

## REST IN PRIVACY: LEGAL ANALYSIS OF POSTHUMOUS DIGITAL AFTERLIFE

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### Abstract

In a world where your last selfie might outlive your last breath, it's time to ask the unthinkable: who controls your digital space once you're gone? From emails and encrypted chats to cloud-stored memories and a lifetime of social media posts, our digital identities are more than just reflections of us—they are us.<sup>718</sup> When we die, this vast archive of personal data doesn't simply disappear. Instead, it floats in the vast expanse of the internet—unclaimed, unprotected, and dangerously exposed.

With over 5 billion internet users now deceased, the idea of a digital legacy needs serious attention. Just like physical property,<sup>719</sup> digital estates hold great personal and emotional value. They deserve protection not only for the deceased, but also to safeguard the privacy and peace of the loved ones left behind.

This research paper explores the changing idea of the digital afterlife and offers a comparison of how different countries deal with the complex issue of managing data after death. It looks at current legal frameworks, identifies key gaps, and evaluates the protections currently in place. Ultimately, it suggests recommendations for industries, tech companies, and governments to help create a more ethical approach to digital estate planning in our widely connected world.

### Keywords

Privacy, digital afterlife, data management safeguards, digital estates, data ownership

GRASP - EDUCATE - EVOLVE

<sup>718</sup> Hopkins, J. P. (2013). Afterlife in the cloud: Managing a digital estate. *UC Hastings Science & Technology Law Journal*, 5(2), 257–296

<sup>719</sup> Morse, T., & Birnhack, M., Privacy Preferences and Behavior Regarding Digital Remains, *24 New Media & Soc'y* 1412 (2022)

## Introduction

In the 21st century, we are all living two lives. The first is in the physical world and the second is the one we meticulously build online – a digital echo of our thoughts, finances and most cherished memories. These aren't just experiences anymore, these are our digital footprints that form our doppelganger,<sup>720</sup> one that is bound to outlive us. But the moment our physical life ends, a profound and unsettling paradox begins.

Each of us leaves behind a sprawling digital estate – a vibrant mosaic of social media profiles filled with photographs, private messages holding decades of secrets, and even real wealth in the form of cryptocurrencies. Unlike the heirlooms we pass down which is governed by centuries of law, these digital legacies have no clear line of succession.<sup>721</sup> This ambiguity has turned the digital world into a lawless frontier, making the fate of our online selves one of the most unanswered dilemmas of our time.

To grasp why this frontier is so treacherous, we must first ask a fundamental question: who are we in the eyes of the law? The legal system recognizes a living person as a legal person, an entity granted a bundle of fundamental rights that protect our autonomy. However, at the moment of death, this "legal person" simply ceases to exist. With it, many of the rights we hold dear, especially privacy, either vanish or are severely weakened while leaving a chilling void behind. If the owner of the data no longer has rights, who can step in to guard their secrets, preserve their memory, or manage their legacy? The answer, unsettlingly, is often no one.

We now find ourselves in a world where tech giants have become the default protectors of our digital afterlives, enforcing opaque terms of service that often override a family's wishes. This

paper will navigate these gaps, comparing international legal frameworks to map the inconsistencies and challenges that define this new west of inheritance. By dissecting the responsibilities of technology platforms and exploring the profound ethical consequences of this chaos, the goal is to chart a path forward. We aim at achieving a more humane and secure way to manage our digital remains, ensuring our final chapter is one of dignity, and not vulnerability.<sup>722</sup>

## Statement of problem

Our digital lives are carefully managed, but our digital afterlives drift like ghosts in the machine. When a user passes away, their large collection of data becomes abandoned, caught in a legal gray area that brings up serious emotional and ethical concerns. The main issue is the striking difference between the permanence of our data and the temporary nature of the laws that aim to control it.<sup>723</sup> This lack of regulation creates a series of ethical problems, privacy risks, and emotional struggles for those who are left behind. With a mix of inconsistent global laws and vague platform rules, there is no dependable way to safeguard the privacy of the deceased or to give peace of mind to their loved ones.<sup>724</sup> This paper addresses this topic by looking at the effects of not taking action, comparing international legal systems, and highlighting the protections needed to restore order and respect to our digital remains.

