post the information is within the user’s control. For social networking sites, users can control what they post online and who can view the content they post.<sup>174</sup> As social norms are dictated by the perception of what is normal, women should control how they present themselves, thereby controlling the norms.

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170. *Id.*

171. *Id.* at 396.

172. *Id.* at 389.

173. *See supra* Part II.

174. *See supra* note 140 (describing Facebook and MySpace privacy settings).

## A. Website Privacy Settings

In regard to privacy settings, Facebook is simultaneously one of the best and worst social networking sites. For every action taken on Facebook (accepting/declining a friend, posting a comment or picture, joining/leaving a group), there is an added layer of visibility and exposure because this action is automatically posted on other users' homepage as part of a "News Feed."<sup>175</sup> This News Feed aggravates the problem of knowing who is accessing a user's information because, even if a user typically would not have checked a given person's page, seeing something on the News Feed may pique their curiosity and prompt them to further investigate the person's information. Although careful users can restrict interaction to just friends or people in the same general network, these "privacy settings may create a false sense of security."<sup>176</sup> Even if a user restricts who can access their information, they now have no way to predict who is accessing their information.

On the other hand, Facebook has extensive privacy features, allowing users to choose what they wish to include in the feed.<sup>177</sup> These features come with several risks. First, the default profile setting on MySpace and Facebook is public, allowing anyone browsing the site to see users' information.<sup>178</sup> Additionally, almost ninety percent of Facebook users never read the privacy policy and sixty percent said "they weren't very concerned about privacy."<sup>179</sup> Facebook also requires email verification, theoretically guaranteeing users' online names correspond to their email and thereby their real name.<sup>180</sup> Research suggests the closer a user's real name is to his or her online name, the more refined the privacy settings should be.<sup>181</sup> Facebook does allow for a maximum privacy setting where only the person's name and

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175. boyd, *supra* note 50, at 16.

176. *See* Suddath, *supra* note 141.

177. *See supra* note 140 (describing Facebook privacy settings).

178. SOLOVE, *supra* note 6, at 200-01.

179. *Id.* at 197.

180. Gross & Acquisti, *supra* note 128, at 72.

181. *Id.* ("[V]isibility tuning controls become even more refined on sites which make no pretense of pseudonymity, like the Facebook.").

basic biographical information is viewable by friends,<sup>182</sup> but users must manually deselect each of the content fields individually.<sup>183</sup> Facebook also allows users to be unsearchable, meaning that if the name is searched on Facebook, no profile will come up.<sup>184</sup> And users can create custom friend lists with individualized privacy settings.<sup>185</sup> Thus, although Facebook potentially presents the highest risk of exposure because the majority of users utilize their real name and real information, it also allows for the greatest amount of control over information, provided the user selects these settings.

MySpace, on the other hand, does not allow someone to be unsearchable.<sup>186</sup> They also only allow for four layers of access to a user's profile—everyone, everyone over eighteen years of age, everyone under eighteen, or friends only.<sup>187</sup> Additionally, while users can choose whether to display name, picture, and birthday, MySpace does not allow other content to be regulated.<sup>188</sup> Thus, a post by a friend will remain visible to the chosen network regardless of whether it is intended to remain private.

Even with the current privacy settings, social networking sites need to allow for greater control over personal privacy, particularly when the user's online name is her real name. Sites should have no default privacy setting but should instead force users to manually select their settings and consider their level of exposure. Alternatively, social networking sites could set the default for privacy at the strictest level and force users to manually change the settings as they desire. The problem with relying on website regulation is that even if they allow for maximum control of information, there is still a possibility that, as in Karen Owens's situation, a friend will disseminate private information without the user's permission. In this instance, the

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182. For example, education or work history.

183. *See supra* note 140 (explaining how users can manipulate how others view their Facebook content).

184. *Id.*

185. Driscoll, *supra* note 99.

186. *How Do I Control My Privacy on MySpace?*, MYSPACE, <http://www.myspace.com/help> (last visited Apr. 9, 2011).

