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# **AFTER THE FINAL LOGOUT: GOVERNING DIGITAL IDENTITY AND THE AFTERLIFE OF DATA IN THE AGE OF SOCIAL MEDIA**

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## ***Abstract***

*The expansion of digital technologies has fundamentally altered the relationship between death, identity, and memory. In contemporary societies, individuals leave behind extensive digital traces, including social media accounts, emails, cloud-stored photographs, and other forms of personal data. These digital remnants collectively constitute what scholars describe as the digital afterlife, the persistence of an individual's online identity and data beyond biological death. Despite the growing scale and significance of digital estates, legal frameworks governing succession, privacy, and property remain largely designed for a pre-digital era. Consequently, the governance of digital remains often falls within the regulatory domain of private technology platforms rather than public law. This article examines the socio-legal challenges posed by the digital afterlife, focusing on issues of digital inheritance, post-mortem privacy, platform governance, and the emerging phenomenon of artificial intelligence-driven digital resurrection. It further analyses the evolving regulatory landscape across jurisdictions, with particular attention to India's emerging framework under the Digital Personal Data Protection Act, 2023. The article argues that existing legal structures inadequately address the complexities of digital identity after death and that a comprehensive legal approach is necessary to reconcile property rights, data protection, and the dignity interests of the deceased. As digital identities increasingly persist beyond life, the question of who governs the digital afterlife has become a pressing challenge for contemporary legal systems.*

**Keywords:** *Digital afterlife, post-mortem privacy, digital inheritance, social media governance, data protection law, digital assets, AI resurrection, digital legacy*

## 1. Introduction

Death used to erase a person's presence from the world. Today, it often leaves their digital life intact.

From social media profiles that continue to appear in birthday reminders to decades of emails preserved in cloud servers, the internet stores fragments of identity long after biological life ends. In doing so, it has quietly created a new legal and ethical frontier: the governance of the digital afterlife.

Imagine receiving a birthday notification from a friend who passed away years ago. Their social media profile still exists, their photographs continue to circulate online, and their past messages remain preserved in digital archives. For many people today, encounters like this are no longer unusual. In the digital age, death rarely produces a complete disappearance. Instead, individuals leave behind vast digital footprints, social media accounts, emails, cloud-stored photographs, and online conversations that persist long after life itself ends.

This persistence has created what scholars increasingly describe as the **digital afterlife**<sup>1</sup>: the continued existence of a person's digital identity and personal data after death. Unlike traditional forms of legacy, digital remains are not preserved in physical spaces such as family albums or letters but on servers owned and managed by global technology companies.<sup>2</sup> As a result, decisions about what happens to a person's digital presence, whether it is deleted, memorialised, accessed by relatives, or even recreated through artificial intelligence, are frequently governed not by public law but by the internal policies of private platforms.

The law, however, has struggled to keep pace with this transformation.<sup>3</sup> Existing legal frameworks of succession, privacy, and property were designed for a world in which identity and memory were largely physical. They offer limited guidance when confronted with questions such as whether heirs should be allowed to access a deceased person's social media account, whether personal data deserves protection after death, or whether companies should be allowed to recreate digital replicas of individuals using artificial intelligence.

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<sup>1</sup> Andrew Gilden, *The Social Afterlife*, 25 **Mich. Telecomm. & Tech. L. Rev.** 327 (2019).

<sup>2</sup> Lilian Edwards & Edina Harbinja, *Protecting Post-Mortem Privacy: Reconsidering the Privacy Interests of the Deceased in a Digital World*, 32 **Cardozo Arts & Ent. L.J.** 1 (2013).

<sup>3</sup> Edina Harbinja, *Post-Mortem Privacy 2.0: Theory, Law and Technology*, 31 **Int'l Rev. L. Computers & Tech.** 26 (2017).