## Research questions

- What legal frameworks, policies, and regulations currently exist in different countries to govern the posthumous management of digital assets

<sup>720</sup> Bak, Marieke A.R., An Information Ethics Approach to Post-Mortem Privacy in Health Data Research, 23 BMC Med. Ethics 1 (2022)

<sup>721</sup> Sathi, R., Legal Challenges of Digital Afterlife Services in India, JUS CORPUS L.J. (2021)

<sup>722</sup> Federal Officials Seek Tribal Input On Changes To Business Operation Regulations. <https://www.kjzz.org/2017-01-02/content-415800-federal-officials-seek-tribal-input-changes-business-operation-regulations>

<sup>723</sup> Mali, D. P., & Prakash, G. A., Death in the Era of Perpetual Digital Afterlife..., 15 Nat'l L. Sch. J. 45 (2019)

<sup>724</sup> Hopkins, John P., Afterlife in the Cloud: Managing a Digital Estate, 5 U.C. Hastings Sci. & Tech. L.J. 209 (2013); Mali, Dhananjay P., & Prakash, Gautam A., Death in the Era of Perpetual Digital Afterlife: Digital Assets, Posthumous Legacy, Ownership and Its Legal Implications, 15 Nat'l L. Sch. J. 45 (2019)

- What are the key gaps, inconsistencies, and challenges in existing legal approaches to digital estate management across various jurisdictions
- How can legal frameworks be expanded to create a more inclusive and secure approach to managing digital estates after death
- What responsibilities do technology companies and social media platforms currently have in managing the accounts of deceased users, and how effectively are they fulfilling these roles
- How do the safeguards and best practices adopted by different governments and organizations compare in terms of protecting digital legacies
- What are the ethical, legal, and emotional consequences of leaving digital data unmanaged after a person's death

### Significance of Research

This research highlights an expanding legal void between technology, law, and human dignity. The significance of this study lies in its timely intervention into one of the most unanswered questions of our era – “who claims ownership of our digital estates posthumously, and who is ultimately entrusted with the guardianship of the vast digital legacy we leave behind?”

First, this research holds profound importance for individuals and their families. With digital data carrying immense personal and emotional value are left behind unprotected, it not only affects the privacy of the individual itself, but of their families and people known by him. This study aims to address and find a solution to overcome and avoid the emotional hardships and privacy risks faced by those left behind, advocating for a system that safeguards their peace of mind.<sup>725</sup>

Second, it contributes significantly by pointing out the crucial disconnect between the

permanence of our data and the temporary nature of the laws designed to govern it. It challenges the traditional legal principle where a legal person ceases to exist upon death, rendering rights like privacy severely weakened. By proposing recommendations for a more comprehensive and ethical approach, this paper seeks to inform policymakers and legislators on how to bridge this gap.

Finally, this research is significant for technology companies and social media platforms, who are considered to be the default guardians of our digital afterlives. By analyzing their current responsibilities and dissecting the impact of their opaque terms of service, this paper provides a pathway toward establishing a more secure and legally clear framework for them to manage our digital remains with dignity.

### Scope of Research

The main focus of this research is to explore the legal, ethical, and social aspects of posthumous digital rights.

- The research highlights the legal gap in India, where there are currently no specific laws that govern posthumous digital rights. Although Indian law recognizes property succession under the Indian Succession Act, it does not provide the same protections for intangible digital assets, leaving digital estates mostly unregulated. This gap is a primary concern of the study.<sup>726</sup>
- It looks at how different regions, including the United States, United Kingdom, Germany, and the European Union manage digital estates after death.
- The study emphasizes legislative frameworks, court rulings, and specific policies from different platforms. By comparing these practices, the research seeks to identify best practices that can be applied in India.<sup>727</sup>

<sup>725</sup> Aaron Perzanowski & Jason Schultz, *The End of Ownership: Personal Property in the Digital Economy* (MIT Press 2016)

<sup>726</sup> Indian Succession Act, No. 39 of 1925

<sup>727</sup> Daoud, A., Othman, A., Robinson, H., Bayati, A., Daoud, A., Othman, A., Robinson, H., & Bayati, A. (2018). Exploring the relationship between materials procurement and waste minimization in the construction industry: The case of Egypt. <https://core.ac.uk/download/227106297.pdf>

- The research examines the role of technology companies and social media platforms as unofficial caretakers of digital legacies. It looks into their terms of service, practices for memorializing accounts, and how well they balance their business interests with individual rights and family wishes.
- The study explores the ethical and emotional consequences of leaving digital assets unmanaged. This includes risks like identity theft, misuse of sensitive personal information, and the psychological effects on grieving families.

