

DEATH IN THE DIGITAL AGE  
Digital Life After Death in the US

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*“We, the Party, control all records, and  
we control all memories. Then we control  
the past, do we not?”*

1984 (Part 1, Chapter 3)  
GEORGE ORWELL

## INTRODUCTION

Across centuries, humans have ritualized memory. From marking the Lascaux Cave, to interring the honorably preserved in pyramids and catacombs, to establishing trusts and memorials, human culture has long practiced the celebration of memory while acknowledging the temporality of human life. Immortalization, before the digital age, meant creating a legacy or property that could endure generationally. It also created a legal system of inheritance to manage the transfer of property, from papers and effects, to estates and finances.

Today, when data retention exceeds the natural retention cycles of human life, our digital identities persist beyond our physical ones. In digital space, a new kind of memorial has emerged in the hallowed HTML of our Facebook pages (*e-mortalization*). In digital space too, we accumulate property – from our iTunes or Kindle libraries, to our cloud storage, to our facial recognition models on Facebook – though it is far less certain to the general public how it may be inherited, or if it should be at all. It is projected that by 2070, Facebook will have more accounts for deceased users than living ones<sup>1</sup>, making it incumbent upon policymakers to close the gap in privacy protections and property management for the deceased.

The EU’s Right to Be Forgotten demonstrates a formalized approach of operationalizing a diluted version of identity bankruptcy, but as the US lacks a strong framework for a similar policy, regulations and inheritance surrounding a data subject’s digital life after death still remains ambiguous. This paper attempts to identify these gaps and surface the challenges between preserving privacy, honoring culture and empathy, and choosing when to forget in this digital age.

## SHIFTING CULTURAL PRACTICES AROUND DEATH

Cultural practices surrounding death and the afterlife hold a strong connection to a physical sense of place. Traditional western burials depend on placemaking, creating a site for the bereaved to visit and a final resting place for the deceased. Even tree burials and sky burials abstractly value this, by physically returning an individual to the Earth. Globally, the assignment of a physical plot to a family or individual has been a lasting characteristic of funerary traditions. Even Japan, despite its extremely densifying urban condition, is fighting to preserve *place* in funerary rituals by compressing

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<sup>1</sup> Öhman, C. J., & Watson, D. (2019). “Are the dead taking over Facebook? A Big Data approach to the future of death online”. *Big Data & Society*. <https://doi.org/10.1177/2053951719842540>

plots into stacked urn mausoleums and modern urn warehouses<sup>2</sup>. Historically, traditional death rituals have remained much the same, but even these are now responding to urban density problems, ushering a new era of funerary compression<sup>34</sup>. Tangentially, new practices like cryopreservation and ghost AIs are gaining cultural currency. Following AI trends on *mind and machine*, startups like Luka<sup>5</sup> are also offering AI chatbots that are trained on conversations with people before they pass away, for family and friends to later speak to through bereavement<sup>6</sup>.