These uncertainties reveal a broader socio-legal challenge. As digital technologies reshape how individuals communicate, remember, and interact, they also reshape how societies encounter death. The governance of digital afterlife, therefore, raises fundamental questions about **privacy, dignity, ownership, and the authority to control human identity after death.**

## 2. Literature Review

Scholarly engagement with the concept of the digital afterlife has grown steadily over the past decade as digital technologies have reshaped the boundaries of identity and memory. Early scholarship by Andrew Gilden explored how social media enables a “social afterlife<sup>4</sup>,” where digital profiles continue to mediate relationships and public memory after death. Similarly, Lilian Edwards and Edina Harbinja have examined the emerging concept of post-mortem privacy<sup>5</sup>, arguing that existing privacy frameworks inadequately protect the dignity interests of deceased individuals in digital environments. Subsequent research has expanded the discussion to questions of digital inheritance and platform governance. Natalie Banta’s work highlights the role of private contractual arrangements, particularly platform terms of service<sup>6</sup>, in determining the fate of digital assets after death. More recent scholarship has also begun examining the implications of artificial intelligence technologies capable of recreating digital representations of deceased individuals, raising new ethical and legal concerns surrounding consent, autonomy, and the boundaries of digital identity.<sup>7</sup>

## 3. The Persistence of Digital Identity

Digital technologies have transformed the way individuals record their lives.<sup>8</sup> Social media platforms, messaging applications, and cloud storage systems now function as repositories of personal history.<sup>9</sup> Everyday moments, photographs, conversations, opinions, and memories are documented continuously and stored online. Unlike physical artefacts, digital information does not fade with time. It can remain accessible indefinitely on remote servers. As a result, when individuals die, their digital identities often continue to exist online.

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<sup>4</sup> Andrew Gilden, *The Social Afterlife*, 25 **Mich. Telecomm. & Tech. L. Rev.** 327 (2019).

<sup>5</sup> Lilian Edwards & Edina Harbinja, *Protecting Post-Mortem Privacy*, 32 **Cardozo Arts & Ent. L.J.** 1 (2013).

<sup>6</sup> Natalie M. Banta, *Inherit the Cloud: The Role of Private Contracts in Distributing or Deleting Digital Assets at Death*, 83 **Fordham L. Rev.** 799 (2014).

<sup>7</sup> Victoria J. Haneman, *The Law of Digital Resurrection*, 66 **B.C. L. Rev.** (forthcoming 2025).

<sup>8</sup> Andrew Gilden, *The Social Afterlife*, 25 **Mich. Telecomm. & Tech. L. Rev.** 327 (2019).

<sup>9</sup> Tabea Tietz et al., *Digital Zombies: The Reanimation of Our Digital Selves*, in **Proceedings of the Web Conference** (2018).

For friends and family members, these digital traces may become sources of comfort. Social media profiles allow people to revisit photographs, reread messages, and share memories of the deceased. In many cases, digital platforms have become spaces for collective mourning, where individuals publicly express grief and remembrance.

However, the persistence of digital identity also creates practical and legal difficulties. Family members may wish to access a deceased person's account but lack passwords or authorisation. Platforms may restrict login access for security reasons. At the same time, the existence of private communications raises concerns about privacy and consent.

The result is a complex situation in which the digital identity of the deceased remains active but legally ambiguous.

#### 4. Succession Law and the Digital Estate

Traditional inheritance law regulates the distribution of property after death. Land, financial assets, and physical possessions are typically transferred to heirs according to wills or statutory succession rules. Digital assets, however, do not easily fit within these established legal categories.<sup>10</sup> Most online platforms do not treat accounts as transferable property.<sup>11</sup> Instead, users enter contractual relationships governed by terms of service agreements. These agreements often specify that accounts are personal and non-transferable, effectively preventing heirs from inheriting them in the traditional sense.

Consequently, the management of digital estates frequently depends on corporate policies rather than legal rules. Technology companies decide whether accounts are deleted, memorialised, or preserved. In doing so, they exercise considerable influence over the digital identities of deceased individuals. This shift raises important questions about the role of private actors in regulating matters traditionally governed by law.<sup>12</sup>

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<sup>10</sup> Natalie M. Banta, *Inherit the Cloud*, 83 **Fordham L. Rev.** 799 (2014).

<sup>11</sup> Tiina Mikk & Katrin Sein, *Digital Inheritance: Heirs' Right to Claim Access to Online Accounts under Estonian Law*, 27 **Juridica Int'l** 110 (2018).

<sup>12</sup> Federico Patti & Francesco Bartolini, *Digital Inheritance and Post-Mortem Data Protection: The Italian Reform*, 27 **Eur. Rev. Priv. L.** 1185 (2019).

## 5. Post-Mortem Privacy and Human Dignity

The persistence of digital data also challenges traditional assumptions about privacy. Privacy law generally protects living individuals by granting them control over their personal information. After death, however, many legal systems consider privacy rights to have expired. In the digital environment, this approach may leave personal data vulnerable to misuse. Emails, private messages, photographs, and confidential records may remain accessible on digital platforms without clear legal protections.

Scholars have therefore proposed the concept of **post-mortem privacy**,<sup>13</sup> which seeks to preserve certain dignity and reputational interests after death. This concept recognises that personal data may continue to affect not only the reputation of the deceased but also the privacy of individuals who interacted with them during life.<sup>14</sup>

The recognition of post-mortem privacy becomes especially important in light of emerging technologies capable of reconstructing digital identities.

## 6. Artificial Intelligence and Digital Resurrection

Recent advances in artificial intelligence have introduced a new dimension to the digital afterlife. AI systems can analyse personal data, such as emails, voice recordings, and social media posts, to create digital avatars capable of imitating an individual's speech patterns and personality.<sup>15</sup> Some companies have begun offering services that allow people to interact with simulated versions of deceased relatives. While these technologies may provide emotional comfort, they also raise significant ethical concerns.

If a digital version of a person can be created using their data, questions of consent and autonomy become critical. Did the individual agree to such use of their personal data? Should family members have the authority to permit or prohibit such recreations? These concerns have led some scholars to propose the recognition of a legal principle sometimes described as the **“right to be dead.”**<sup>16</sup> This principle would protect individuals from unauthorised digital

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<sup>13</sup> Lilian Edwards & Edina Harbinja, *Protecting Post-Mortem Privacy*, 32 **Cardozo Arts & Ent. L.J.** 1 (2013).

<sup>14</sup> Gianclaudio Malgieri, *R.I.P.: Rest in Privacy or Rest in (Quasi-) Property?*, in **Data Protection and Privacy: The Internet of Bodies** 207 (Ronald Leenes et al. eds., 2018).

<sup>15</sup> Victoria J. Haneman, *The Law of Digital Resurrection*, 66 **B.C. L. Rev.** (forthcoming 2025).

<sup>16</sup> Mark A. Morenz-Harbinger, *The Networking Dead: Defining Statutory Publicity Rights in Digital Estates* (2013), <https://ssrn.com>.

resurrection after death.

## 7. The Indian Legal Landscape

India currently lacks a comprehensive legal framework governing digital inheritance.<sup>17</sup> The country's succession laws, including the Indian Succession Act and the Hindu Succession Act, were enacted long before the emergence of digital technologies and do not explicitly address digital assets.

However, recent legislative developments have begun to address aspects of digital data governance. The Digital Personal Data Protection Act, 2023, allows individuals to nominate a person who may exercise certain data protection rights on their behalf in the event of death or incapacity.<sup>18</sup> This nominee may request access to, correction of, or deletion of the deceased person's personal data. While this mechanism represents a step forward, it focuses primarily on data protection rather than the inheritance of digital assets themselves.

The constitutional foundation for such protections can be traced to **K.S. Puttaswamy v. Union of India**,<sup>19</sup> in which the Supreme Court recognised privacy as a fundamental right and emphasised the importance of informational autonomy in the digital age. Nevertheless, the question of whether such autonomy extends beyond death remains unresolved.

## 8. Conclusion

For centuries, death marked the end of a person's presence in the social world. The digital age has unsettled that certainty. Online profiles remain visible, photographs circulate indefinitely, and conversations persist in databases that may outlive generations. Human identity, once tied to physical existence, now survives in data.

As societies grapple with this transformation, the law must confront a fundamental question: **who should control the digital traces we leave behind?** If left solely to the policies of private platforms, the memory and identity of the deceased risk becoming subject to corporate governance rather than democratic regulation.

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<sup>17</sup> L. Wassink, *Digital (Im)Mortality as a Driver for Drafting Post-Mortem Privacy and Data Protection Regulation* (2023), <https://ssrn.com>.

<sup>18</sup> **Digital Personal Data Protection Act**, No. 22 of 2023, § 14 (India).

<sup>19</sup> *K.S. Puttaswamy v. Union Of India*, (2017) 10 S.C.C. 1 (India).

The challenge for modern legal systems is therefore not merely technological but deeply human, to ensure that dignity, autonomy, and memory continue to be respected even after the final logout.

