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# DIGITAL AFTERLIFE AND POSTHUMOUS PRIVACY: LEGAL FRAMEWORKS FOR AI RESURRECTION AND SYNTHETIC MEDIA CREATION OF DECEASED PERSONS

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## ABSTRACT

The quick and rapid emergence of technologies has enabled the idea of “digital resurrection” through synthetic media. This can range from anywhere between memorial chatbots, lifelike voice to video simulations etc. These technologies have really disturbed the existing notions of privacy, dignity, and control one has over their personal data after their death.<sup>1</sup> While some states in the USA extend a posthumous right of publicity, the European Union excludes deceased persons from data protection, and countries such as India lack clear frameworks altogether.<sup>2</sup> However, overall the current legal frameworks seem to be inadequate and to deal with these issues as of now. (as will be demonstrated further in this paper)<sup>3</sup> This paper asks some important questions - Whether a coherent legal framework can be designed in order to protect a person’s posthumous privacy? What about accommodating for the expressive and cultural uses of synthetic media? Methodologically speaking, this paper takes the approach of conducting a doctrinal and comparative analysis of privacy, intellectual property, and inheritance laws. It also considers the various technical possibilities such as watermarking and consent registries.<sup>4</sup> And thus, in this paper, an argument for a hybrid regulatory package, that is, a time-limited right to deletion of training data, enforceable digital wills, provenance and labelling standards, and a specifically narrowed down, customized posthumous privacy right, will be presented.<sup>5</sup>

**Keywords:** Artificial Intelligence, Data Protection, Posthumous Digital Rights, Digital Privacy, Intellectual Property.

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<sup>1</sup> Kwan Yiu Cheng, *The Law of Digital Afterlife: The Chinese Experience of AI ‘Resurrection’ and ‘Grief Tech*, 33 Int’l J. L. & Info. Tech. eaae029 (2025), <https://doi.org/10.1093/ijlit/eaee029>.

<sup>2</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council (General Data Protection Regulation), 2016 O.J. (L 119) 1, recital 27.

<sup>3</sup> Information Technology Act 2000 (India).

<sup>4</sup> IP.com, *Who Speaks for the Dead? AI Consent and the Digital Afterlife*, IP.COM (2023), <https://ip.com/blog/who-speaks-for-the-dead-ai-consent-and-the-digital-afterlife/>.

<sup>5</sup> Edina Harbinja, Tal Morse & Lilian Edwards, *Digital Remains and Post-Mortem Privacy in the UK: What Do Users Want?*, 40 Int’l Rev. L. Computers & Tech. 4 (2026), <https://doi.org/10.1080/13600869.2025.2506164>.

## INTRODUCTION

Human's presence now exists even beyond their death in this digital age. Advancements and developments in the field of Artificial Intelligence (AI) combined with synthetic media have now made it possible to accurately recreate the likeness, voice, and even unique conversational styles of individuals who are deceased.<sup>6</sup>

There are memorial chatbots that are able to accurately mimic a loved one's unique speech patterns. And now there are voice-cloned testimonies that were also introduced in court proceedings. These advance technologies challenge the distinction between memory and manipulation thereby making it more and more blurry.<sup>7</sup> The growing prevalence of such technologies underscores an urgent need for legal intervention and ethical scrutiny.<sup>8</sup>

The implications of these technological advancements are drastic and profound. Families of the deceased individuals derive comfort when they are interacting with digital memorials. However, these same tools can be used negatively and exploited for commercial gain, political messaging, or misinformation.<sup>9</sup> Digital Data is intangible and it can be infinitely replicated. This raises important questions about who has the authority to control, delete, or repurpose the digital traces of the dead individuals?<sup>10</sup>

The important questions are:

(a) What protections currently exist for posthumous privacy and likeness across key jurisdictions? (b) How should the law distinguish between commercial exploitation and non-commercial memorialisations in regulating AI resurrection? (c) What technical and governance mechanisms, for example provenance, watermarking, or digital wills, can really operationalize these protections?<sup>11</sup>

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<sup>6</sup> Kwan Yiu Cheng, *The Law of Digital Afterlife: The Chinese Experience of AI 'Resurrection' and 'Grief Tech*, 33 Int'l J. L. & Info. Tech. eaae029 (2025), <https://doi.org/10.1093/ijlit/eaee029>.

<sup>7</sup> Jacopo Ciani Sciolla & Ugo Pagallo, *No Peace After Death? The Impact of AI-Driven Memorial Chatbots on Privacy and Data Protection*, 16 Info. 426 (2025), <https://doi.org/10.3390/info16060426>.