#### Limitation of Research

- The most significant limitation is that India currently lacks clear laws governing posthumous digital rights. This restricts the research to comparing foreign laws and prevents a thorough evaluation of India's own legal system.
- There is a lack of case law worldwide, and almost none in India that directly addresses the protection or management of digital estates after death. This means the research must rely mainly on secondary sources, academic commentary, and platform policies rather than judicial interpretation.
- The legal and policy landscape around digital estates is constantly changing. Platform terms of service are updated frequently, and international laws are being reformed. As a result, the conclusions of this study may not remain constant in the long run.
- Technology companies often have unclear policies. The study mainly relies on publicly available terms of service, academic sources, and reports which may not fully represent the internal practices or enforcement actions of these companies.

#### Objective of Research

- To understand the significance of protecting personal digital data after death and explore the concept of digital legacy.

- To examine existing laws, policies, and frameworks related to posthumous data protection in different countries.
- To identify the gaps, inconsistencies, and challenges in current legal approaches towards the management of digital estates.
- To propose recommendations for strengthening legal frameworks and building a more inclusive approach to digital estate management in order to bridge these gaps.
- To analyze the role of tech companies and social media platforms in handling accounts of deceased users.<sup>728</sup>
- To compare different safeguards and measures adopted by governments or organizations for safeguarding the digital afterlife.
- To assess the ethical, legal, and emotional implications of leaving digital data unmanaged after death.

#### Research methodology

This research study adopts a comparative and analytical research methodology. It primarily relies on existing statutes, articles and data sources including case studies and guidelines from governments to examine how different countries address the legal and ethical challenges of managing digital assets after death.

A comparative legal analysis is conducted to evaluate the similarities and differences in digital afterlife legislation across jurisdictions such as the United States, United Kingdom, Germany, European Union and India.<sup>729</sup>

A doctrinal approach is conducted to critically assess the different existing laws, court rulings, and frameworks governing digital legacy management in different countries. The focus is based on identifying key loopholes, inconsistencies, and areas lacking legal clarity.

<sup>728</sup> Vas Kumar - Markkula Center for Applied Ethics. <https://www.scu.edu/ethics-spotlight/hackworth-fellowships-project-showcase-2021/vas-kumar/>

<sup>729</sup> Property (Digital Assets etc.) Bill [HL] 2024-25, H.C. Bill 25 (U.K.); Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA) (2015); General Data Protection Regulation, Regulation (EU) 2016/679, 2016 O.J. (L 119) 1 (EU)

## Literature review

The study of digital existence after death has grown quickly over the last ten years. It has shifted from basic digital estate planning to a complex field that connects legal, ethical, and technological challenges. The initial work in this area came from the human-computer interaction community. Scholars recognized that death in digital spaces requires different approaches than traditional planning. Hopkins (2013) offered the first framework for understanding digital estate planning. He established that digital assets need special legal and technological solutions to ensure privacy, security, and proper handling.<sup>730</sup>

Mali and Prakash (2019) built on this groundwork through detailed research. They revealed the large digital footprint users create and the unforeseen consequences of unmanaged digital estates. Their work was notable for identifying the lack of uniform practices among social media platforms. This absence of legal agreement creates a regulatory gap, leaving digital assets unaccounted for.<sup>731</sup>

1) Öhman and Floridi (2017) expanded beyond basic property rights to complex philosophical ideas. They introduced the concept of the Digital Afterlife Industry, examining it through an informational view of Marxian economics<sup>732</sup>. Their work showed how commercial interests change the information related to the deceased. They argued that this manipulation violates principles of human dignity and should be strictly regulated.

2) Building on this theory, Bak (2022) applied Information Ethics theory. He argued that deceased individuals have a basic moral right to privacy. He established that people continue to exist as informational entities that

can be harmed even after death. This important framework has influenced later legal analyses by providing a philosophical basis for posthumous privacy rights that goes beyond family interests.<sup>733</sup>

3) These studies create a journey from recognizing the need for digital estate planning to identifying the practical and emotional challenges users face. They emphasize the need for clear, consistent laws and easy-to-use tools to help individuals plan their digital afterlife. As digital footprints continue to grow, these foundational works lay the groundwork for ongoing efforts to turn academic insights into effective policies and technologies that respect both privacy and inheritance rights.