187. *Id.*

188. *Id.*

law or self-regulation should help.

### B. The Need to Revive Privacy Law

Currently, there are two main legal approaches taken by privacy law scholars: libertarian and authoritarian.<sup>189</sup> The libertarian viewpoint advocates a “hands off” approach.<sup>190</sup> Scholars adhering to this approach argue that the benefit of the Internet is the free flow of information, and therefore this freedom to disseminate information should be protected.<sup>191</sup> These scholars believe access to information is more important than personal privacy and thus, if privacy rights are violated, there should be no legal redress.<sup>192</sup>

The authoritarian approach, likely motivated by the increase in cyber-bullying, child pornography, and child predators, is “designed to employ strict controls over the spread of information.”<sup>193</sup> These scholars place privacy and safety concerns above the free flow of information. Currently, several states ban or have attempted to ban anonymous online speech.<sup>194</sup> Under these laws, people posting a comment or a picture must reveal varying levels of personal information to the site, usually a working email.<sup>195</sup> Although this information may not be publicized, the website retains the information for legal purposes. Similarly, states are attempting to outlaw online impersonation that occurs when a person posts a comment online using another

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189. SOLOVE, *supra* note 6, at 110.

190. *Id.*

191. *Id.* at 110–112.

192. *Id.* at 112.

193. *Id.*; *see also* Bartow, *supra* note 168, at 414 (“Calls for government control over Internet content have typically been directed at limiting the content or contacts available to children.”).

194. SOLOVE, *supra* note 6, at 113; H.B. 775, 2008 Reg. Sess. (Ky. 2008), <http://www.lrc.ky.gov/record/08rs/HB775.htm> (proposing that Internet providers shall require registration of all users who post anonymously); S.R. 1327, 212th Leg. (N.J. 2006), [http://www.njleg.state.nj.us/2006/bills/a1500/1327\\_i1.htm](http://www.njleg.state.nj.us/2006/bills/a1500/1327_i1.htm) (mandating that internet service providers maintain and enforce a policy requiring information of person who posts messages on forums). An example of anonymous speech would be posting defamatory remarks on a public forum under a false name or with no name at all.

195. *See supra* note 197.

person's real name.<sup>196</sup> Presumably, both laws function to give people affected by the online speech some form of recourse should the speech give rise to a legal claim.

Legislators subscribing to the authoritarian approach continue to pass legislation restricting online behavior. The Video Voyeurism Prevention Act, passed in 2003, forbids video voyeurism,<sup>197</sup> regardless of whether the video itself is taken in private or in public.<sup>198</sup> Currently, there is proposed legislation to ban access to social networking sites in public schools and public libraries.<sup>199</sup> However, these restrictions are limited. The Communications Decency Act of 1996 (CDA), enacted to restrict pornographic content on the Internet, contains an exception immunizing providers and users who publish information provided by others.<sup>200</sup> To qualify for immunity under § 230, courts require that: (a) the defendant be a “provider or user” of an “interactive computer service;” (b) the cause of action treat the defendant as the publisher or speaker of the harmful information; and (c) the information be “provided by another information content provider”—i.e., the defendant did not provide the content.<sup>201</sup>

Because the majority of legislation restricting Internet content is aimed at protecting minors or financial fraud victims, courts may be less sympathetic to claims brought by adults, as

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196. SOLOVE, *supra* note 6, at 113; *see, e.g.*, CAL. PENAL CODE § 528.5 (West 2010) (imposing criminal and civil penalties for the impersonation of another online); N.Y. PENAL LAW §190.25 (McKinney 2008) (criminalizing the impersonation of another on the Internet).

197. This term refers to someone who videotapes another without their permission—usually in a sexual context. MERRIAM-WEBSTER DICTIONARY, <http://www.merriam-webster.com/dictionary/voyeur> (last visited Apr. 9, 2011) (defining voyeur as “a prying observer who is usually seeking the sordid or the scandalous”).