<sup>8</sup> Y. Tony Yang, *Digital Resurrection and Posthumous Identity: Toward a Cross-Cultural Neurorights Framework*, 17 AJOB Neuroscience 242 (2026), <https://pubmed.ncbi.nlm.nih.gov/40554775/>

<sup>9</sup> IP.com, *Who Speaks for the Dead? AI Consent and the Digital Afterlife*, IP.COM (2023), <https://ip.com/blog/who-speaks-for-the-dead-ai-consent-and-the-digital-afterlife/>.

<sup>10</sup> Anjali Ranjan, *Digital Afterlife Industry: Legal Perspectives on Digital Will and Posthumous Data Privacy in India*, Jus Corpus (Feb. 4, 2025), <https://www.juscorpus.com/digital-afterlife-industry-legal-perspectives-on-digital-will-and-posthumous-data-privacy-in-india/>

<sup>11</sup> Edina Harbinja, Tal Morse & Lilian Edwards, *Digital Remains and Post-Mortem Privacy in the UK: What Do*

**CASE ANECDOTE: *STATE V. HORCASITAS* (ARIZONA, 2025)**

In May 2025, an unprecedented occurrence in the legal field was observed during the sentencing hearing of the case “*State v. Horcasitas*, Maricopa County Superior Court, Arizona. Christopher Pelkey”<sup>12</sup>, a U.S. Army veteran killed during a 2021 road-rage incident, was resurrected via artificial intelligence: his likeness, voice, and manner of speaking were synthesized using media (photographs, voice recordings, and social media content) to deliver a victim-impact statement which was authored by the sister of the deceased veteran.<sup>13</sup>

The AI-created avatar of the deceased introduced itself with disclaimers, acknowledging that it was an approximation of Christopher Pelkey’s voice (“a version created through AI that uses my picture and my voice profile”). It addressed Gabriel Paul Horcasitas, the defendant, directly, expressed remorse and forgiveness, even suggesting that under different circumstances they “could have been friends.”<sup>14</sup>

The judge of the case, Judge Todd Lang, after viewing the video, described it as “reflective of Pelkey’s character and family values” and praised its message. The court then imposed a sentence of ten and one-half years’ imprisonment, the statutory maximum for the manslaughter conviction. Although the AI statement evidently moved the court, the defendant’s appeal (filed shortly thereafter) raises questions about whether and how much weight judicial decision-makers should assign to AI synthetic media, especially in settings where evidentiary or ethical standards are underdeveloped?<sup>15</sup>

**TECHNICAL BACKGROUND: HOW AI RESURRECTION WORKS**

AI-driven “resurrection” relies on the assembling and processing of various categories of diverse data sources which include publicly available posts of the deceased person from social

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Users Want?, *Int’l Rev. L. Computers & Tech.* (published online May 20, 2025), <https://doi.org/10.1080/13600869.2025.2506164>

<sup>12</sup> *State v. Horcasitas*, No. 1 CA-CR 23-0215, slip op. (Ariz. Ct. App. Apr. 4, 2024), <https://law.justia.com/cases/arizona/court-of-appeals-division-one-unpublished/2024/1-ca-cr-23-0215.html>.

<sup>13</sup> IP.com, *Who Speaks for the Dead? AI Consent and the Digital Afterlife*, IP.COM (2023), <https://ip.com/blog/who-speaks-for-the-dead-ai-consent-and-the-digital-afterlife/>.

<sup>14</sup> Kwan Yiu Cheng, *The Law of Digital Afterlife: The Chinese Experience of AI ‘Resurrection’ and ‘Grief Tech*, 33 *Int’l J. L. & Info. Tech.* eaae029 (2025), <https://doi.org/10.1093/ijlit/eaae029>.

<sup>15</sup> Edina Harbinja, Tal Morse & Lilian Edwards, Digital Remains and Post-Mortem Privacy in the UK: What Do Users Want?, *Int’l Rev. L. Computers & Tech.* (published online May 20, 2025), <https://doi.org/10.1080/13600869.2025.2506164>

media platforms, private electronic communications such as emails and text messages, and archived audiovisual materials like voice recordings, photographs, and videos. In some experimental contexts, even biometric details (fingerprints, retina scans etc.) or neural data have been considered as intricate and complex inputs that can be used for reconstructing and establishing the personality and identity.<sup>16</sup>

From these inputs, different technical modalities can be employed. Voice cloning systems use deep learning models to replicate the speaking styles from short audio samples. This is what generates new utterances in the deceased person's unique tone and cadence. Persona models, which are typically fine-tuned large language models, are able to approximate the conversational styles by being trained on personal writings and texts. Image and video synthesis leverages generative adversarial networks and diffusion models to recreate facial likenesses (expressions, emotions and reactions) and even animate avatars that are capable of interacting in real time.<sup>17</sup> The integration of these modalities enables multimodal avatars that simulate the presence of the deceased in close-to-reality, lifelike ways.<sup>18</sup>