## 4) Chapter 1: The Three-Fold Challenge of Law, Policy and Access

The smooth transfer of digital assets faces a three-fold challenge involving legal issues, company policies, and technical obstacles. The biggest problem is the shortcomings of current law. For instance, India's traditional inheritance laws like the Indian Succession Act 1925 and the Hindu Succession Act 1956 were created for a time before the digital age.<sup>734</sup> They don't recognize intangible digital assets as property, leaving digital estates at risk. This lack of a clear legal structure can also lead to unexpected conflicts with existing cybercrime laws. In the United States, the Computer Fraud and Abuse Act (CFAA) could make it illegal for a fiduciary to access a deceased person's account if the platform's terms of service say otherwise. Similarly in India, Sections 43 and 66 of the Information Technology (IT) Act<sup>735</sup> can classify the use of someone else's credentials after death as illegal, causing a direct clash between an heir's right to an estate and the law's ban on unauthorized access. This legal gap is not just a theoretical concern; it poses a

<sup>730</sup> Hopkins, J. P. (2013). Afterlife in the cloud: Managing a digital estate. *UC Hastings Science & Technology Law Journal*, 5(2), 257–296

<sup>731</sup> Mali, D. P., & Prakash, G. A. (2019). Death in the era of perpetual digital afterlife: Digital assets, posthumous legacy, ownership and its legal implications. *National Law School Journal*, 15(1), 45–72

<sup>732</sup> Öhman, C., & Floridi, L. (2017). The political economy of death in the age of information: A critical approach to the digital afterlife industry. *Minds and Machines*, 27(4), 639–662

<sup>733</sup> Bak, M. A. R. (2022). An information ethics approach to post-mortem privacy in health data research. *BMC Medical Ethics*, 23(1), 1–14

<sup>734</sup> Indian Succession Act, supra note 2; Hindu Succession Act, No. 30 of 1956

<sup>735</sup> Information Technology Act, No. 21 of 2000

real danger that emphasizes the urgency of the situation.

The second major issue is the considerable power held by tech companies. Without a unified, global legal framework, these companies have essentially become the gatekeepers of our digital afterlives. The agreements they have with users often include clauses that prevent third-party access and declare accounts non-transferable<sup>736</sup>. This effectively builds a contractual barrier that heirs find hard to break through without specific legal orders.

Finally, the technical details of access create real challenges. Even with a legal order, having just a password may not be enough to access a digital account. The common use of multi-factor authentication and encryption means that even a properly appointed fiduciary may be unable to get in without the deceased's physical devices or specific keys, such as those used for cryptocurrency wallets.<sup>737</sup>

For example, an executor may need to access a deceased person's email to retrieve financial records, but they may not need to read the deceased's private messages. The difference between accessing content for estate management and actually using the account is a complicated legal issue that must be resolved<sup>738</sup>. This highlights the need for a solution that connects the legal, corporate, and technical aspects to ensure that any future systems balance the needs of the estate with the privacy rights of the deceased.

## Chapter 2: Global Approaches, Legal Frameworks and Policies

The laws and rules regarding digital assets<sup>739</sup> after death do not follow a single global standard. Instead, they consist of various national laws, important court decisions, and

voluntary company policies. A comparison shows several different approaches, each shaped by a country's legal traditions and the evolving technology landscape. The following discussion examines the legal frameworks in the United States, the United Kingdom, Germany, and India. It highlights their unique strengths and significant weaknesses.

### 2.1. United States: RUFADAA and Fiduciary Access

The legal approach in the United States has largely standardized due to the widespread adoption of the Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA). Developed by the Uniform Law Commission, RUFADAA is model legislation that allows fiduciaries, such as personal representatives or trustees, to access, manage, or close a deceased person's digital accounts. Its creation was a response to complaints about its predecessor, the Uniform Fiduciary Access to Digital Assets Act (UFADAA).<sup>740</sup> Technology companies criticized UFADAA for giving fiduciaries unrestricted access and overriding Terms of Service agreements.

RUFADAA resolves this conflict by creating a clear hierarchy of authority that prioritizes a user's explicit intent. At the highest level is the user's use of an online tool, such as Google's Inactive Account Manager or Meta's Legacy Contact, to choose a beneficiary for their account. If the user did not use such a tool, the act prioritizes the user's instructions in a will, trust, or other legal document. If neither method is available, the platform's terms of service govern the fiduciary's access to the account. This structure aims to balance a user's right to privacy with the fiduciary's need to handle the digital estate.