198. 18 U.S.C. § 1801 (2006).

199. *See* SOLOVE, *supra* note 6, at 113.

200. 47 U.S.C. § 230 (2006) (“No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.”).

201. *Id.*; *Zeran v. Am. Online, Inc.* 129 F.3d 327, 330 (4th Cir. 1997) (denying liability for defamation based on the plain language of § 230 and because of congressional intent to maintain a regulation-free Internet).

adults presumably can protect their personal privacy.<sup>202</sup> For someone like Karen Owens, legal recourse against the websites that published her PowerPoint is unlikely because they are immune under § 230 of the CDA. Additionally, Owens may be found contributorily negligent because she sent it to her friends, thereby self-publishing the information to third parties. In a recent case in New Jersey, a federal district court held that even the person who forwards a harmful email is immune under the CDA.<sup>203</sup> Citing several other cases regarding Internet privacy, the court concluded that immunity would be stripped only if the person forwarding the email added original content.<sup>204</sup> Thus, it appears that even Owens's so-called "friends" who sent her email to websites would also be immune under § 230 of the CDA.

Both the libertarian and authoritarian approach are limited in that they leave no legal redress for adults whose personal information is posted on the Internet by a third party. Tort law can and should function to protect "those people who engaged in socially desirable sharing of personal information, but who had the misfortune to see those personal details disseminated to the general public without their consent."<sup>205</sup> One supplement for these individuals is defamation. Defamation requires "(a) a false and defamatory statement concerning another; (b) an unprivileged publication to a third party; (c) fault amounting at least to negligence on the part of the publisher; and (d) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication."<sup>206</sup> The main problem with defamation law is that it protects a person only when content is proven false.<sup>207</sup> But what about people like Karen Owens or others who self-post information on social networking sites that, although true, is just as harmful to

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202. See generally SOLOVE, *supra* note 6, at 105–124 (discussing legislative trends in privacy law); see also Montes, *supra* note 98, at 509 ("[O]nline privacy concerns surrounding the collection and dispersal of children's personal information are particularly important to both Congress and the public.").

203. *Mitan v. A. Neumann & Assoc., LLC*, Civ. No. 08-6154, 2010 WL 4782771, at \*4 (D.N.J. Nov. 17, 2010).

204. *Id.* at \*5.

205. Strahilevitz, *supra* note 93, at 7.

206. RESTATEMENT (SECOND) OF TORTS § 558 (1977).

207. *Id.*

reputation?

The best recourse for these types of invasions is the privacy torts.<sup>208</sup> Of the four torts, publicity given to private life is the most viable option in the Internet age.<sup>209</sup>

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208. The four torts concerning privacy (excluding defamation) are: (a) unreasonable intrusion upon the seclusion of another; (b) appropriation of another's name or likeness; (c) unreasonable publicity given to another's private life; and (d) publicity that unreasonably places another in a false light before the public. *Id.* at § 652A. For a discussion of which states apply these torts in an Internet context, see Ann K. Wooster, Annotation, *Invasion of Privacy by Internet or Website Postings*, 54 A.L.R. 6TH 99 (2010).