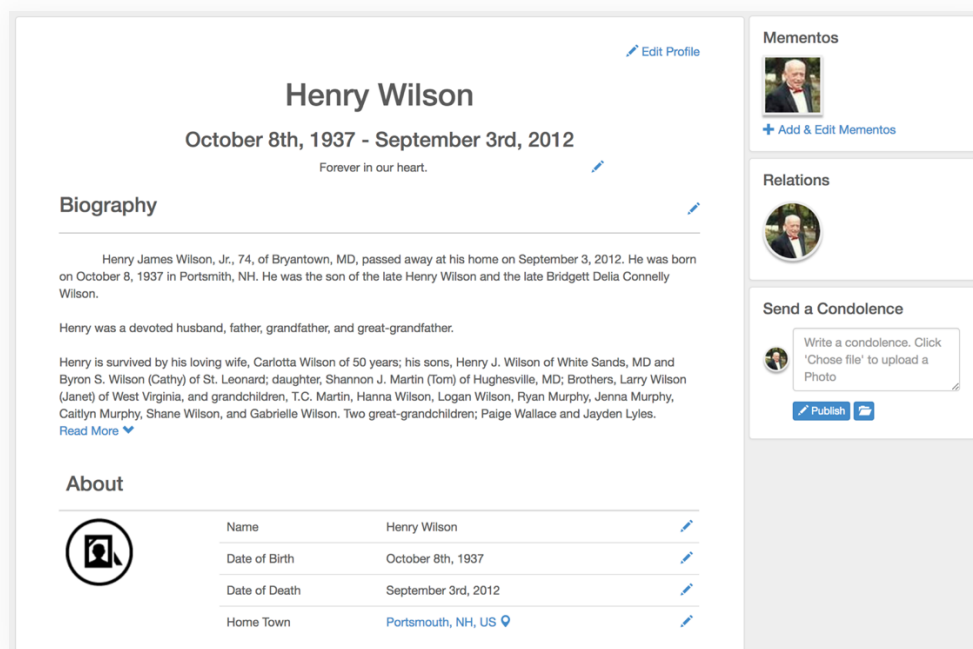


Figure 1: An example of a Qeepr memorial page

In the internet’s infancy, online obituaries served as funerary placemakers. Websites like [legacy.com](http://legacy.com), the World Wide Cemetery([cemetery.org](http://cemetery.org)), and [Qeepr](http://Qeepr) have created memorials for people to visit and

<sup>2</sup> Jordan, Mary. (28 Mar. 1996). “IN JAPAN, NO ROOM AT THE MAUSOLEUM.” The Washington Post, *WP Company*, [www.washingtonpost.com/archive/politics/1996/03/28/in-japan-no-room-at-the-mausoleum/69958da5-606f-4a59-ba1e-b42cfac6642d/?noredirect=on&utm\\_term=.bcf060bad49e](http://www.washingtonpost.com/archive/politics/1996/03/28/in-japan-no-room-at-the-mausoleum/69958da5-606f-4a59-ba1e-b42cfac6642d/?noredirect=on&utm_term=.bcf060bad49e).

<sup>3</sup> Au, M. (2016). “Housing the Dead: A lense through local densification patterns.” *Room One Thousand*, 4. <https://escholarship.org/uc/item/10g1v3rz>

<sup>4</sup> Biegelsen, A. (Oct 31, 2012). “America's Looming Burial Crisis”. *CityLab*. <http://www.citylab.com/housing/2012/10/americas-looming-burial-crisis/3752/>

<sup>5</sup> Dormon, Bob. (Jul 6, 2018). “The AI that (almost) lets you speak to the dead.” *Ars Technica*. <https://arstechnica.com/information-technology/2016/07/luka-ai-chatbot-speaking-to-the-dead-mind-uploading/>

<sup>6</sup> This article details on the concept of a “Digital Avatar” and digital immortality, focused on the use of AI towards capturing the essence of a person.

Humphries, Courtney. (18 January, 2018). “.” The MIT Technology Review. MIT. <https://www.technologyreview.com/s/612257/digital-version-after-death/>

maintain<sup>7,8</sup>. The digital transformation of funerary rituals have also expanded into Facebook, where designated people can take over the management of a users' account once they pass, and moderate content from friends in memory of the deceased individual<sup>9</sup>.

While many rituals serve to establish a sense of place, they are also rooted in global cultural precedents that also establish a responsibility and rights of those close to the deceased to perform them. The rights and responsibilities of close family are well-established in natural law<sup>10</sup>, and Hindu, Muslim, Buddhist and Judeo-Christian religious customs<sup>11</sup>. Funerary rituals directly implicate those who survive the deceased.

## PREPARING THE DIGITAL SELF BEFORE DEATH

With the digital emerges a new phase of death planning. Not only must an individual consider traditional procedures like crafting a will, managing financial and sentimental assets, and disclosing their funeral preferences, but also preparing their accounts for obsolescence.