Deeper technicalities and research about the modalities also explore and explain the mitigation mechanisms that are required in order to preserve trust and dignity. The Metadata provenance standards aim to embed and instill the source and verifiable information about the origin of synthetic content. Intricate and detailed watermarking techniques are employed in order to label the AI-generated outputs in ways that are able to resist alteration and changes being made in order to tamper with both the input and output. Complementarily, consent registries and cryptographic attestations can also allow the individuals to record "digital wills". This will be a step towards leading to the specifying of permissible uses of their data.<sup>19</sup>

While all these tools offer partial safeguards, there are still many limitations that are remaining. For instance, watermarking can be bypassed by using other AI platforms that are able to remove watermarks using "eraser tools", provenance metadata is not able to survive sharing that occurs

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<sup>16</sup> Y. Tony Yang, Digital Resurrection and Posthumous Identity: Toward a Cross-Cultural Neurorights Framework, 17 *AJOB Neuroscience* 242 (2026), <https://pubmed.ncbi.nlm.nih.gov/40554775/>

<sup>17</sup> Kwan Yiu Cheng, *The Law of Digital Afterlife: The Chinese Experience of AI 'Resurrection' and 'Grief Tech*, 33 *Int'l J. L. & Info. Tech.* eaae029 (2025), <https://doi.org/10.1093/ijlit/eaee029>.

<sup>18</sup> Edina Harbinja, Tal Morse & Lilian Edwards, Digital Remains and Post-Mortem Privacy in the UK: What Do Users Want?, *Int'l Rev. L. Computers & Tech.* (published online May 20, 2025), <https://doi.org/10.1080/13600869.2025.2506164>

<sup>19</sup> Anjali Ranjan, *Digital Afterlife Industry: Legal Perspectives on Digital Will and Posthumous Data Privacy in India*, *Jus Corpus* (Feb. 4, 2025), <https://www.juscorpus.com/digital-afterlife-industry-legal-perspectives-on-digital-will-and-posthumous-data-privacy-in-india/>

over different platforms (cross-platform sharing), and models that are trained on mixed datasets are very risky because of cross-model data leakages and re-identification of individuals who never gave their consent to participate in the first place.<sup>20</sup>

## ETHICAL AND SOCIAL IMPLICATIONS

The practice of resurrecting the deceased digitally through various ways like voice synthesis, avatars, or memorial chatbots can have really profound ethical and social challenges. A central concern of this idea is the exploitation of the emotions of family members who lost the deceased person, who may be confronted with hyper-realistic simulations of their loved ones.<sup>21</sup> The commodification and commercialisation of digital identity raises questions of consent and dignity.<sup>22</sup> Treating grief of surviving family members as a market opportunity leads to the reducing of personal identity to a monetizable asset. MDPI in their study shows how memorial chatbots, even though they are marketed as therapeutic, often risk deepening the grief or creating over-dependency by blurring the boundary between memory and simulation.<sup>23</sup>

Another risk lies in false or misleading posthumous speech. AI systems that are trained on the fragments of personal data sometimes generate results that are inconsistent with the political and other views of the deceased person.<sup>24</sup> The use of a synthetically resurrected voice of a dead person in a court proceeding, exemplifies how the digital likenesses can significantly influence such high-stakes decisions without the deceased person's consent or control on it.<sup>25</sup> These practices carry very broad political risks, that include the possibility of AI-generated endorsements or fabricated statements attributed to public figures after death.<sup>26</sup>

These harms underscore the urgency of the need of regulatory intervention. It must be seen that

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<sup>20</sup> Jacopo Ciani Sciolla & Ugo Pagallo, *No Peace After Death? The Impact of AI-Driven Memorial Chatbots on Privacy and Data Protection*, 16 Info. 426 (2025), <https://doi.org/10.3390/info16060426>.

<sup>21</sup> Kwan Yiu Cheng, *The Law of Digital Afterlife: The Chinese Experience of AI 'Resurrection' and 'Grief Tech*, 33 Int'l J. L. & Info. Tech. eaae029 (2025), <https://doi.org/10.1093/ijlit/eaae029>.

<sup>22</sup> Edina Harbinja, Tal Morse & Lilian Edwards, *Digital Remains and Post-Mortem Privacy in the UK: What Do Users Want?*, *Int'l Rev. L. Computers & Tech.* (published online May 20, 2025), <https://doi.org/10.1080/13600869.2025.2506164>

<sup>23</sup> Jacopo Ciani Sciolla & Ugo Pagallo, *No Peace After Death? The Impact of AI-Driven Memorial Chatbots on Privacy and Data Protection*, 16 Info. 426 (2025), <https://doi.org/10.3390/info16060426>.

