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# What Do You Really Want? Speech v. Reputation in a World of Instant Gratification

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# What Do You Really Want? Speech v. Reputation in a World of Instant Gratification

April 1, 2015 · by [Leoangelo Cristobal](#) · in [GGU Law Review](#) ·



([https://ggulawreview.files.wordpress.com/2015/04/img\\_3932.jpg](https://ggulawreview.files.wordpress.com/2015/04/img_3932.jpg))

The “Loaded Hash Browns” at Jacks N Joe.

“Where do you want to eat?”

That’s the question many food aficionados ask when they start making dining plans for the day. It’s also the question most regular people ask on a daily basis – it doesn’t matter if you’re in a relationship, celebrating with friends, or simply divulging in the numerous food spots your town has to offer.

Today’s social media provides us with an unprecedented platform for expression. Although you can definitely sue someone for defaming you, social media’s expansive platform has created an unintentional temptation for abuse – we can say what we want, how we want, about who and what we want, with very minimal worry for consequences.

Eating out at restaurants is extremely [common](http://www.statista.com/topics/1957/eating-out-behavior-in-the-us/) (<http://www.statista.com/topics/1957/eating-out-behavior-in-the-us/>), particularly in big cities and populations like the Bay Area. It is no longer seen as something reserved for a special occasion. [Hipsters](http://www.urbandictionary.com/define.php?term=hipster) (<http://www.urbandictionary.com/define.php?term=hipster>) love to buck the trend, but right now, what’s “in” is what’s “out” – as in what food is “out” there, and how can I find it?

Buying groceries and cooking a meal at home isn’t cool anymore. It may be more expensive to maintain a “going-out-to-eat” diet, but it’s more in tune with the times. In particular, San Francisco is full of “techie” and young folks with disposable income. Other than the [newest smartphone](http://www.techradar.com/us/news/phone-and-communications/mobile-phones/20-best-mobile-phones-in-the-world-today-645440/10) (<http://www.techradar.com/us/news/phone-and-communications/mobile-phones/20-best-mobile-phones-in-the-world-today-645440/10>) or [fancy cocktails](http://www.delish.com/food-fun/most-expensive-cocktails#slide-1) (<http://www.delish.com/food-fun/most-expensive-cocktails#slide-1>) at “that bar everyone goes to,” these folks cannot wait to spend their money on all the newest and most popular foods that *everyone* in their inner-circle is talking about.

If you’re in the know, then you know that [Yelp!](http://www.yelp.com/search?find_desc=food&find_loc=San+Francisco%2C+CA&ns=1) ([http://www.yelp.com/search?find\\_desc=food&find\\_loc=San+Francisco%2C+CA&ns=1](http://www.yelp.com/search?find_desc=food&find_loc=San+Francisco%2C+CA&ns=1)) is the number one way to find out where those best eats are. The website (and app) allow anyone to filter their search by the type of food, the price of food, and the desired area of dining within *seconds*.

Other social media outlets provide even more ways for foodies to share their love with the rest of the world: [Instagram](http://iconsquare.com/tag/foodporn) (<http://iconsquare.com/tag/foodporn>), [Foursquare](https://foursquare.com/v/halal-cart/523c9758498e959b88a4fa40) (<https://foursquare.com/v/halal-cart/523c9758498e959b88a4fa40>), [Twitter](https://twitter.com/itsfoodporn) (<https://twitter.com/itsfoodporn>), and [Facebook](https://www.facebook.com/business/news/restaurant-menus-facebook-pages) (<https://www.facebook.com/business/news/restaurant-menus-facebook-pages>) provide windows into the kitchens of the finest food joints around. The sharing is fun, and it has created instant access for anyone with a smart phone and an affinity for “friends,” “@” signs, and “hashtags.”

But with all this sharing, there is a great deal of reliance being placed on strangers to tell us what is “good” and what is “bad.” I’ll admit – when I look to Yelp to find a good breakfast place (the morning after a jolly evening with my companions), I expect the app to be accurate. I want to find a [place that sells Corned Beef Hash](http://www.yelp.com/search?find_desc=breakfast&find_loc=San+Francisco%2C+CA&ns=1#start=0&cflt=breakfast_brunch&attrs=BusinessAcceptsCreditCards,RestaurantsPriceRange2.1&), within 5 blocks from Mission St., that’s open by 8:00am, for less than \$5, and that accepts credit cards ([http://www.yelp.com/search?find\\_desc=breakfast&find\\_loc=San+Francisco%2C+CA&ns=1#start=0&cflt=breakfast\\_brunch&attrs=BusinessAcceptsCreditCards,RestaurantsPriceRange2.1&](http://www.yelp.com/search?find_desc=breakfast&find_loc=San+Francisco%2C+CA&ns=1#start=0&cflt=breakfast_brunch&attrs=BusinessAcceptsCreditCards,RestaurantsPriceRange2.1&)) I rely on Yelp, and the users who share on Yelp, to find that for me. And I *do not* expect them to fail me.