Facebook formally announced the creation of memorial pages, that are to be managed by designated keepers<sup>12</sup>. These designated people ("legacy contacts") can choose whether an account will be memorialized or permanently deleted. On memorialized account pages, the designated users can moderate new posts – which Facebook calls "tributes" – and moderate new images, tags and profile pictures, without gaining access to the users' private messages. Additionally, no one can log into memorialized accounts and Facebook takes measures to prevent content from appearing in public spaces, like newsfeeds, when a user is identified as deceased.

Instagram, like Facebook also transitions accounts into memorials, while offering some user controls to the account owner before the account is converted<sup>13</sup>. Users can choose whether they want their accounts to appear as marked memorials or not, and no one can log into accounts after their owners are marked as deceased. Previous posts remain visible, and Instagram does not promote any content to public spaces like the "Explore" page.

On both Facebook and Instagram, to report that a person is deceased and initiate the account transition process, users are required to submit documents that prove they are immediate family of the deceased<sup>14</sup>. Instagram specifically requests birth certificates, death certificates or other proof of legal guardianship or other representation. These documents in particular are extremely personal,

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<sup>7</sup> Qeepr is an app with memorial pages for the deceased, that integrates with cemeteries offering additional services like directions to grave sites.

Qeepr, (6 May, 2019). <http://www.qeepr.com/>

<sup>8</sup> Legacy.com, (6 May, 2019). <https://www.legacy.com>

<sup>9</sup> Sandberg, Sheryl. (9 April, 2019). "Making It Easier to Honor a Loved One on Facebook After They Pass Away." Facebook Newsroom, *Facebook*. <https://newsroom.fb.com/news/2019/04/updates-to-memorialization/>

<sup>10</sup> Hering, Ana-Klara. (2009). Post-Mortem Relational Privacy: Expanding The Sphere Of Personal Information Protected By Privacy Law. *University of Florida*. [http://etd.fcla.edu/UF/UFE0024742/hering\\_a.pdf](http://etd.fcla.edu/UF/UFE0024742/hering_a.pdf)

<sup>11</sup> Kathleen Garces-Foley. (2005). "Death And Religion In A Changing World."

<sup>12</sup> Sandberg, Sheryl. (9 April, 2019). "Making It Easier to Honor a Loved One on Facebook After They Pass Away." Facebook Newsroom, *Facebook*. <https://newsroom.fb.com/news/2019/04/updates-to-memorialization/>

<sup>13</sup> (6 May, 2019) "What happens when a deceased person's account is memorialized?." Instagram Help Center. *Instagram*. [https://help.instagram.com/231764660354188?helpref=faq\\_content](https://help.instagram.com/231764660354188?helpref=faq_content)

<sup>14</sup> The RTBF states a similar requirement, deeming that "suitable" proof must be supplied with requests for erasure, else the entity can refuse to honor an erasure request.

and naturally deter false requests, but also require the sharing of personal information of both the deceased and those connected to them.

Google similarly has an account service called the “Inactive Account Manager,” wherein, when a user is inactive for more than three months (or a specified length of time), their designated contacts receive a notification that allows them to download any user data that the account owner chose to share<sup>15</sup>. After the individuals download this archive, accounts can be programmed for deletion.

While each these services offers the option of deleting accounts, what deletion means in this context is not well defined. User-generated content like posted text, images and profile metadata, for example, is deleted<sup>16</sup>. Because private messages also implicate other users who may continue using their accounts, this data is not deleted in the event of an account deletion. Because the nested nature of data and multiple users, deleting an account does not necessitate the deletion of all of its associated data, and server logs will retain prior user activity information, regardless.

Apple allowed widow Peggy Martin to gain access to her late husband’s iCloud account with a court orders<sup>17</sup>, while other licensed software and paid accounts (Kindle, Amazon Prime, Spotify) expire by default<sup>18</sup>. Other accounts, like cryptocurrency wallets leave users to their own devices to assure that their keys are passed on to trusted contacts in the case of emergencies or events of death. Other services like [DeadSocial.org](https://deadsocial.org) and [Death.io](https://death.io) offer platforms for people to input their preferences for curating their online legacies to reduce the burden of decision-making for family members, and give people more agency in determining their digital persistence after death.