This legal framework emerged from a time of significant uncertainty. A key case that brought attention to this issue was *Ajemian v. Yahoo!, Inc.* This case started as a lengthy legal dispute after a deceased individual's personal

<sup>736</sup> Google, About Google Inactive Account Manager, <https://support.google.com/accounts/answer/3036546> (last visited Sept. 21, 2025)

<sup>737</sup> Naomi Cahn, *Postmortem Life Online*, 25 Prob. & Prop. 36 (2011)

<sup>738</sup> John G. Browning, *Digital Assets and the Modern Estate Plan*, 40 Est. Plan. 3 (2013)

<sup>739</sup> Natalie M. Banta, *Inherit the Cloud: The Role of Private Contracts in Distributing Digital Assets at Death*, 83 Fordham L. Rev. 799 (2014)

<sup>740</sup> *Ajemian v. Yahoo!, Inc.*, 84 N.E.3d 766 (Mass. 2017)

representatives sought access to his email account to settle his estate. Yahoo, the service provider, initially refused access, citing the Stored Communications Act (SCA) of 1986.<sup>741</sup> This federal law aims to protect the privacy of electronic communications from unauthorized third parties. In a landmark decision, the Massachusetts Supreme Judicial Court ruled that the SCA did not stop Yahoo from voluntarily sharing the contents of the emails with the personal representatives.

The court noted that the representatives could provide lawful consent on behalf of the deceased. This ruling did not require disclosure, but it was a significant step toward recognizing the legal position of a fiduciary<sup>742</sup>. It also hinted at the access principles that RUFADAA would later clarify. The legal landscape is further complicated by the Computer Fraud and Abuse Act (CFAA), a federal law that makes unauthorized computer access a crime. Even with a deceased person's password, fiduciaries could technically violate the CFAA if a platform's terms of service prohibit third-party access. This created a legal gap for those trying to fulfill their responsibilities to the estate.

## 2.2. The United Kingdom: From Devices to New Property

The UK legal system has typically regarded digital records as part of the physical device where they are stored, such as a mobile phone or laptop. The legal value lies not in the data itself but in the property rights and interests linked to it. This means that a Personal Representative automatically inherits a deceased person's digital assets along with their physical estate. However, the transfer of rights still depends on the terms and conditions set by service providers. The PR has a duty to protect and preserve these assets carefully.

However, the UK's legal landscape is poised for a significant change. The Property Digital Assets Bill, introduced in September 2024, aims to officially recognize digital assets as a separate

form of personal property.<sup>743</sup> This marks an important shift from the traditional view toward clearer legal classification. The proposed Bill suggests adding a third property category for digital assets, responding directly to a Law Commission report. This indicates the UK government's acknowledgment that its common law tradition is not sufficient for the digital age. By July 2025,<sup>744</sup> the Bill had passed its second reading in the House of Commons. This proposed legislation represents a major reassessment of legal principles to include a new and valuable form of property.

## 2.3. Germany: Universal Succession and Judicial Precedents

The German approach to posthumous digital inheritance is based on the principle of universal succession found in Section 1922(1) of the German Civil Code. This principle states that heirs take on the legal rights and responsibilities of the deceased. The legal system treats digital accounts like traditional assets, which means the platform must follow the law rather than requiring users to agree to a specific company tool.

This approach was solidified by a crucial ruling from the German Federal Court of Justice in 2018.<sup>745</sup> The court stated that a social media account is inheritable, making a strong legal comparison to a physical diary. The court also decided that any platform terms of service that limit access for heirs are invalid since they go against central principles of German law. This ruling emphasizes long standing legal principles over the contracts of private companies. It is also important to note that while heirs can access the content, they cannot actively use the account which helps balance inheritance rights and posthumous privacy.

<sup>741</sup> Ajemian v. Yahoo!, Inc., 84 N.E.3d 766 (Mass. 2017)

<sup>742</sup> Computer Fraud and Abuse Act, 18 U.S.C. § 1030 (2020)

<sup>743</sup> Property (Digital Assets etc.) Bill [HL] 2024-25, H.C. Bill 25 (U.K.); Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA) (2015); General Data Protection Regulation, Regulation (EU) 2016/679, 2016 O.J. (L 119) 1 (EU) Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA) (2015)

<sup>744</sup> Property (Digital Assets etc.) Bill [HL] 2024-25, H.C. Bill 25 (UK)

<sup>745</sup> German Federal Court of Justice, Case No. III ZR 183/17 (2018)

#### 2.4. The European Union and GDPR Gap

The General Data Protection Regulation (GDPR) is one of the world's most robust data protection laws, yet it explicitly limits its scope to living natural persons. This means that rights for data subjects, including the right to be forgotten in article 17 ends when a person dies. While GDPR does not directly apply to the deceased, it can affect their relatives. For instance, a data controller must still respect the privacy rights of surviving relatives when handling a request, ensuring that no third party data is revealed. This creates a significant legal gap because the personal data of a deceased person is no longer protected by this landmark privacy law. The Monash article points out that although the GDPR acknowledges post mortem privacy rights, enforcing them presents challenges.<sup>746</sup>

Some European countries have enacted specific national laws to address this gap. In Italy, Article 2 of the Privacy Code gives heirs and others with a legitimate interest the right to access a deceased person's data, unless the deceased clearly stated otherwise in a formal declaration. A 2018 ruling from the Court of Venice backed this up stating that simply accepting a platform's terms of service does not cancel this legal right. This creates a difference between financial digital assets, which should be transferred through a will and non-financial assets which can be managed through a post mortem mandate.

#### 2.5. India: The Legal Vacuum

India's legal system is often seen as lacking when it comes to posthumous digital rights. Current succession laws including the Indian Succession Act of 1925 and the Hindu Succession Act of 1956 focus on physical property and do not recognize digital assets as a separate type of property. This gap in the law creates conflicts with other regulations. India's Information Technology Act of 2000 prohibits unauthorized access which may put heirs in a position where they accidentally commit cyber

offenses while trying to access digital assets that should be part of the estate.

This legal gap in India leads to a dangerous situation. Unlike places with imperfect or developing legal systems, India's lack of laws places the entire burden on individuals. They have to navigate a complicated legal landscape. Consequently, a person's digital assets are at risk of theft and family members trying to access them might be breaking the law<sup>747</sup>. Despite these challenges, there is a promising development. The Digital Personal Data Protection Act of 2023 introduces the Right to Nominate. This allows people to choose a nominee to manage their data after they die or become unable to do so. However, this idea remains largely untested and cannot be enforced without clear laws and integration with existing succession laws. Additionally, the law is not yet active and an independent board for its enforcement has not been established.

Likewise in France, intellectual property rights include a right to protect the work's integrity and a right of publication that can be passed on to heirs. French courts have also issued recent rulings that clarify the validity of wills for residents living abroad while highlighting the importance of following strict legal procedures.

#### Chapter 3: The Role and Responsibilities of Technology Platforms

In the digital age, a new paradox has emerged. The most intimate details of our lives are stored in the most impersonal of places, on corporate servers governed by corporate policy. Chapter 3 addresses this fundamental tension by looking at the powerful and unchecked role of technology platforms as the default guardians of our digital afterlives. As the passage shows, without a clear legal framework, companies have created their own solutions. These include memorialization tools and strict terms of service that serve as unbreakable contractual barriers. This chapter will explore how this situation has led to a significant power imbalance, where a

<sup>746</sup> GDPR, Regulation (EU) 2016/679

<sup>747</sup> Indian Succession Act, No. 39 of 1925, INDIA CODE (India); Digital Personal Data Protection Act, No. 22 of 2023

private company's internal policies can override the deeply personal needs of grieving families.

### 3.1. Tech Companies as Default Guardians

In the absence of global legal framework, technology companies and social media platforms have taken it into their hands and have inevitably stepped into the role of the unofficial caretakers of digital legacies. They have created their own solutions, such as memorialization and account management tools which often serve as the only reliable means for a grieving family to handle a loved one's online presence. This situation shows the influence of platform terms of service, which act as hidden barriers to access. These terms usually prevent third party access and state that accounts cannot be transferred. This creates a contractual wall that is hard for heirs to break through without a specific legal directive. As a result, a power imbalance emerges. A private company's policy can override a family's wishes, effectively making corporate policy the governing law for posthumous data.

### 3.2. A Comparative Look at Corporate Policies

Facebook and Instagram's Meta system focuses on the memorialization of an account. Upon receiving proof of a user's death, a family member or friend can request that the account be memorialized which removes it from public spaces like birthday reminders but keeps their content visible<sup>748</sup>. A user can choose a legacy contact who has limited authority to manage the account.<sup>749</sup> This includes tasks like pinning tribute posts or changing the profile picture. However, a legacy contact cannot log in to the account, read private messages or alter past posts or photos. They also cannot add a new legacy contact or remove friends.<sup>750</sup>

Google's Inactive Account Manager is a proactive tool that helps users plan for their

digital afterlife. A user can designate up to 10 trusted contacts to receive specific data after a set period of inactivity. This user initiated action allows users to decide what happens to their accounts after their death, giving it a higher authority under legal frameworks like RUFADAA. The plan is only activated after a user defined period of inactivity and the company will then notify the user before granting access to the contacts.<sup>751</sup>

Apple's Legacy Contact feature is a secure system that puts users in control. Users can add a trusted person to their account. When the user dies, the contact can request access to the data using a unique access key and a death certificate. Apple's system claims to be the easiest and most secure way to grant access, but it requires both the user's planning and the company's verification.<sup>752</sup>

## Chapter 4: Emotional Consequences

The discussion around digital legacy goes way beyond corporate and legal frameworks to include the significant moral and emotional toll that it takes on the departed soul and their loved ones. The disconnect between the transient nature of digital data and the finality of human grief directly contributes to the psychological effects of the digital afterlife.

### 4.1. The Psychological Impact on Grieving Families

Social media and digital platforms have become vital spaces for public mourning, offering a sense of community and support while enabling people to express their sorrow more openly. Digital memorials can provide a safe space for remembrance and reflection, helping grieving individuals feel connected to the deceased and serving as a virtual place to talk with the person they lost.<sup>753</sup> The ability to revisit conversations and see tagged photos

<sup>748</sup> Instagram Help Center, *Memorialized Instagram Accounts*.

<sup>749</sup> Damien McCallig, *Facebook After Death: An Evolving Policy in a Social Network*, 15 Int'l J. L. & Info. Tech. 1 (2017)

<sup>750</sup> Meta (Facebook), *How to Add a Legacy Contact*, <https://www.facebook.com/help/1070665206293088> (last visited Sept. 21, 2025)

<sup>751</sup> Google, *supra*; Meta (Facebook), *How to Add a Legacy Contact*, <https://www.facebook.com/help/1070665206293088> (last visited Sept. 21, 2025)

<sup>752</sup> Apple Support, *Digital Legacy Program*

<sup>753</sup> Morse, T., & Birnhack, M., *Privacy Preferences and Behavior Regarding Digital Remains*, 24 New Media & Soc'y 1412 (2022)

also provides a sense of emotional release<sup>754</sup> and help individuals make meaning of their loss while understanding it.

However at the same time, the persistent presence of a departed loved one can also pose serious psychological problems. The constant connection to an individual who no longer exists can lead to a state of suspended grief and can be challenging for the bereaved to find closure and adjust to the reality of physical absence. Because it defies the expected finality of death, receiving an unexpected birthday notification from a deceased loved one's account is startling. The platform's algorithms, which put engagement ahead of psychological health can entangle the family's emotional state.

#### 4.2. Ethical and Mental Challenges of AI-Powered Griefbots

The most significant ethical issue which is raised in this context is consent. A person's autonomy and privacy are violated when their digital image is recreated without their express consent. Research indicates that a majority of people only support digital resurrection if the deceased explicitly consented to it and this support drops to 3% if consent is not given.<sup>755</sup> This is a new type of digital exploitation where someone's digital image is used without their permission. If posthumous data rights are not in place, a person's digital self could be reconstructed into AI against their will for financial benefit<sup>756</sup>. Therefore, the primary concern here is with niche companies in this specialised field that run the risk of taking advantage of the grief and vulnerability of individuals who have lost a loved one in order to make money.

Beyond consent, these technologies present a significant psychological risk within individuals engaging with it. While this may offer temporary

short term comfort and solace to those who need it, at the same time it can also trap individuals in a prolonged state of grief by delaying acceptance and creating a dependency on a digital facsimile of a loved one.<sup>757</sup> A startling encounter with a digital person can cause digital haunting, which can worsen emotional distress and keep people away from going through the normal stages of mourning which would eventually help them in the long term. A person's data becomes more than just a memory in the absence of a legal framework that acknowledges their rights beyond death, it becomes a potentially marketable product. To counter this new danger, legal experts and scholars are already pushing for digital dignity clauses and posthumous data deletion rights to combat this emerging threat.

#### Chapter 5: Gaps, Challenges, and Recommendations

It is crucial to identify the major gaps and difficulties that currently characterise the digital afterlife. We go beyond just pointing out the issues to provide specific, doable suggestions for developing an all encompassing and moral framework for handling digital legacies. These recommendations emphasise on the shared responsibility needed to address this changing issue and is aimed at individuals, technology companies and legislative bodies.