209. While valuable in privacy settings, the other three torts likely are not actionable because of the inapplicability of their elements and because they likely would be barred by § 230 immunity. Commercial misappropriation likely is not applicable to individuals harmed by Internet postings, as it applies only to defendants using a person's name or symbol of identity to obtain a commercial advantage. RESTATEMENT (SECOND) OF TORTS § 652C (1977). Additionally, if available within the state, a ban on anonymous speech or impersonation likely would cover Internet use of another's name or identity. Moreover, § 230 immunity applies to websites that do not directly provide the content. 47 U.S.C. § 230 (2006). This tort could be helpful however, against people who use private information to sell ads or in some other way boost use of their own website to make a profit. For example, Facebook recently started allowing advertisers to re-post if a user "likes" their product or service, or if they "check in" to their business's location. See Morrison & Foerster, LLC, *Like It or Not?: Facebook Allows Advertisers to Republish User Posts as Ads*, 2 SOCIALLY AWARE: SOC. MEDIA L. UPDATE 6, [http://www.jdsupra.com/post/documentViewer.aspx?fid=2802b4c7-dcd5-452f-8c0010592dc1a60a&utm\\_source=twitterfeed&utm\\_medium=twitter&utm\\_campaign=bizt](http://www.jdsupra.com/post/documentViewer.aspx?fid=2802b4c7-dcd5-452f-8c0010592dc1a60a&utm_source=twitterfeed&utm_medium=twitter&utm_campaign=bizt) (last visited Apr. 9, 2011); *Facebook Help Center*, FACEBOOK, <http://www.facebook.com/#!/help/?search=What%20is%20the%20Like%20button%3F> (last visited Apr. 9, 2011) (describing how "liking" something is to give positive feedback about something on the user's page and how users can "check in" to places, allowing other users to know their location). Thus, a company who is liked or has someone check in to their locale can post that person's activity on all their friends' homepage regardless of their consent. In Karen Owens's situation, if the website uses access to Owens's private information to sell ads, commercial misappropriation may be available if § 230 immunity could be circumvented.

Publicly placing the plaintiff in a false light is also not cognizable for individuals who do not have a claim under defamation because like defamation, the information must be false in order to be actionable. RESTATEMENT (SECOND) OF TORTS § 652E (1977). Intrusion upon seclusion could be used if the means by which the private information was obtained involved an unreasonable invasion into the privacy or solitude of another. *Id.* at § 652B. If, for instance, someone hacked into Karen Owens's computer and uploaded the PowerPoint to the Internet, she would likely have recourse under intrusion upon seclusion (as well as trespass). See, e.g., *Ashland Mgmt. Inc. v. Altair Inv. NA, LLC*, 869 N.Y.S.2d 465, 469 (N.Y. 2008) (denying summary judgment for defendants who hacked

Individuals like Karen Owens should utilize the seldom-used tort of publication of private, embarrassing facts. Additionally, courts, often hostile to this tort, should recognize the changing culture of privacy law and allow greater flexibility in defining the parameters of liability.<sup>210</sup> Public disclosure of private facts (also called “publicity given to private life”) is most clearly defined by the Restatement (Second) of Torts:

One who gives publicity to a matter concerning the private life of another is subject to liability to the other for invasion of his privacy, if the matter publicized is of a kind that (a) would be highly offensive to a reasonable person, and (b) is not of legitimate concern to the public.<sup>211</sup>

The greatest challenge to advancing this tort is in defining the elements. What is considered publication today is different from what courts traditionally considered publication. Given the varying levels of access to information on the Internet, what counts as giving “publicity to a matter concerning private life?”<sup>212</sup> Publicity, as defined by the Restatement, means “the matter is made public, by communicating it to the public at large, or to so many persons that the matter must be regarded as substantially certain to become one of public knowledge.”<sup>213</sup>

At least one court has held that if publication of one’s story includes private details of another, the party has no recourse.<sup>214</sup> In *Bonome v. Kaysen*, a Massachusetts court held that author Susanna Kaysen was allowed to publish intimate details of her sex life with Bonome because she was “telling her own personal story—which inextricably involve[d] Bonome in an intimate

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into plaintiff’s computer and included materials in promotional materials). If the private content obtained was a video, this tort could be used in conjunction with the Video Voyeurism Prevention Act. 18 U.S.C. § 1801 (2006). However, for individuals who post information themselves or choose to send the information to friends, there is no legal remedy under intrusion upon seclusion.

210. See Chander, *supra* note 113, at 125 (“[J]udges must reinvigorate the paradigmatic privacy tort—the tort for public disclosure of embarrassing private fact.”).

211. RESTATEMENT (SECOND) OF TORTS § 652D (1977).

212. *Id.*

213. *Id.* cmt. a.