## THE RIGHT TO BE FORGOTTEN

The “right to be forgotten” (RTBF) demonstrates a regulatory desire, at least in the EU, for a formalized way to approach a lighter version of post-mortem privacy. Though the RTBF applies only on a case-by-case basis and is largely a framework for delisting information, it does offer an operationalized method for *forgetting* in digital space and memory. The United States currently does not have a federal equivalent for the EU’s RTBF, data erasure requests, or subject-access requests as required by the GDPR, but does offer a fractured collective of state laws governing them instead. Because social media companies generally operate in both the EU and the US contexts, new requirements from the GDPR have improved services available to US-based users, too, though a federal net to protect these is lacking.

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<sup>15</sup> Rosen, Rebecca J. (12 April, 2019). “Google Death: A tool to take care of your Gmail when you’re gone.” *The Atlantic*. <https://www.theatlantic.com/technology/archive/2013/04/google-death-a-tool-to-take-care-of-your-gmail-when-youre-gone/274934/>

<sup>16</sup> *Though this is loosely explained in this article, it is unclear from Facebook, Google or Instagram’s policies whether a delete constitutes a hard delete or soft delete. Additionally, these systems usually are eventually-consistent so data may not be updated across all replicas for some unspecific amount of time until it eventually synchronizes.*

Picchi, Aimee. (23 March, 2018). “OK you’ve deleted your Facebook data, but is your data still out there?” *CBS News*. <https://www.cbsnews.com/news/ok-youve-deleted-facebook-but-is-your-data-still-out-there/>

<sup>17</sup> Glance, David. (19 January, 2016.). A widow's battle to access her husband's Apple account. <https://phys.org/news/2016-01-widow-access-husband-apple-account.html>

<sup>18</sup> Herrera, Tim. (18 January, 2017). “Is Your Digital Life Ready for your Death?”. *The New York Times*. <https://www.nytimes.com/2017/01/18/technology/is-your-digital-life-ready-for-your-death.html>

Challenges from first-amendment maximalists weaken the potential for regulations like this to stretch into the US context<sup>19,20</sup>, and similar challenges may complicate the status of content generated by the deceased in public forums, if an individual desires to obliterate their digital presence after death. The arbitration of the public value of online content is currently relegated to private companies (ie. Google has a process established to evaluate RTBF requests to comply and whether information in a delist request is important for the public to see). In the United States, without a similar legal requirement, frameworks for evaluating the public value of content do not exist. The RTBF currently applies “where the data are no longer needed for their original processing purpose, or the data subject has withdrawn his consent and there is no other legal ground for processing.” The event of death may fall alongside this, if a user is no longer present to continue using the service<sup>21</sup>. However, the GDPR itself explicitly remains neutral for the data of the deceased<sup>22</sup>.

While the contours of the RTBF in the EU remain blurry, countries like France and Germany established explicit post-mortem privacy rights. The Digital Republic Act of 2016, an amendment to France’s existing Data Protection Act, for example, allows users to declare instructions for data brokers on the management and use of personal data after death<sup>23</sup>. German courts applied a different approach, after a ruling in a 2018 case on the access and ownership rights of a deceased girl’s Facebook account, filed by her parents<sup>24</sup>. In 2015, the initial ruling backed the parents, transferring the account to them in its totality (not in the memorial format, but rather with full access to the girl’s account and messaging history). In 2017, Facebook won an appeal, on the basis that the company’s contract for the account ended when the girl passed away. Afterwards, the German Federal Court of Justice reclassified the account as property similar to a private diary or correspondence, and the ownership of the account was again transferred to the parents. This approach specifically aligns a Facebook account to property, and invites a property law approach to the inheritance of digital assets after death.

