

## Ads on a Tombstone

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### Redefining Human Dignity to Protect Digital Remains of the Deceased

#### Introduction

On any given day, more than 10,000 Facebook users die (Karppi, 2013). Their accounts are then left untouched until someone – usually an immediate family member – reports their death. From that moment on, the account will either be deleted or turned into a “memorial account” for the recently deceased user. The data of memorialized users remains in the system as “nodes that open up to other notes and other agencies” – and is subsequently monetized through “the surplus attention and user activity of the bereaved” (Karppi, 2013; Öhman & Floridi, 2017)<sup>1</sup>. In the first 8 years of Facebook’s existence, roughly 30 million users passed away, adding members to a steadily growing – and legally opaque – digital graveyard.

Obviously, Facebook is not the only social media site that deals with a steady influx of deceased members: Twitter, for example, will take down accounts of users who have remained inactive for six months. Instagram, on the other hand, will leave the accounts online and unchanged unless reported (Harrison, 2018).

How are we to deal with this phenomenon? There exists little to no precedent for the amount of personal and behavioral data that each social media user feeds into his or her online persona, and personal information collected online – be it on Facebook, Google or other sites<sup>2</sup> – has mostly been regarded as some sort of digital property – a concept

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<sup>1</sup> A more detailed explanation of how this monetization works is found in the following section.

<sup>2</sup> For an overview of the practices of different social media sites, see McCallig (2013) & Harrison (2018). Up to date information can be found on the companies’ websites.

that's bound to become even more abstract as the (partial) owners of the data pass away (McCallig, 2013).

In their paper *The Political Economy of Death in the Age of Information: A Critical Approach to the Digital Afterlife Industry*, Oxford researchers Carl Öhman and Luciano Floridi present a conceptual framework for thinking about these questions and provide us with three core arguments:

- (a) there is an emerging industry for the data of the deceased
- (b) we can no longer think of our user data as mere property
- (c) we need to define new data regulation along the notion of human dignity (respect for the dead) instead of the notion of digital property ownership.

This paper will provide an outline of their framework, question & expand on its assumptions, and briefly look at its applicability to one of the largest data-collection endeavors: government census data.

### **How are the Dead Profitable?**

Before we look at Öhman and Floridi's critique of the Digital Afterlife Industry (DAI), we need to understand how post-mortem user data can be profitable.

*There is no provision that expressly terminates the contractual agreement between Facebook and a user who dies. – Damien McCallig in Facebook after death: an evolving policy in a social network*

Upon the event of death, internet corporations such as Facebook and Google often enjoy full rights to the user information of the deceased (O'Brien, 2015). Facebook in particular has no account inactivity policy, meaning that the accounts of the deceased are only deactivated upon request and under certain conditions (McCallig, 2013). If not deleted,

Facebook “memorializes” the profiles of their dead users, and can use “them as a means to produce surplus attention and user activity from the bereaved, which in turn can be sold to a third party” (Öhman & Floridi, 2017).

Interaction with a memorialized account can take multiple forms: friends can still visit the profile and browse through posted content such as photos, articles etc.; they can post on the deceased person’s timeline and – depending on the account settings – even tag the account in photos. To further facilitate the interaction with memorialized accounts, Facebook now allows designated “legacy contacts” to manage the account<sup>3</sup>. Recently, Facebook added a ‘Tributes’ feature that gives legacy contacts the ability to “decide who can see and post tributes and [...] who can see posts the deceased person is tagged in or remove the tag” (Shu, 2019)<sup>4</sup>.

This way, whenever Facebook users interact with the memorialized account, they keep exposing themselves to the site’s targeted advertisement and keep feeding the site’s algorithms. If we were to draw a parallel to the bereaved in a real graveyard, Facebook is not only putting ads on tombstones, but also collecting data on each visit.

### **The Theoretical Framework: Dead Labor and Human Dignity**

In their paper, Öhman and Floridi lean on Karl Marx’s concept of living and dead labor as well Floridi’s ontological concept of the informational body. This section will provide a condensed outline of these two ideas and explain how they lead up to their conceptual framework for thinking about the digital remains of dead users.

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<sup>3</sup> Facebook’s legacy contacts have to meet two criteria: they need to be designated by the account holder while they are alive, and they need to have their own Facebook account. Under these guidelines, I, for instance, would have to convince my father to create a new Facebook account before designating him as my legacy contact.

<sup>4</sup> See McCallig’s paper for a more detailed account on the different interests that have shaped Facebook’s memorial account policies up to 2013.

### **Why digital remains might be monetized in the future**

According to Marx's economic philosophy, labor exists in two forms, living labor (the activity of human work, e.g. a man building a saw) and dead labor (capital or commodified work, e.g. the saw itself). The saw, however, is pretty useless unless it is worked by another human to build something else. This gives rise to the endless cycle of capital and labor: as labor is commodified into capital, more labor is needed to make it profitable.