##### 5.1. An Unmanaged Afterlife

The digital afterlife's central problem is an underlying, unresolved conflict. Significant gaps and inconsistencies that characterise this legal void have been brought to light by this analysis. These include the incompatibility of national laws with international platforms, the absence of judicial precedent and the inadequate classification of digital assets as property. These disparities all point to the same issue, which is when someone's digital legacy is abandoned, it

<sup>754</sup> Williams, R., Digital Afterlife and Mourning Platforms: Virtual Grief and Community, 20 Death Studies 301 (2016)

<sup>755</sup> Tsvetelova, K., Posthumous Rights and AI Griefbots: The Ethics of Digital Resurrection, 12 Ethics Inf. Technol. 497 (2021)

<sup>756</sup> Lilian Edwards & Edina Harbinja, *Protecting Post-Mortem Privacy: Reconsidering the Privacy Interests of the Deceased*, 32 Cardozo Arts & Ent. L.J. 1 (2014)

<sup>757</sup> Bak, Marieke A.R., An Information Ethics Approach to Post-Mortem Privacy in Health Data Research, 23 BMC Med. Ethics 1 (2022); Öhman, Carl & Floridi, Luciano, The Political Economy of Death in the Age of Information: A Critical Approach to the Digital Afterlife Industry, 27 Minds & Machines 639 (2017)

floats aimlessly, is open to invasion to privacy and causes psychological distress. The following suggestions are intended to tackle these issues and pave the way for a more thorough and moral framework for posthumous digital management.

## 5.2. Recommendations for a Comprehensive and Ethical Framework

The most urgent need is for legislative reform that provides legal clarity where it is currently absent. For India, this means amending existing statutes like the Indian Succession Act<sup>758</sup> to include and classify digital assets as a new type of property. A separate law, like RUFADAA in the US, should be enacted to designate digital executors and provide a clear legal pathway for heirs to access, manage, and distribute digital estates.<sup>759</sup> The promising idea of a Right to Nominate in the Digital Personal Data Protection Act 2023 must also be backed up by laws that make it a workable and enforceable system. The recommendations are not uniform globally, hence they must be tailored to the specific legal and cultural context of each jurisdiction. Given the US's emphasis on corporate contracts and individual consent, a legislative approach that is effective in Germany<sup>760</sup> with its strong tradition of universal succession, might not be politically or culturally viable there<sup>761</sup>. India therefore requires a custom solution that works with the country's current succession laws.

Meanwhile, technology firms need to take on more accountability. They ought to offer more complete and approachable tools that enable more precise control over digital legacies such as the choice of preservation or deletion. In order to guarantee that corporate policy complies with national law, platforms should also include legally binding India specific succession clauses in their terms of service. The German ruling serves as a model for a robust,

law first approach where a nation's legal principles take precedence over a private company's terms. In order to guarantee that user choice is respected, advocacy organisations such as the OpenID Foundation and the Digital Legacy Association are collaborating with platforms to help develop these frameworks.

Finally, individuals have a critical role to play in proactively managing their own digital legacy. This can be accomplished through a practical set of guidelines which would include the following:

- Inventory: Keep track of all your digital assets including account numbers, usernames, and file location notes. This inventory should be stored in a safe, encrypted location. Passwords should not be included directly in a will since those become public records.
- Digital Executor: Use the legacy contact tools offered by companies such as Google and Apple, or name a trusted person as a digital executor in a will to manage digital assets after death.
- Documents: Give precise instructions for every asset, stating whether it should be given to a designated heir, erased, or memorialised.
- Regular reviews : Since the digital world is always evolving, a digital estate plan should be reviewed once a year and updated following significant life events such as getting married, getting divorced, or opening new accounts.

## Conclusion

The digital afterlife is not only a technical or legal issue, but also a crucial one for human dignity. An individual's digital legacy becomes an essential component of who they are through the years and its destiny after death is ought to be determined by their own choices

<sup>758</sup> Law Commission of India, Report No. 271, Towards a Digital India: Proposed Reforms for Digital Asset Succession (2021)

<sup>759</sup> Indian Succession Act, No. 39 of 1925, INDIA CODE (India); Digital Personal Data Protection Act, No. 22 of 2023

<sup>760</sup> Bundesgerichtshof (BGH) [Federal Court of Justice] III ZR 183/17 (2018) (Ger.)

<sup>761</sup> German Federal Court of Justice, Case No. III ZR 183/17 (BGH, 2018)

rather than by chance.<sup>762</sup> This analysis shows how inadequate the current legal frameworks are, making a person's digital identity easily accessible to exploitation, abuse, and uncontrolled chaos. To guarantee that a person's last chapter is one of dignity rather than vulnerability, clear legal frameworks including ethical business practices and proactive individual planning are required. It is essential that legislative measures are implemented to keep pace with swiftly evolving technology, guaranteeing that in the era of AI, death signifies the cessation of data exploitation rather than its continuation.

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<sup>762</sup> Gillespie, T., Custody and Control: Data, Dignity and the Modern Digital Afterlife, 38 Oxford J. Legal Stud. 882 (2020)