Even more broadly, if a user wants to be entirely “forgotten” online in the event of death, its technical implementation remains extremely challenging. Decoupling enmeshed users from complicated large-scale systems in the age of the internet is a Gordian knot. If the deceased had engaged in online conversations with others, can their contributions to these conversations be

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<sup>19</sup> Jon L. Mills. (2018). *Privacy Revisited: A Global Perspective on the Right to be Left Alone*, 53 Tulsa L. Rev. 321. <https://digitalcommons.law.utulsa.edu/cgi/viewcontent.cgi?article=3110&context=tlr>

<sup>20</sup> Lee, Edward, *The Right to Be Forgotten v. Free Speech* (August 26, 2015). A Journal of Law and Policy for the Information Society (Forthcoming); Chicago-Kent College of Law Research Paper. Available at SSRN: <https://ssrn.com/abstract=2651141>

<sup>21</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L [2016] 119/1 at Arts. 17, 21. [Hereinafter GDPR]

<sup>22</sup> “Member States may provide for rules regarding the processing of personal data of deceased persons” Recital 27, GDPR.

<sup>23</sup> Proust, Oliver. Defromont, Julien-Alexis. (11 Sep, 2018). “Post-GDPR French Data Protection Law adopted.” *PrivacyLawBlog*. <https://privacylawblog.fieldfisher.com/2018/post-gdpr-french-data-protection-law-adopted>

<sup>24</sup> (12 July, 2018). “Facebook ruling: German court grants parents rights to dead daughter's account”. *BBC*. <https://www.bbc.com/news/world-europe-44804599>

removed?<sup>25</sup> The RTBF primarily prioritizes rights of the individual filer, while considering the effects of delisting on the general public. However, questions of relation-privacy are not directly implicated in this regulation.

## A PRIMER ON POST-MORTEM PRIVACY IN THE US: Information vs Property

### Data as Information

The right to privacy is a personal right in US common law, and as such, is a right only applied to the living. Protections, like privacy torts, usually meant to safeguard individuals from reputational harm in defamation suits also cannot protect the deceased, as deceased individuals cannot experience reputational harm or an invasion of privacy. This notion was fortified by the judgment in *Jesse James, Jr. v. Screen Gems Inc.*<sup>26,27</sup>, in which a widow filed that the use of her late husband's name in a documentary was a violation of privacy, but lost, because her claim insufficiently applied to her husband but did not transfer to her.

When 18-year old Nikki Catsouras suffered a devastating accident in a 100-mph car, images of her lifeless and nearly decapitated body at the scene began to circulate across the internet, leaving her parents and sisters in undue emotional distress. The California Highway Patrol (CHP) had taken images onsite for due diligence, but circulated these images to unauthorized viewers outside of the CHP<sup>28</sup>. Nikki's parents took action for legal recourse against the CHP for this leak. In their initial case with the Orange County Superior Court, a judge dismissed their case, holding that privacy rights do not extend to the dead. In the following settlement, Nikki's parents were ultimately awarded for negligence and the infliction of distress on behalf of the CHP.

Though Nikki's parents did win their appeal, it did not depend on generalized relational privacy rights, nor did Jesse James' rights extend to his surviving widow. These do not have a national precedent, but the "zones of privacy" as defined by Griswold case offer a potential foundation for them. *Griswold v. Connecticut* established a right to "marital privacy." Justice William O'Douglas' wrote in his majority opinion that this right was not established directly by the Bill of Rights but instead, was embedded in the "penumbras" of other constitutional protections. This penumbra's envelope is not yet well defined, but could potentially extend privacy protections as a relational right.

Where post-mortem privacy is clearly relational is in medicine. Medical data governed by HIPAA at the federal level is protected for a 50-year period, with rights for family to access, use, and disclose

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<sup>25</sup> Another aside: If user data is applied to machine learning models, for example, how might their data be removed from a model that is constantly evolving in often illegible ways?

Eduard Fosch Villaronga, Peter Kieseberg and Tiffany Li. (2018). *Humans Forget, Machines Remember: Artificial Intelligence and the Right to Be Forgotten*, 34 Comp. L. & Sec. Rev. 304, <https://doi.org/10.1016/j.clsr.2017.08.007>

<sup>26</sup> Fennimore, Keenan C. (2 January, 2012). "Reconciling California's Pre, Post, and Per Mortem Rights of Publicity." *Indiana International & Comparative Law Review* 22(2): 377-409. <http://journals.iupui.edu/index.php/iiclr/article/view/17867>

<sup>27</sup> Mrs. Jesse JAMES, Jr., Plaintiff and Appellant, v. SCREEN GEMS, INC., and Columbia Broadcasting System, Inc., Civ. 23586. District Court of Appeal, Second District, Division 3, California. (21 October, 1959).