<sup>24</sup> Y. Tony Yang, *Digital Resurrection and Posthumous Identity: Toward a Cross-Cultural Neurorights Framework*, 17 AJOB Neuroscience 242 (2026), <https://pubmed.ncbi.nlm.nih.gov/40554775/>

<sup>25</sup> IP.com, *Who Speaks for the Dead? AI Consent and the Digital Afterlife*, IP.COM (2023), <https://ip.com/blog/who-speaks-for-the-dead-ai-consent-and-the-digital-afterlife/>.

<sup>26</sup> Victoria Haneman, *The Law of Digital Resurrection*, 65 B.C. L. Rev. 1921 (2024), <https://bclawreview.bc.edu/articles/3205/files/68389b44a7eae.pdf>

AI resurrection technology is guided by respect for autonomy, dignity, and emotional integrity towards the survivors.<sup>27</sup>

## LITERATURE REVIEW AND THEORETICAL FRAMEWORK

The concept of a “digital afterlife” covers the persistence, recreation, that is the very simulation of a person's identity in digital form after their death has occurred. This can refer to the memorialization of the deceased person on social media platforms, or through chatbots which have learned from private messages, or very advanced avatars which are capable of mimicking voice and likeness. Scholars differentiate between the passive digital remains (archived data like emails, photos, and social media updates) and active reconstructions created by artificial intelligence based on the biometric details, voice, even neural information.<sup>28</sup> The legal importance of the distinction lies in the varying levels of intimacy as well as the possible abuse.<sup>29</sup> For instance, photos are publicly accessible, voice samples or neural data trigger more profound questions of autonomy and identity.<sup>30</sup>

The academic debate coalesces around the following three normative perspectives.

1. Property-based approaches that are mainly rooted in the United States' “right of publicity,” conceptualize a person's likeness and voice as assets that may be exploitable. The Boston College Law Review in their study has highlighted how the state publicity statutes extend to the heirs for commercial licensing but are inconsistent across various jurisdictions.<sup>31</sup> This approach has enabled estates to be able to afford the power to authorize or prevent commercial resurrection, however it does not do much to address the non-commercial or dignity-related harms of the same.<sup>32</sup>

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<sup>27</sup> Anjali Ranjan, *Digital Afterlife Industry: Legal Perspectives on Digital Will and Posthumous Data Privacy in India*, Jus Corpus (Feb. 4, 2025), <https://www.juscorpus.com/digital-afterlife-industry-legal-perspectives-on-digital-will-and-posthumous-data-privacy-in-india/>

<sup>28</sup> Kwan Yiu Cheng, *The Law of Digital Afterlife: The Chinese Experience of AI ‘Resurrection’ and ‘Grief Tech*, 33 Int'l J. L. & Info. Tech. eaae029 (2025), <https://doi.org/10.1093/ijlit/eaae029>.

<sup>29</sup> Y. Tony Yang, Digital Resurrection and Posthumous Identity: Toward a Cross-Cultural Neurorights Framework, 17 AJOB Neuroscience 242 (2026), <https://pubmed.ncbi.nlm.nih.gov/40554775/>

<sup>30</sup> Edina Harbinja, Tal Morse & Lilian Edwards, Digital Remains and Post-Mortem Privacy in the UK: What Do Users Want?, *Int'l Rev. L. Computers & Tech.* (published online May 20, 2025), <https://doi.org/10.1080/13600869.2025.2506164>

<sup>31</sup> Victoria Haneman, *The Law of Digital Resurrection*, 65 B.C. L. Rev. 1921 (2024), <https://bclawreview.bc.edu/articles/3205/files/68389b44a7eae.pdf>

<sup>32</sup> IP.com, *Who Speaks for the Dead? AI Consent and the Digital Afterlife*, IP.COM (2023), <https://ip.com/blog/who-speaks-for-the-dead-ai-consent-and-the-digital-afterlife/>.

2. Autonomy and consent-based approaches emphasize the individual's right to determine the use of their digital traces posthumously. A study by JusCorpus highlighted that the proposals for enforceable "digital wills" allow for people to be able to specify whether their data may be used for memorial or generative purposes.<sup>33</sup> Yet, as MDPI notes in their study, consent becomes complex issue to deal with when the surviving members of the family supply or override data related to the deceased person, particularly in the context of memorial chatbots that are designed for grief support.<sup>34</sup>

3. Dignity and rights-based approaches focus less on property or consent and more on the inviolability of personhood. The literature emerging with respect to "neuro-rights" argues that posthumous simulations of identity implicate fundamental interests in mental integrity and human dignity, even transcending economic frames.<sup>35</sup> The Yang (2025) study, calls for a cross-cultural framework that regards posthumous identity of a person as protected in ways that are similar to privacy or human rights.<sup>36</sup>

Despite the massively growing attention, the existing literature about the issue reveals two critical gaps.