But what happens if I don’t get the information I’m looking for? Or if Yelp leads me astray? Or if a restaurant hasn’t conformed to a certain part of my search criteria?

For some people, the answer is not so pretty: they’ll post bad ratings on Yelp [despite never actually eating the food](http://www.yelp.com/topic/san-francisco-worst-review-youve-ever-read) (<http://www.yelp.com/topic/san-francisco-worst-review-youve-ever-read>). A picture on Instagram will be shared, but a caption will be included disparaging the establishment for not being open at 5:00am or not accepting credit cards. Some [tweets](http://www.bbcamerica.com/mind-the-gap/2015/01/20/twitter-mindthechat-restaurant-) (<http://www.bbcamerica.com/mind-the-gap/2015/01/20/twitter-mindthechat-restaurant->

[critic-giles-coren/](#)) imply incompetence due to one food item's inadequacy. [Some dedicate entire Twitter accounts \(https://twitter.com/anti\\_mcdonalds\)](#) to disparage the restaurant. And some tweets are somewhere in between being [confused and upset \(http://www.thebolditalic.com/articles/4933-the-worst-reviews-of-the-bay-areas-best-restaurants\)](#).

Have we gotten to the point where that kind of criticism is warranted? Do we rely on these applications so much that we've come to expect them to be on point, all the time, no matter what? It should not come to the point where, when these searches fail us, we can destroy a restaurant's reputation with unfettered discretion.

Our [First Amendment rights of freedom of speech \(http://billofrightsinstitute.org/resources/educator-resources/americanpedia/americanpedia-bill-of-rights/first-amendment/freedom-of-speech/\)](#) are strong, and we are all entitled to our opinions. But the state *always* has a counter-balancing interest in protecting one's reputation. Businesses in the food industry rely on their clientele enjoying their experience and spreading the word to other potential customers. A line must be drawn between "angry foodie upset with the restaurant experience" and "unwarranted comments detrimental to the reputation of a restaurant."

[Defamation \(https://www.law.cornell.edu/wex/defamation\)](#) is when someone makes statements about another person, causing that person's reputation to sink within the community. At common law, one could be liable for a defamatory statement concerning someone else if that statement was published to other people. "Publishing" included writing, radio, and spoken words – and the more permanent the message could be, the easier someone could sue and win a defamation suit.

In this day and age, commentary on social media has a serious and permanent impact on a restaurant's reputation. This goes both ways: if commentary is [good \(http://blog.foodnetwork.com/fn-dish/2014/06/10-best-restaurants-to-follow-on-instagram/\)](#), customers come flocking in; if commentary is [bad \(http://www.yelp.com/list/worst-bay-area-restaurants-san-francisco-2\)](#), customers have the presumption that the restaurant is never worth visiting.

When we consider going out to eat, there is a lot of value in getting a "heads-up" from others about the quality of a restaurant's food and service. If the food, service, or overall experience is actually poor, a bad review is justified. And "truth" is always a defense to any claim of defamation.

But hateful comments, even in the context of food, can be an unlawful assault on a restaurant's reputation. Most restaurants are focused on making a profit – they're not focusing on whether they need to file a defamation lawsuit in response to spiteful social media attacks.

But all it takes is a few [bad reviews \(http://www.businessinsider.com/owner-yelp-is-bad-for-small-business-2013-4\)](#) for a restaurant to start going under (even if certain restaurants have recently [challenged that premise \(http://insidescoopsf.sfgate.com/blog/2014/09/17/richmond-restaurant-owner-encourages-bad-yelp-reviews/\)](#)).

So before you tell me where you want to eat, really think about.

I know you're hungry, but try not to get too cranky while we try to find the right place!

Tags: [@\\_bay\\_area](#), [critic](#), [criticism](#), [defamation](#), [Facebook](#), [first amendment](#), [food](#), [foodie](#), [foursquare](#), [friend](#), [ggu](#), [hashtag](#), [instagram](#), [instant](#), [instant gratification](#), [reputation](#), [review](#), [san francisco](#), [share](#), [social media](#), [speech](#), [twitter](#), [yelp](#)

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