<sup>28</sup> Bennett, Jessica (April 24, 2009). "One Family's Fight Against Grisly Web Photos". *Newsweek*. <https://www.newsweek.com/one-familys-fight-against-grisly-web-photos-77275>



personally identifiable health records of the deceased<sup>29</sup>. After this expires, these records are no longer classified as “protected health information,” and can be used without concern of the HIPAA Privacy Rule<sup>30</sup>. This information can offer relevant health awareness to family (for example, heritable diseases), and can allow those involved with the healthcare of the deceased to continue managing payments or completing required health processes (ie. there are special exceptions for medical examiners and coroners)<sup>31</sup>. This differs in the use of medical data of the deceased for research. Even if the data are deidentified, a representative of the deceased must consent to the use of these data<sup>32</sup>.

Both in the US and abroad, the collection and use of genetic data invites a clear need for relational privacy. The Icelandic Healthcare Database, for example, has achieved scientific success because of its wealth of genealogical data<sup>33</sup>, but this large presence of post-mortem data also can expose information about living family members<sup>34</sup> linked to these genealogies, necessitating changes to its consent framework<sup>35,36</sup>. However, even the current opt-out model and strict use requirements are limited because they do not address the ancestral data already in use<sup>37</sup>. The use of post-mortem medical data has clear impacts on the health, access to services, and the health awareness of descendants. A similar parallel has not been established for social media information, which also invokes relational-privacy, but lacks a clear or measurable impact on those connected to the deceased. For the family of Henrietta Lacks, relational privacy may be more relevant than the content of medical data in her cell lines.

## Data as Property

Because the bulk of death planning is tilted towards asset management, there does exist a body of knowledge on the inheritance of some digital assets (including social media accounts). Typically, assets can be passed on to others through three designations: (1) beneficiary designation, often used to transfer assets like life insurance or 401k plans to specified recipients as per the provider’s policy; (2) operation of law, in which jointly-owned assets are transferred to the sole surviving account owner(s); and (3) legal documents, like wills or trusts established by the decedent which bequeath

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<sup>29</sup> Health Information Portability and Accountability Act of 1996, 45 CFR 160.103(2)(iv) (2012)

<sup>30</sup> Ibid.

<sup>31</sup> Mathews, Courtney. Martinho, Andreia Martins. (14 September 2012). “Patient Physician Confidentiality: ‘Till death do us apart?’” *AMA Journal of Ethics*. doi: 10.1001/virtualmentor.2012.14.9.hlaw1-1209.

<sup>32</sup> Health Information Portability and Accountability Act of 1996, 45 CFR 164.502(g)(4) (2012)

<sup>33</sup> Palmer, Katie M. (25 March, 2015). “Why Iceland Is The World's Greatest Genetic Laboratory.” *Wired Magazine*. <https://www.wired.com/2015/03/iceland-worlds-greatest-genetic-laboratory/>

<sup>34</sup> Hauksson, Pétur (19 August, 1999). “Icelanders opt out of genetic database.” *Nature*. (400, 707-708). <https://www.nature.com/articles/23341>

<sup>35</sup> Government of Iceland. (1998). Act on a health sector database No. 139/1998. Reykjavik, Iceland: Government of Iceland. Available at: <http://brunnur.stjr.is/interpro/htr/htr.nsf/pages/gagngr-log-ensk>

<sup>36</sup> Annas, G.J., (2000). Rules for research on human genetic variation: Lessons from Iceland. *New England Journal of Medicine* 342, 1830-1833.