Firstly, the regulatory fragmentation severely undermines coherence. The states in the USA treat likeness as transferable property, whereas the European Union excludes the deceased person from the GDPR (General Data Protection Regulation), and in India there exists no statutory framework in this respect.<sup>37</sup> This patchwork leaves digital resurrection largely unregulated outside of commercial exploitation, that too in limited jurisdictions.

And secondly, there is a technical mismatch. While scholarship proposes dignity or consent protections, enforceable mechanisms such as provenance tracking, watermarking, or registries

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<sup>33</sup> Anjali Ranjan, *Digital Afterlife Industry: Legal Perspectives on Digital Will and Posthumous Data Privacy in India*, Jus Corpus (Feb. 4, 2025), <https://www.juscorpus.com/digital-afterlife-industry-legal-perspectives-on-digital-will-and-posthumous-data-privacy-in-india/>

<sup>34</sup> Jacopo Ciani Sciolla & Ugo Pagallo, *No Peace After Death? The Impact of AI-Driven Memorial Chatbots on Privacy and Data Protection*, 16 Info. 426 (2025), <https://doi.org/10.3390/info16060426>.

<sup>35</sup> Y. Tony Yang, *Digital Resurrection and Posthumous Identity: Toward a Cross-Cultural Neurorights Framework*, 17 AJOB Neuroscience 242 (2026), <https://pubmed.ncbi.nlm.nih.gov/40554775/>

<sup>36</sup> Edina Harbinja, Tal Morse & Lilian Edwards, *Digital Remains and Post-Mortem Privacy in the UK: What Do Users Want?*, *Int'l Rev. L. Computers & Tech.* (published online May 20, 2025), <https://doi.org/10.1080/13600869.2025.2506164>

<sup>37</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council (General Data Protection Regulation), 2016 O.J. (L 119) 1, recital 27.

still remain underdeveloped in the legal discourse.<sup>38</sup>

Thus, there is a dire requirement of a hybrid theoretical model recognizing likeness as more than property, embedding autonomy through digital wills, and grounding dignity protections in enforceable technical standards in order to bridge the gap between normative aspirations and practical governance.<sup>39</sup>

## CURRENT LEGAL LANDSCAPE: COMPARING JURISDICTIONS

**United States** - In the United States, the protection for a deceased person's likeness usually flows from the state rights of publicity. This is what is called a property-oriented doctrine that many states extend post-mortem there.<sup>40</sup> In California's statute, under Cal. Civ. Code § 3344.1, a "deceased personality" retains a post-mortem right of publicity for a period of 70 years and the heirs may enforce any unauthorized commercial uses of the name, voice, signature, photograph, or likeness.<sup>41</sup> Some recent legislative amendments have expressly targeted the digital replicas and AI uses of deceased persons data. The state Indiana's statutory regime also similarly protects the post-mortem publicity rights by extending enforcement for a time period up to 100 years and providing remedies for any unauthorized commercial exploitation.<sup>42</sup>

Despite these statutes, protections remain fragmented. This is because many state laws focus on the commercial exploitation by dealing with issues like licensing and merchandising while leaving non-commercial or expressive uses like memorial chatbots, scholarly reconstructions, or court-admitted synthetic statements in grey areas in a definitional sense.<sup>43</sup> The absence of a federal standard has led to overall inconsistent and incomplete coverage across jurisdictions.<sup>44</sup>

**European Union** - The GDPR (General Data Protection Regulation) explicitly excludes

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<sup>38</sup> Anjali Ranjan, *Digital Afterlife Industry: Legal Perspectives on Digital Will and Posthumous Data Privacy in India*, Jus Corpus (Feb. 4, 2025), <https://www.juscorpus.com/digital-afterlife-industry-legal-perspectives-on-digital-will-and-posthumous-data-privacy-in-india/>

<sup>39</sup> Edina Harbinja, Tal Morse & Lilian Edwards, Digital Remains and Post-Mortem Privacy in the UK: What Do Users Want?, *Int'l Rev. L. Computers & Tech.* (published online May 20, 2025), <https://doi.org/10.1080/13600869.2025.2506164>

<sup>40</sup> Victoria Haneman, *The Law of Digital Resurrection*, 65 B.C. L. Rev. 1921 (2024), <https://bclawreview.bc.edu/articles/3205/files/68389b44a7eae.pdf>

<sup>41</sup> California Civil Code § 3344.1 (1 January 2024).

