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# Digital Footprints

## Social networks and the right to delete

### Introduction

*Good name in man and woman...is the immediate jewel of their souls. But he that filches from me my good name robs me of that which not enriches him, and makes me poor indeed.<sup>1</sup>*

William Shakespeare

Social networking sites are the websites that we use to let others know exactly who we are or to establish a profile to find others with similar interests. Often used to connect with old friends or to find new ones, social networking sites are some of the most popular sites on the internet.

But the internet operates in a multi-jurisdictional environment in which no one jurisdiction is dominant and there is little coordination, thus users of social networking sites (SNS)<sup>2</sup> generally receive little legal protection. Moreover, the potential impact and dangers of these sites are not yet fully understood or appreciated and it is probable that the most harmful consequences have not yet been witnessed. These issues are of growing concern due to the rampant use of social media, across countries, cultures and continents – more than 800 million people use Facebook alone. All this contributes to the extensive and growing problems relating to fundamental considerations of defamation, privacy and reputation, all of which I explore in this paper. Furthermore, the impact of these issues is not limited to a single area of life or society and the extraordinary impact of social networking technology ‘on the political, professional, and personal lives leaves us gasping in attempts to keep abreast’.<sup>3</sup> Individual actions must be taken to avoid the lasting, and potentially deleterious consequences presented by SNS.

Whilst, in some countries, there have been important improvements to media law to reflect changing social landscapes, few have been in response to societal changes of the magnitude posed by social networking. As German and Dreshel

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<sup>1</sup> As quoted in David Rolph, *Reputation, Celebrity and Defamation Law* (Cornwall: Ashgate, 2008), 7.

<sup>2</sup> Social networking sites are commonly referred to as SNSs or SN sites. Here they will be referred to as SNS.

<sup>3</sup> Kathleen German and Bruce Drushel, ‘Emerging Media: A View Downstream’, in *The Ethics of Emerging Media* (New York: Continuum, 2011), 8.

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note, we are witnessing the consequences when ‘technologies collide with cultures. The former frequently is seen as always pushing forward, often not progressing toward a known end as much as being propelled from its beginnings.’<sup>4</sup> We are witnessing the ‘pushiness’ of technology, as social media has come to alter the very nature of human interaction by ‘multiplying audiences and altering the nature of relationships’.<sup>5</sup>

As society has changed, so too has the ability to damage an individual’s reputation. The most crucial aspect of this is that the damage can last forever and this is my main concern. SNS have the effect of permanently storing every comment – true, false and anything in between – ever made about an individual. The ease with which such information can be disseminated and subsequently judged is in equal parts striking and problematic. ‘More information is collected about us, and held in more hands, and accessible to more people, than ever before’<sup>6</sup>, but public (user) appreciation of this reality is not widespread, to say the least. Greater appreciation of these socio-technological changes is essential. Where personal information is accessible, greater controls to limit its transmissibility become increasingly important and this has given rise to impassioned calls for a ‘right to delete’ personal information and not to have it stored forever.

The ‘right to delete’ would ensure legal protection against the increasing opportunities for irreparable damage to a person’s reputation afforded by the spread of social networking technology, and I examine this in seven parts. First, I will look at, define and explain the relevant technological capabilities. Due to their unmatched reach, Facebook and Twitter are the main subjects for consideration and will be specifically discussed in this section. In addition, the discussion considers these problems as they apply to free, web-based email. Though not classified as SNS, these services – such as Hotmail, Gmail and Yahoo! Mail – pose similar quandaries regarding privacy and defamation.

Second, I will introduce in detail the legal considerations underpinning the debate. To illustrate the appropriateness of advocating changes to laws intended to protect reputation, basic and historical notions of libel, reputation and privacy are explored. Similarly, the problem of balancing the competing interests of privacy and freedom of speech is discussed.

In the third part, recent cases in which retained data on SNS have led to long-lasting reputational damage are provided and specific theoretical examples of how similar harm could be perpetrated are discussed.

In the fourth part, I seek to answer two simple, but important questions: ‘Why is this a problem?’ and ‘Why is this problem different from those before?’ I will

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<sup>4</sup> Ibid., 1.

<sup>5</sup> Elspeth Tilley, ‘New Culture/Old Ethics’, in *The Ethics of Emerging Media* (New York: Continuum, 2011), 191.

<sup>6</sup> John Palfrey and Urs Gasser, *Born Digital* (New York: Basic Books, 2008), 61.

suggest reasons why this particular combination of technological, social and cultural changes demands a reformulation (and creation) of laws, relating to the technology at the heart of the debate, which is itself both new and widely misunderstood. The concept of a 'digital footprint'<sup>7</sup> that is global in reach, instantly accessible and lasting forever, is introduced to this end. That these transformations collide awkwardly with the various laws, which were not created with this type of technology or reach in mind, is also discussed.

In the fifth part, I give specific recommendations regarding steps one must take to avoid becoming a victim of SNS. These should be both adhered to by individuals for self-protection and employed by managers to protect employees as well as the organization.

The sixth part questions the soundness of the preceding arguments in favour of the right to delete, while observing potential issues relating to the deletion of data that could potentially be of public interest. Similar counter-arguments are also explored, before the final part offers specific recommendations regarding potential legal remedies for the problems illustrated.

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<sup>7</sup> Humphreys defines 'digital/internet footprint' as 'any information that a person has "created" which is online, widely available, and specifically linked to [an] author's real name'. [In 'How Much is Too Much? Privacy Issues on Twitter'. Cornell Department of Communication, 11.]