This metaphor is then directly applied to deceased Internet users: "they actually become a form of undead agency that demands life activity (labor) from the living in order to continue to live, that is – to remain productive" (Öhman & Floridi, 2017).

This makes sense given that even "free" services such as Facebook try to maximize their profits by attracting consumers in whatever way they can, and thus also have an interest in "increasing any form of (productive) posthumous interaction [with memorial accounts]" (Öhman & Floridi, 2017). After all, memorialized profiles can still be visited, posted on or tagged in photos (Facebook, 2019). This might incentivize companies to display the deceased in ways that are more "consumable" and might distort the reality of who the person was, or how they chose to portray themselves online. The pressure to profit off of these accounts is likely to increase with time (as more users die) and with increased competition with other social networks (when every marginal competitive advantage becomes more important).

### **Why is the monetization of digital remains unethical?**

The Marxist interpretation outlined above provides one possible economic explanation for why profit-oriented companies might increasingly capitalize on interactions across memorial accounts. But it doesn't make a case for why this is ethically wrong. For this, we will look at

the Floridian ethics outlined in Öhman's and Floridi's papers and see how they defend social media users' virtual presence along the lines of human dignity.

According to Luciano Floridi, one's personal identity is not only composed of one's biological body, but also of something he calls one's *informational body*, which includes our biometrical information, search history, social data etc. As such, our data is not just our property; it is part of who we are. We exist with and through it, and it constitutes our identity within our modern society. Thus, for another to alter one's informational body in any way or form is, to some degree, a violation of one's identity.

But Floridi's argument goes further. He defines the very concept of human dignity as a one's ability to "remain the master of one's existence, of one's own 'journey' through the world", be it physical or virtual (Öhman & Floridi, 2017). Thus, violations of one's online identity are not just violations of individual identity or informational privacy, but also aggressions of human dignity itself.

What does this mean in practice? In the physical world, we see the concept of human dignity applied in situations where the memory of someone is not to be distorted in the name of profit, e.g. the codes of ethics that regulate human exhibitions of human remains: we don't give ghost tours in ancient tombs nor "put a Santa hat on Ötzi the Iceman to attract more museum visitors around Christmas" (Öhman & Floridi, 2017). This is because we feel some degree of respect for the humanity of these remains and feel that commercializing them would violate it.

This is arguably the most important part of the argument, as it helps us solve some of the problems we encounter if we define the relationship between users and their data purely along the lines of property ownership: contrary to the ownership-based idea of data property, the right to being treated with dignity exists regardless of whether one is alive or

dead, whether one is aware of it or not, for “the informational (inorganic) body continues to have the right to be treated with respect worthy of a (dead) human” (Öhman & Floridi, 2017). Further, the right to be treated with human dignity is non-exhaustive – even partial ownership of our data by large media companies does not negatively affect the claim (Spitzer, 2017). Finally, it offers some grey-area for data-manipulation & reorganization as long as it doesn’t directly conflict with the idea of human dignity.

Thinking about digital remains terms of an informational body may sound far-fetched, but it can make intuitive sense: after we pass away, much of the information that will remain of our person – our behavioral preferences, our photos, our exchanges with other people – will exist in the form of data. And unlike the family and friends who will remember us for some time, our data might last beyond the human lifespans of those closest to us. In other words, our data might become the single most comprehensive souvenir of who we were.

### **Critique of the Celebrity Culture Comparison**

Öhman and Floridi acknowledge that celebrity culture provides a possible ethical and legal precedent for the “commercialization of digital remains,” for even after their death, celebrities often remain in society as brands or ideas that continue to generate profit for those who own or are associated with their brands. One example they name is that of Michael Jackson – the pop-star’s brand generated over \$140 million since his death (Forbes, 2015).

Öhman and Floridi then make a problematic claim: that by making communication and self-portrayal strategies accessible to the general public, social media has democratized the way in which formerly only celebrities used to portray themselves. As a result, today’s social media users have become some sort of “micro celebrities”. They see this

development as particularly distressing given the “alarming lack of legislation” over issues of data heritage.

While one can agree about the alarming nature of this legal void, referring to regular social media users as “micro celebrities” seems like a dangerous conceptual leap. At the risk of being cynical, one could argue that even when they are alive, celebrities create their brand with the very intention of generating profit. This profit prerogative persists past their death, when consumption of the brand continues to benefit the production studios or family members who hold the rights to the celebrities’ brand. In other words, the profit motive shapes their brand during their lifetime and after their death, essentially presenting the post-mortem continuation of a contract they agreed to when they were alive. We can’t say the same for the average social media user.

Why not? Because (a) online users don’t only build brands, and (b) their portrayal is not necessarily profit-oriented:

Regular social media users accept the Terms of Service which essentially allow users to take advantage of any given media site’s services (e.g. messaging, posting, media exchange) in exchange for their attention (monetized through ad revenue) and data on their personal preferences. But over the last two decades, our online persona has become less an optional digital accessory than an often-indispensable requirement of modern life – Facebook, LinkedIn and Google accounts are often as crucial to participation in modern society as are driver’s licenses or passports.

Further, contrary to a celebrity’s brand, regular social media users’ profiles can be said to be closer representations of their true identity. Sure, the virtual and non-virtual persona may differ, but our virtual footprint (in the form of online accounts and user data)

has become too comprehensive, too all-encompassing to be regarded a merely an optional branding luxury – it has become part of the person we are.

For these reasons, celebrity culture is probably not a good place to look for legal precedents for dealing with data heritage. One should look into precedents where heritage is connected to the mostly un-curated remembrance of people and unaffected by an overbearing profit motive.

### **Possible Limits of the Framework: Data-Privacy**

An internal team at the Census Bureau recently discovered that the personal information of over 100 million respondents of the 2010 head count could be deanonymized, meaning that it was possible to identify the age, gender, location, race and ethnicity of said respondents (Associated Press, 2019). This is not an isolated phenomenon: as survey data becomes more ubiquitous and granular, the risk of extracting personal information from large data-sets such as censuses becomes a serious problem – one that threatens not only the privacy of the respondents, but also the public's trust in government data collection.

To prevent deanonymization of census data, it undergoes a process that injects some amount of noise into the data whenever released. If added up over multiple queries, this noise can hurt the accuracy of the analysis. This gives rise to an evolving tradeoff between privacy and accuracy as well as to the question of which of the two takes priority.

While Öhman and Floridi's framework for thinking about personal data helped us make a case for whether personal social media data should or should not be used in certain ways, it offers little to no guidance for these sorts of data privacy cases. Breaches of data privacy might violate the informational privacy of individuals and conflict with different notions of data ownership, but they are "unlikely to display the users in ways threatening



human dignity” and would therefore not count as problematic under Öhman and Floridi’s human dignity standard<sup>5</sup>.

In other words, the human dignity standard seems to be more relevant when (a) the data in question is comprehensive enough to alter the way a person is remembered and (b) the data is distorted for the sake profit maximization<sup>6</sup>.

### **First Steps**

Social media is a relatively new phenomenon and mostly used by young people who seldom think about death as an imminent possibility. Yet death is real and so are the petabytes of data that each of us will leave behind. At least as far as social media accounts are concerned, there is a simple way bridge the current lack of legislation on how to deal with digital remains: ask the user.

There is no substitute for consent by the user while they are alive, and it is especially true for sites that, like Facebook, lack an account inactivity policy. One possible approach is to set up a compulsory feature where users get to briefly outline how they want their data to be dealt with in case they pass away. This simple process would have at least two benefits:

- a) it could account for part of the lacking legislation on the issue
- b) it can increase the user’s consciousness of the digital remains problem and help them re-think how they handle their data online.

Another option is to transfer the legal burden from the users to the social media company by legally requiring the deletion – or preventing the creation – of memorial accounts, unless the user explicitly consented to it. This would not solve the problem of

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<sup>5</sup> We assume that data-privacy breaches don’t go as far as to compromise human dignity in the form of discrimination, political disenfranchisement etc.

<sup>6</sup> Öhman and Floridi acknowledge that physical and virtual heritage data has historically been distorted due to reasons other than profit, e.g. sometimes the bereaved have particular ideas for their loved ones’ remembrances which may or may not significantly distort the way we remember those who passed away.

memorial account monetization, but it would add an important layer to a process in which most of the responsibility is being conveniently delegated to the users.

## **Conclusion**

Society today strongly underestimates the magnitude and potential for the misuse of digital remains and there is an alarming lack of legislation regarding digital remains. Yet our digital remains – such as our behavioral data, photos and exchanges with other people – might one day become the most comprehensive record of who we were.

What currently protects our digital remains from misrepresentation and commercialization are our ownership rights to our data, but even these are compromised by the partial or full ownership of our data by social media sites (O'Brien, 2015). To resolve this tension, Öhman and Floridi propose to defend digital remains along the lines of human dignity – by seeing them as an extension of our personhood, as our *informational body*.

This essay expanded on how Öhman and Floridi's ethical framework for human dignity can solve some of the problems that arise from thinking of digital remains purely in terms of digital property: human dignity is valid beyond the death of the owner, it is non-exhaustive, inalienable, and it doesn't require awareness or consent by the user (Spitzer, 2017). Further, this essay outlined the limitations of the framework in regard to data-privacy protection and problematized one of the ideas raised by Öhman and Floridi, i.e. the temptation to use celebrity culture as a legal precedent for general data heritage.

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