<sup>42</sup> Indiana Code § 32-36-1 (2024).

<sup>43</sup> Edina Harbinja, Tal Morse & Lilian Edwards, Digital Remains and Post-Mortem Privacy in the UK: What Do Users Want?, *Int'l Rev. L. Computers & Tech.* (published online May 20, 2025), <https://doi.org/10.1080/13600869.2025.2506164>

<sup>44</sup> IP.com, *Who Speaks for the Dead? AI Consent and the Digital Afterlife*, IP.COM (2023), <https://ip.com/blog/who-speaks-for-the-dead-ai-consent-and-the-digital-afterlife/>.

deceased persons from its personal-data protections (Recital 27), though Member States “may provide for” rules governing processing of the deceased person’s data.<sup>45</sup> Consequently, individual national approaches are very different from each other. For instance France’s data-protection law (implementing Article 40 of its Data Protection Act) allows individuals to give post-mortem instructions about retention, erasure, or communication of their data and to designate a person to implement those wishes.<sup>46</sup> Other Member States vary in recognition of heirs’ limited rights<sup>47</sup> or in how personality/image rights are enforced (e.g., Italy’s constraints on using portraits after death), producing an uneven regulatory landscape that often leaves non-commercial dignity harms unaddressed.<sup>48</sup>

**India** - India currently does not have a statutory post-mortem data-protection regime. The Information Technology Act and related rules do not explicitly create any inheritable data-subject rights or recognize the concept of “digital wills” with legal and statutory effect.<sup>49</sup> It may be suggested in such a scenario that a recourse can be found in reinterpreting inheritance or fiduciary doctrines, but that doctrinal and policy work is required before the enforceable post-mortem privacy rights.<sup>50</sup>

## PROPOSALS & RECOMMENDATIONS

The doctrinal gaps that have been mapped in the above sections, suggest that the existing law is ill-suited or at least very poorly suited to regulate AI resurrection as of now. Therefore, a hybrid regulatory package is necessary in order to balance innovation and posthumous dignity. This package would combine things like input control, consent-driven governance, a *sui generis* right, and also mandatory technical standards.<sup>51</sup>

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<sup>45</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council (General Data Protection Regulation), 2016 O.J. (L 119) 1, recital 27.

<sup>46</sup> Loi n° 78-17 du 6 janvier 1978 relative à l’informatique, aux fichiers et aux libertés (France), art 40.

<sup>47</sup> Kwan Yiu Cheng, *The Law of Digital Afterlife: The Chinese Experience of AI ‘Resurrection’ and ‘Grief Tech*, 33 Int’l J. L. & Info. Tech. eaae029 (2025), <https://doi.org/10.1093/ijlit/eaee029>.

<sup>48</sup> Edina Harbinja, Tal Morse & Lilian Edwards, Digital Remains and Post-Mortem Privacy in the UK: What Do Users Want?, *Int’l Rev. L. Computers & Tech.* (published online May 20, 2025), <https://doi.org/10.1080/13600869.2025.2506164>

<sup>49</sup> Information Technology Act 2000 (India).

<sup>50</sup> Anjali Ranjan, *Digital Afterlife Industry: Legal Perspectives on Digital Will and Posthumous Data Privacy in India*, Jus Corpus (Feb. 4, 2025), <https://www.juscorpus.com/digital-afterlife-industry-legal-perspectives-on-digital-will-and-posthumous-data-privacy-in-india/>

<sup>51</sup> Kwan Yiu Cheng, *The Law of Digital Afterlife: The Chinese Experience of AI ‘Resurrection’ and ‘Grief Tech*, 33 Int’l J. L. & Info. Tech. eaae029 (2025), <https://doi.org/10.1093/ijlit/eaee029>.

**(A) Right to Deletion (Input Control).**

Regulating of outputs is technically infeasible, and rather, posthumous protection should centre on the inputs. A time-limited right to deletion would enable and allow the decedents (through their estates or designated representatives) to demand the withdrawal of personal data from training corpora for a fixed period of their choosing, for example twenty or thirty years post-mortem.<sup>52</sup> The enforcement of this idea would rely on the take-down orders against platforms and statutory infractions for the unauthorized repurposing of protected data.<sup>53</sup> This approach provides a realistic enforcement hook while also avoiding excessive overreach into the generative model internals.<sup>54</sup>

**(B) Digital Wills and Consent Registry.**

Secondly, a standardized “digital will” framework should permit individuals to dictate how their data and likeness may be used after their death, working on similar principles of a written will about tangible property.<sup>55</sup> Such wills could be registered in a cryptographically verifiable consent ledger. Platforms would be legally required to check the registry before producing any kind of posthumous content.<sup>56</sup> This measure is suitable as it empowers autonomy while also reducing the risk of unauthorized digital resurrection.<sup>57</sup>

**(C) Sui Generis Posthumous Privacy Right.**

A specific and narrowly tailored statutory right should be introduced in order to cover the dignity and non-commercial related concerns.<sup>58</sup> Unlike the broad U.S. right of publicity, this right would specifically block harmful or exploitative uses like commercial advertisements or

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<sup>52</sup> Edina Harbinja, Tal Morse & Lilian Edwards, Digital Remains and Post-Mortem Privacy in the UK: What Do Users Want?, *Int'l Rev. L. Computers & Tech.* (published online May 20, 2025), <https://doi.org/10.1080/13600869.2025.2506164>

<sup>53</sup> IP.com, *Who Speaks for the Dead? AI Consent and the Digital Afterlife*, IP.COM (2023), <https://ip.com/blog/who-speaks-for-the-dead-ai-consent-and-the-digital-afterlife/>.

<sup>54</sup> Anjali Ranjan, *Digital Afterlife Industry: Legal Perspectives on Digital Will and Posthumous Data Privacy in India*, Jus Corpus (Feb. 4, 2025), <https://www.juscorpus.com/digital-afterlife-industry-legal-perspectives-on-digital-will-and-posthumous-data-privacy-in-india/>

<sup>55</sup> Posthumous Data Privacy in India' (2024) <https://www.juscorpus.com/digital-afterlife-industry-legal-perspectives-on-digital-will-and-posthumous-data-privacy-in-india/> accessed 23 October 2025.

<sup>56</sup> IP.com, *Who Speaks for the Dead? AI Consent and the Digital Afterlife*, IP.COM (2023), <https://ip.com/blog/who-speaks-for-the-dead-ai-consent-and-the-digital-afterlife/>.

<sup>57</sup> Kwan Yiu Cheng, *The Law of Digital Afterlife: The Chinese Experience of AI 'Resurrection' and 'Grief Tech*, 33 *Int'l J. L. & Info. Tech.* eaae029 (2025), <https://doi.org/10.1093/ijlit/eaee029>.

<sup>58</sup> Edina Harbinja, Tal Morse & Lilian Edwards, Digital Remains and Post-Mortem Privacy in the UK: What Do Users Want?, *Int'l Rev. L. Computers & Tech.* (published online May 20, 2025), <https://doi.org/10.1080/13600869.2025.2506164>

defamatory speech with respect to the deceased person, while it will also be leaving space for cultural, educational, and fair uses such as court proceedings.<sup>59</sup>

#### **(D) Mandatory Technical Provenance and Labelling.**

Last but not the least, the technical safeguards must accompany particular legal rights. The interaction between data protection and technical control suggests that there be mandates for provenance metadata, robust and un-hackable watermarking, and “synthetic origin” labels on all AI-generated outputs.<sup>60</sup> Regulators could also require things like dataset registries and provenance logs, thus enabling independent audits of compliance.<sup>61</sup>

#### **Policy Checklist.**

Enforcement should combine the following: (i) A specialized regulator which is having oversight powers, (ii) A private right of action for the survivors (like family members of the deceased), and last but not the least, (iii) Platform duties with penalties for non-compliance. Carve-outs would ensure that the genuine cultural, archival, and scholarly uses remain protected.

Taken together, this package offers a balanced model as it safeguards autonomy and dignity without foreclosing socially valuable uses of synthetic media.

### **IMPLEMENTATION CHALLENGES & ENFORCEMENT**

Operationalizing of a hybrid regulatory package has significant hurdles in the process. Jurisdictional conflicts are acute, in the sense that, while the EU excludes the deceased people from the protection that is provided by the GDPR, several U.S. states recognize post-mortem publicity rights, but that also creates fragmented regimes.<sup>62</sup> Evidentiary burdens are also equally high, thus proving that a synthetic output was derived from the protected personal data remains technically complex, especially given the anonymized (based on the black-box

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<sup>59</sup> Victoria Haneman, *The Law of Digital Resurrection*, 65 B.C. L. Rev. 1921 (2024), <https://bclawreview.bc.edu/articles/3205/files/68389b44a7eae.pdf>

<sup>60</sup> Jacopo Ciani Sciolla & Ugo Pagallo, *No Peace After Death? The Impact of AI-Driven Memorial Chatbots on Privacy and Data Protection*, 16 Info. 426 (2025), <https://doi.org/10.3390/info16060426>.

<sup>61</sup> Kwan Yiu Cheng, *The Law of Digital Afterlife: The Chinese Experience of AI ‘Resurrection’ and ‘Grief Tech*, 33 Int’l J. L. & Info. Tech. eaae029 (2025), <https://doi.org/10.1093/ijlit/eaee029>.

<sup>62</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council (General Data Protection Regulation), 2016 O.J. (L 119) 1, recital 27.

theory which means the internal workings of the system remain inaccessible.) training sets and cross-model leakage across various if not all generative systems.<sup>63</sup> Also the platforms face the burden of compliance costs in building provenance registries, maintaining deletion protocols, and retrofitting watermarking systems.<sup>64</sup>

A phased approach is therefore more advisable to be implemented in the following manner: (1) Immediate rollout of mandatory labelling and a consent registry pilot, (2) Introduction of a statutory right to deletion with limited retroactivity in order to manage feasibility, and last but not the least, (3) Gradual harmonization of the standards through a multi-stakeholder governance body that is combining regulators, platforms, and civil society.<sup>65</sup> This pathway helps to balance the feasibility with the normative imperative of protecting the posthumous dignity.<sup>66</sup>

## CONCLUSION

In order to conclude, it is evident to note that this paper has argued the fact that regulating digital afterlife technologies requires a hybrid approach which combines both legal and technical measures. The existing frameworks are not enough as they only inadequately protect the dignity of the deceased person, focusing either on commercial exploitation or completely ignoring the posthumous rights altogether.<sup>67</sup> In the various scholarships and research as demonstrated in this paper, the proposed package prioritizes input control acting through a right to deletion, consent through digital wills and registries, and technical provenance measures such as watermarking and synthetic origin labels.<sup>68</sup> A specifically tailored and customized *sui generis* posthumous privacy right will further be able to help in order to guard and protect against the exploitative uses of such technology while also permitting certain genuine memorialisations of the deceased. Policymakers should therefore begin with the above

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<sup>63</sup> Kwan Yiu Cheng, *The Law of Digital Afterlife: The Chinese Experience of AI 'Resurrection' and 'Grief Tech'*, 33 Int'l J. L. & Info. Tech. eaac029 (2025), <https://doi.org/10.1093/ijlit/eaac029>.

<sup>64</sup> Jacopo Ciani Sciolla & Ugo Pagallo, *No Peace After Death? The Impact of AI-Driven Memorial Chatbots on Privacy and Data Protection*, 16 Info. 426 (2025), <https://doi.org/10.3390/info16060426>.

<sup>65</sup> Anjali Ranjan, *Digital Afterlife Industry: Legal Perspectives on Digital Will and Posthumous Data Privacy in India*, Jus Corpus (Feb. 4, 2025), <https://www.juscorpus.com/digital-afterlife-industry-legal-perspectives-on-digital-will-and-posthumous-data-privacy-in-india/>

<sup>66</sup> Edina Harbinja, Tal Morse & Lilian Edwards, *Digital Remains and Post-Mortem Privacy in the UK: What Do Users Want?*, *Int'l Rev. L. Computers & Tech.* (published online May 20, 2025), <https://doi.org/10.1080/13600869.2025.2506164>

<sup>67</sup> Victoria Haneman, *The Law of Digital Resurrection*, 65 B.C. L. Rev. 1921 (2024), <https://bclawreview.bc.edu/articles/3205/files/68389b44a7eae.pdf>

<sup>68</sup> Kwan Yiu Cheng, *The Law of Digital Afterlife: The Chinese Experience of AI 'Resurrection' and 'Grief Tech'*, 33 Int'l J. L. & Info. Tech. eaac029 (2025), <https://doi.org/10.1093/ijlit/eaac029>.

suggested phased approach implementation. This means starting with consent registries and labelling, while technologists refine the watermarking protection mechanism and provenance standards.<sup>69</sup> Together, these reforms can and will surely help to preserve the autonomy and the dignity in the digital afterlife without stifling innovation, while also ensuring that the dead are neither voiceless nor exploited in the age of synthetic media.<sup>70</sup>

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<sup>69</sup> Anjali Ranjan, *Digital Afterlife Industry: Legal Perspectives on Digital Will and Posthumous Data Privacy in India*, Jus Corpus (Feb. 4, 2025), <https://www.juscorpus.com/digital-afterlife-industry-legal-perspectives-on-digital-will-and-posthumous-data-privacy-in-india/>

<sup>70</sup> IP.com, *Who Speaks for the Dead? AI Consent and the Digital Afterlife*, IP.COM (2023), <https://ip.com/blog/who-speaks-for-the-dead-ai-consent-and-the-digital-afterlife/>.