<sup>37</sup> Khazan, Olga. (7 October, 2014). “How Iceland's Genealogy Obsession Leads to Scientific Breakthroughs.” *The Atlantic*. <https://www.theatlantic.com/health/archive/2014/10/how-iceland-s-genealogy-obsession-leads-to-scientific-breakthroughs/381097/>



property to designees<sup>38</sup>. One law firm details that digital assets can be designated in wills, but that different assets are “owned” by the decedent, while others are not, and are therefore not transferrable<sup>39</sup>. Digital assets like hard drives, CDs or Blu-Ray media players can be transferred the same way other physical property, like a book, may be. Under the “first-sale doctrine” of the US Copyright Act, the sale of physical media extends both license to access the media, but also ownership of the media itself. These assets are inheritable in the corridors of existing asset transfer protocols. Other assets, like music libraries subject to DRM are licensed rather than sold to users<sup>40</sup>. In these cases, the license to access the media is granted to purchasers, but not the ownership of the files. Amazon’s Terms of Service, for example, specifies that licenses expire upon death and that it retains the rights to the content itself<sup>41</sup>. Apple’s Terms of Service limit the use of digital files to Apple devices owned by the account holder, and explicitly mentions “No Rights of Survivorship<sup>42</sup>.” A carefully curated playlist on iTunes is not legally the same as a vinyl record collection. The inheritance of social media accounts (with user-generated authorship) is not detailed in this context, because it does not fold into IP law the same way digital media does.

Proposals to operationalize the management of this after death often suggest “digital wills.” In a now-deleted blog post about estate-planning on [USA.gov](https://blog.usa.gov/post/22261234875/how-and-why-you-should-write-a-social-media-will)<sup>43</sup>, posted in 2012, the US government recommended that people create “social-media wills” to specify their preferences for account management after death<sup>44</sup>. However, a centralized strategy for all accounts in this format may be infeasible with the current lack of standardization (by necessity) in different social media Terms of Service agreements. Additionally, formal wills are public documents in some respects, and disclosing preferences in this forum may erode privacy for the deceased, and those connected to them<sup>45</sup>.

## CLOSING THE GAP

Post-mortem digital personhood is in flux, translated as both property and information, in the envelopes of both an individual and relational rights. Courts consistently hold that privacy rights do

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<sup>38</sup> American Bar Association. (1 April, 2019). “Introduction to Wills.”

[https://www.americanbar.org/groups/real\\_property\\_trust\\_estate/resources/estate\\_planning/an\\_introduction\\_to\\_wills/](https://www.americanbar.org/groups/real_property_trust_estate/resources/estate_planning/an_introduction_to_wills/)

<sup>39</sup> Martin Law Firm. “Inheriting iTunes: What happens to your digital assets after death?”

Retrieved on 7 May, 2019. <https://jbmartinlaw.com/inheriting-itunes-what-happens-to-your-digital-assets-at-death/>

<sup>40</sup> Warr, Phillipa. (14 October, 2014). “Digital assets post-mortem”. *Internet Policy Review*.

<https://policyreview.info/articles/news/digital-assets-post-mortem/328>

<sup>41</sup> Amazon. (21 May 2018). “Conditions of Use”. *Amazon*. Retrieved 6 May, 2019.

<https://www.amazon.com/gp/help/customer/display.html?nodeId=508088>

<sup>42</sup> Apple Media Services Terms and Conditions. *Apple Inc.* Retrieved 6 May, 2019.

<https://www.apple.com/legal/internet-services/itunes/us/terms.html>

<sup>43</sup> “How and why you should write a social-media will.” USA.gov. Retrieved 6 May, 2019.

<https://blog.usa.gov/post/22261234875/how-and-why-you-should-write-a-social-media-will>

<sup>44</sup> Rosen, Rebecca J. (3 May, 2012). “The government would like you to write a social-media will.” *The Atlantic*.

<https://www.theatlantic.com/technology/archive/2012/05/the-government-would-like-you-to-write-a-social-media-will/256700/>

<sup>45</sup> *This may materialize, for example, when a person specifies which data they want people to access and which they do not, or in the ways they specify who should be able to post tributes and how they want new content to be moderated.*

Cohen, Albert. (11 September, 2013). “What part of wills are public information?” *Avvo*.