214. *Bonome v. Kaysen*, No. 032767, 2004 WL 1194731, at \*6 (Mass. Mar. 3, 2004).



way.”<sup>215</sup> This decision demonstrates an outdated theory that ignores the current reality of privacy on the Internet. Under this theory, neither Karen Owens nor the men she wrote about would have legal redress even though each of their expectations of privacy likely was violated.<sup>216</sup> A more modern and appropriate theory to deal with a case like Karen Owens’s is “[l]imited privacy,” which is “the idea that when an individual reveals private information about herself to one or more persons, she may retain a reasonable expectation that the recipients of the information will not disseminate it further.”<sup>217</sup>

Privacy for the purposes of the intrusion tort, is not a binary, all-or-nothing characteristic. There are degrees and nuances to societal recognition of our expectations of privacy: the fact that the privacy one expects in a given setting is not complete or absolute does not render the expectation unreasonable as a matter of law.<sup>218</sup>

Critics of this theory claim that “information ceases to be private the moment it is shared with a second person.”<sup>219</sup> However, courts, including the Supreme Court, consistently hold that privacy is not so narrowly defined. As early as 1953, in a California Supreme Court case, Justice Carter argued that merely because something is done outside the home does not make it public.<sup>220</sup> The United States Supreme Court, in 1989, looked to the common law’s “literal understandings of privacy,” and Webster’s dictionary to define privacy as information “intended for or restricted to the use of a particular person or

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215. *Id.* (emphasis omitted).

216. Owens’s privacy was violated by the friends who emailed her PowerPoint and by the websites that decided to publish it. The men’s privacy was violated by both Owens and the websites that published the information.

217. Strahilevitz, *supra* note 93, at 17.

218. *Id.* (quoting *Sanders v. Am. Broad. Co.*, 20 Cal. 4th 907, 915–16 (1999) (internal citations omitted)).

219. *Id.* at 4.

220. *Gill v. Hearst Pub. Co.*, 253 P.2d 441, 446 (1953) (Carter, J., concurring) (criticizing the majority for holding “that anything any one does outside of his home is with consent to the publication thereof, because, under those circumstances he waives his right of privacy even though there is no news value in the event”).

group or class of persons: not freely available to the public.”<sup>221</sup> This view from the Supreme Court suggests that information is not public the moment it is shared with another; rather, it is private until intended for publication.

In addition, keeping every action private under the more limited definition of privacy, where any kind of third-party sharing counts as publication, is impossible. Even sexual acts, which are considered the most private,<sup>222</sup> “necessarily take place in the presence of at least one other person.”<sup>223</sup> Although some scholars believe “there is no such thing as inherently private information”<sup>224</sup>— even the Restatement concedes that some acts are by their very nature private.<sup>225</sup>

A more modern and intuitive approach to this tort is an objective analysis of whether a person in similar circumstances would have a reasonable expectation of privacy. In fact, the Restatement attempts to include this factor by requiring the information be “highly offensive to a reasonable person” and not newsworthy.<sup>226</sup> However, as seen in cases like *Bonome*, too often courts disregard these factors or apply them too rigidly.<sup>227</sup>

Another factor that should be considered is whether the information had “a high risk of widespread dissemination *regardless* of what any particular individual did with the information.”<sup>228</sup> Here, courts should analyze the context in which the exchange took place to determine the expectations of the parties. “Deciding whether a disclosure was consensual thus plays a pivotal role in determinations of whether particular facts are private.”<sup>229</sup> Additionally, when analyzing what is

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221. U.S. Dep’t of Justice v. Reporters Comm. for Freedom of the Press, 489 U.S. 749, 763–64 (1989).

222. RESTATEMENT (SECOND) OF TORTS § 652D cmt. b (1977) (“Sexual relations, for example, are normally entirely private matters . . .”).

223. Strahilevitz, *supra* note 93, at 5.

224. *Id.* at 9.

225. RESTATEMENT (SECOND) OF TORTS § 652D cmt. h (1977) (“There may be some intimate details of her life, such as sexual relations, which even the actress is entitled to keep to herself.”).

226. *Id.* § 652D.

227. *Bonome*, 2004 WL 1194731, at \*6.

228. Strahilevitz, *supra* note 93, at 10 (emphasis added).

229. *Id.* at 9.

newsworthy, courts should emphasize modern standards, as “[b]logworthiness is not the same as newsworthiness.”<sup>230</sup> Courts are starting to appreciate the non-newsworthiness of sexual material, but this appreciation should extend to all private material.<sup>231</sup> Regardless of what factors a court considers, an in-depth, objective analysis is necessary to adequately protect those who have a reasonable expectation of privacy.

Critics of modernizing privacy tort law claim that such a liberal interpretation is impractical, as the law is constrained by precedent.<sup>232</sup> This argument is not persuasive because privacy law requires a fact-specific inquiry that constantly changes as technologies evolve.<sup>233</sup> Some scholars argue that precedent should not apply as strictly in cases of new technology if the cases involve novel fact patterns.<sup>234</sup> Others argue that questions of what is private or public should not be questions of law at all, but rather, factual determinations for the jury.<sup>235</sup> All these solutions allow tort law to remain applicable to modern situations, particularly since one of the prongs for publicity given to private life is that the information “be highly offensive to the reasonable person.”<sup>236</sup> This suggests intent to measure what is public and private by a “reasonable person” standard, not by rigid, unchanging formulas.<sup>237</sup> Publicity given to public life, as it was intended to apply, clearly covers modern invasions of privacy that occur on the Internet; it is now merely a matter of waiting for courts to recognize this intent.

Because of possible limitations on the legal system,<sup>238</sup> the law

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230. Chander, *supra* note 113, at 131.

231. *Id.* at 130. (“[C]ourts will not always sustain a claim of newsworthiness, especially when it comes to sexual images.”).

232. Strahilevitz, *supra* note 93, at 51.

233. *Id.* at 52. (“[A]dherence to precedent may be undesirable in the realm of privacy law, given the rapidity with which new technologies and new norms can cause expectations of privacy to change.”).

234. *Cf. id.*

235. *Id.* at 50–52.

236. RESTATEMENT (SECOND) OF TORTS § 652D (1977).

237. *Id.*; Chander, *supra* note 113, at 136 (“The disclosure tort itself covers only disclosures that are highly offensive to a reasonable person, and thus allows for changes in social standards.”).

238. An additional risk to utilizing the law is that it may exacerbate the

should be accessible to those who want to avail themselves of the court system, but the ideal solution is self-regulation.

### C. Self-Regulation

That said, a claim for publicity given to public life would not extend to the majority of information posted on social networking sites because, with the exception of third-party posting and posts that result from hacking, this private material is typically self-published.<sup>239</sup> Karen Owens likely can avail herself of the court system, even if a limited privacy viewpoint is taken, because, although she sent the email to her friends, she did not expect the information would be sent forward, and she certainly did not expect the list to go viral.<sup>240</sup> A person who elects to post private information online that is subsequently used in a harmful way by someone to whom she gave access would have no redress, unless it is shown that the use was publication and the original posting was private.<sup>241</sup>

Thus, ultimately, privacy is a personal concern. Even if there are solutions for third-party postings or dissemination, simply having the private material accessible to friends is dangerous

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problem. In theory, the purpose of bringing suit against someone who violates a person's privacy is either to enjoin the defendant from future invasion or to obtain monetary relief for the reputational harm suffered. RESTATEMENT (SECOND) OF *Torts* § 652H (1977). However, even if the lawsuit is successful, the victim still possibly loses in a sense because the publicity of a lawsuit may bring about more unwanted attention. See SOLOVE, *supra* note 6, at 121 ("Don't sue for defamation because even if you win, you'll lose.").

239. SOLOVE, *supra* note 6, at 27.

240. See *supra* note 32 (Karen "feels badly that she unintentionally violated the privacy of her partners"); SOLOVE, *supra* note 6, at 112. "Let me be as clear as possible about this: The letter you are all clamoring over, parsing, deriding and fantasizing about was a personal note. It is a private letter that someone among my friends thoughtlessly, yet I am sure without any malice, forwarded to a couple of people who are strangers to me. And they, in turn, passed it on to more strangers, and so on. Now, to my deep embarrassment, and acute sense of invaded privacy, all of you-thousands of strangers-are dissecting my personal letter. I would never have written for public consumption in such a sloppy, candid, opinionated flip tone. This was never intended for your eyes." *Id.* (describing a response on a message board from female who similarly had private email sent that eventually went viral).

241. RESTATEMENT (SECOND) OF TORTS § 652D (1977).

because friends can include casual acquaintances.<sup>242</sup> These acquaintances are particularly troublesome because not much is known about their personal privacy philosophy.<sup>243</sup> Additionally, an acquaintance could one day become a colleague whose knowledge of private information could be harmful to one's professional reputation. Thus, the best way to reduce reputational harm that comes from posting sensitive material is to stop posting this material. Although college students, particularly females, are taking some steps toward self-protection, until this generation is better educated about the privacy implications and the realities of the college environment, the naiveté will continue.

College students are taking steps to prevent the spread of information about themselves on the Internet. For starters, some are not posting the harmful content in the first place.<sup>244</sup> Others are continuing to post private content but are changing their online name so that strangers and employers cannot find them.<sup>245</sup> One fourth year medical student, who was interviewing for residency, had this to say:

There are definitely things on our [Facebook page] that we wouldn't necessarily want our future employers to see or judge us on (particularly [pictures], and personal info). However, we understand how vital [Facebook] is to our social lives, as we are extremely busy individuals and are unlikely to keep up with family and friends otherwise. So the easiest compromise was to change our names in hopes that our future employers won't find us. Our friends know who we are and if we want to friend new people in the process, we usually just give them a heads up. Most of us have changed our names completely, while others have just added a middle name or changed the first or last name.<sup>246</sup>

Another way students are navigating the privacy minefield is

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242. Gross & Acquisti, *supra* note 128, at 73.

243. *Id.*

244. See Mohan, *supra* note 137 (“[I] also just don’t post that much inappropriate stuff anymore . . .”).

245. Email from Cathy Ho, Med. student at S. Ala. Univ., to author (Nov. 8, 2010, 03:39 EST) (on file with author).

246. *Id.*

by using words without specific meaning in order to avoid identification and judgment of their behavior. The word hookup is inherently vague, allowing for many definitions ranging from kissing to sex.<sup>247</sup> Students do not define what a hookup is when discussing their conduct with friends, so as to play up the behavior when socially acceptable, or to play down the behavior if it is advantageous.<sup>248</sup> Further, any posts online about hooking up can be interpreted differently by those who view the post.<sup>249</sup>

However, this vagueness can have negative consequences. Because of the pressure to conform to social norms, confusion over other students' sexual behavior can result in internal confusion, where a student might not know how to tailor their own sexual habits.<sup>250</sup> So, although vagueness can help in terms of self-protection, in another way, it is furthering ignorance about the hookup culture. "Silence perpetuates stigmas, and stigmas prevent understanding."<sup>251</sup>

Although not the focus of this Note, another method to deter posting of private information would be to dispel the myths about the hookup culture itself. One way would be by employing the "Most of Us" campaign, which attempts to "reveal pluralistic ignorance" regarding perceived and actual social norms.<sup>252</sup> Although primarily applied to driving statistics and teen drinking behavior, this approach could be successful if statistics about how often peers are hooking up were posted on college campuses.<sup>253</sup> Even without abolishing the college hookup culture, any protectionist methods are helpful in avoiding long-term

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247. BOGLE, *supra* note 34, at 87 ("The ambiguous nature of the term is undoubtedly part of its appeal. Individuals are able to share with others that they did something sexual without necessarily specifying what happened.").

248. INST. FOR AM. VALUES, *supra* note 80, at 5.

249. *Id.* ("[T]he ambiguity of the phrase 'hooking up' is part of the reason for its popularity.").

250. BOGLE, *supra* note 34, at 93, 161 ("The fact that there are no clear standards has led to confusion for students trying to decide when sex is appropriate.").

251. STEPP, *supra* note 1, at xvi.

252. See Lambert, *supra* note 103, at 132 (explaining that the "campaign highlight[s] students' beliefs about and comfort levels with sexual behaviors while hooking up [to] help to reduce pluralistic ignorance about hooking up").

253. *Featured Projects*, MOST OF US, <http://www.mostofus.org/projects/featured-projects/> (last visited Apr. 9, 2011).

reputational harm.

An additional technique to aid in avoiding reputational harm is utilization of the social networking privacy settings. As discussed above, Facebook allows for nuanced manipulation of privacy settings, but this depends upon utilization of these settings.<sup>254</sup> These sites allow for extremely privatized settings including individualized privacy settings for each friend.<sup>255</sup> If students, especially women, would apply these settings, countless humiliating and enduring harms could be avoided.

Regardless of how women choose to protect their personal information, some form of action needs to be taken. Young women need first to learn the importance of privacy—the lasting ramifications of posting private information online. Second, they need to learn ways in which they can protect this information, such as those listed above. Without awareness of the consequences, women will not see the need to take action, and the online culture of inappropriate posting and subsequent judgment will continue to grow.

## VI. CONCLUSION

Women need to protect their private information. The solution is that simple. Students of both genders need to educate themselves about the realities and myths of the college hookup culture. If students feel compelled to participate in social norms, understanding what *is* socially normative can help curtail the appearance that constant hooking up is the norm. Once students understand that hooking up is not the norm, they can choose not to participate in the hookup culture at all. If co-eds understand that posting their sexual behavior online leads to misperception, they can decide not to perpetuate this cycle by keeping their behavior private.

Regardless of whether women are participating in the college hookup culture, students should be aware of who *can* access their private information online and who *is* accessing this information. Whether students protect their privacy by simply not posting the

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254. *See infra* Part V.A.

255. Driscoll, *supra* note 99.

private material, by changing their Facebook name, or by utilizing the privacy settings, any protective steps help curb the long-term reputational damage. If current Internet behavior does not change, reputations will continue to be harmed, women will continue to be marginalized online and offline, and relationships will continue to be lost or damaged.

Websites should help protect reputations by eliminating default privacy settings, thereby mandating user control over privacy or by making the strictest privacy setting the default position. Although likely immune under § 230, websites have some responsibility to maintain a safe online environment. Once students are turned on to the privacy settings, they should be utilized to the fullest extent to protect their privacy.

If this self-help fails, the law should supplement by allowing for successful claims of publication of private, embarrassing facts. This requires a more flexible, modern approach to what is private and what is publication. Juries should be utilized to determine what is private versus what is public, what is highly offensive to a reasonable person, and what is considered newsworthy. This ensures that a) a reasonable person standard is being applied and b) the standard of what is reasonable can change as society develops. Numerous studies continue to be done on how information spreads through social media sites.<sup>256</sup> Courts should utilize these results to determine whether litigants are entitled to a reasonable expectation of privacy.

Reputation matters. It helps people gain and keep relationships, but it can also ruin credibility. Social networks are great for unfettered access to information and friends, but they should not be treated like a private journal hidden under the bed. These websites are viewed by countless people, known and unknown. Women are losing their reputations online and in the Internet age, they need to protect their privacy.

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256. Strahilevitz, *supra* note 93, at 4 (“The literature on social networks allows us to identify useful generalizations about the ways in which information flows through social networks. Because information spreads in rather predictable ways, and patterns emerge in particular kinds of networks, courts can use these regularities to analyze the ex ante likelihood that previously private information will become widely known.”).