<https://www.avvo.com/legal-guides/ugc/privacy---what-part-of-wills-are-public-information>

not survive death. But with the proliferation of information online held by third-party serves, with the potential for nearly infinite retention, it is worth reconsidering the need for a posthumous right to privacy. The current approach to post-mortem privacy, by default, inadequately allows access to surviving family members with legal representation, even if an individual does not specify intent for their digital assets<sup>46</sup>. Balancing the interests of family (and their own privacy rights) with the intent of the deceased will continue to be a multifaceted legal zone, in which the succession of data requires attentiveness to its treatment as both information and property. As we are increasingly entrenched in our digital futures, and as these futures persist after our deaths, legal privacy protections must continue to evolve to protect our digital personhood.

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<sup>46</sup> Harbinja, Edina. (2017) Post-mortem privacy 2.0: theory, law, and technology, *International Review of Law, Computers & Technology*, 31:1, 26-42, DOI: [10.1080/13600869.2017.1275116](https://doi.org/10.1080/13600869.2017.1275116)

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*What happens to models that are trained on personal data of users when they want to withdraw that data?*

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*If autopsies are published, can medical information, like certain risk factors, affect the insurance premiums of relatives? (Does GINA protect any part of this?)*

<https://www.bloomberg.com/news/articles/2015-01-27/inside-the-massive-project-to-uncover-the-holocaust-s-nameless-victims#p1>

## APPENDIX

### Facebook's Memorialization Request Process:

facebook

How can we help?

Help CenterEnglish (US)

Creating an Account

Friending

Your Home Page

Messaging

Stories

Photos

Videos

Pages

Groups

Events

Payments

Marketplace

Apps

Facebook Mobile and Desktop Apps

Accessibility

Memorialization Request

After someone has passed away, we want to respect their wishes for what should happen to their account. If a family member or friend uses this form to submit a request, the account goes into a special memorialized state unless the person has requested to have their account removed when they pass away.

Please keep in mind that memorialization is a big decision. If you're not a family member or close friend of the person who passed away, we recommend reaching out to the person's family before requesting memorialization.

Memorializing an account will do things like keep the account secure by preventing anyone from logging into it. The account will still be visible on Facebook, but the only person who can manage a memorialized account is a legacy contact selected by the account holder.

If the account holder hasn't selected a legacy contact, the account won't be actively cared for by anyone after memorialization has been requested.

Keep in mind that if the account holder requested to have their account permanently deleted after they pass away, we will remove their account once we're made aware they have passed away.

If you'd like to request that an account be memorialized, please use this form to let us know.

Who passed away?

If you can't find who you're looking for, try our special request form.

When did they pass away?

If you don't know the exact date, please get in touch with a family member or friend who knows it.

Optional: Documentation of death

If you can, please provide a link to an obituary or other documentation about the death. This is very helpful to the team that reviews memorialization requests.

http://

If you don't have a link to provide, you can upload your documentation instead.

Choose FileNo file chosen

Your email address

Please provide a valid email address that can be used to contact you.

If you need help with costs related to your loss, consider creating a fundraiser on Facebook.

Send

### Instagram Removal Request for Deceased Person:

Instagram

How can we help?

Help Center

Using Instagram

Managing Your Account

Instagram for Business

Troubleshooting and Login Help

Privacy and Safety Center

Removal Request for Deceased Person on Instagram

Please use this form to request the removal of a deceased person's account. We extend our condolences and appreciate your patience and understanding throughout this process.

Your full name

Your email address

Full name of the deceased person

Username of the deceased person's Instagram account  
(ex: If the URL of the account is [instagram.com/— enter —](#) in the following field)

A link to the Instagram account of the deceased person

When did they pass away?

If you don't know the exact date, please approximate

Please provide verification that you're an immediate family member

You'll need to upload documentation like a death certificate, the deceased person's birth certificate or proof of authority

Choose FileNo file chosen

Any additional information

Send

## Google Inactive Account Manager:

