



## DEAD ONLINE, ALIVE IN LAW? WHO CONTROLS A PERSON'S DIGITAL IDENTITY AFTER DEATH?

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### ABSTRACT

*The rapid expansion of digital identities has created complex questions about what happens to online accounts, personal data, creative works, and digital likenesses after death. This paper examines the emerging legal framework governing digital inheritance and post-mortem digital identity across the United States, European Union, and India. It analyses the interaction between contract and succession law, privacy and personality rights, fiduciary access regimes, copyright, and emerging AI-specific protections. It pays particular attention to RUFADAA in the United States, the European approach to post-mortem data and personality rights, and India's developing position under Puttaswamy, Krishna Kishore Singh, the Digital Personal Data Protection Act, 2023, and recent personality-rights cases involving AI-generated replicas. The paper argues that existing laws remain fragmented and jurisdiction-dependent, particularly where digital accounts and AI-generated representations intersect. It proposes clearer testamentary directions, platform-level succession mechanisms, and legal recognition of post-mortem digital identity to address these emerging challenges comprehensively.*

**Keywords:** Digital inheritance, Post-mortem privacy, Digital identity, Personality rights, Artificial intelligence.

### INTRODUCTION

Death used to be simple, legally speaking. A person died, their house and bank account passed on through a will or through succession law, and that was more or less the end of it. That is not how it works anymore. When someone dies today, they usually leave behind a Gmail account that keeps getting mail. This WhatsApp number still shows "last seen," an Instagram account

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that keeps popping up on other people's feeds, and sometimes enough old voice notes and videos for someone to actually build an AI version of them that can talk.

None of this was really planned for. Inheritance law was written for houses and jewellery and bank accounts, not for online accounts that a company technically owns the servers for. And now, on top of that, AI has added a completely new problem: not just who gets to read a dead person's old messages, but who gets to decide whether a machine is allowed to generate new things in that person's voice.

This paper looks at how different legal systems are trying to answer this. There isn't one clean answer. Instead, there are basically four different layers of law that all apply at once and don't really talk to each other: contract law, fiduciary/succession law, privacy and personality rights, and now AI-specific law. I'll go through each one, look at the US, EU and Indian positions, and then talk about what happens when they clash.

### **IT'S NOT PROPERTY, IT'S A LICENSE**

The first problem is more basic than people think. When you sign up for Gmail or Instagram, you're not really "buying" anything; you're agreeing to a license to use someone else's servers under their terms and conditions. Read literally, that license is personal to you and ends when you die. There's no "account" left to pass on to anyone; there's just data sitting on a private company's servers that the company has no legal duty to hand over.

This isn't a hypothetical. In 2005, the family of a US Marine named Justin Ellsworth, who was killed in Iraq, asked Yahoo for access to his email. Yahoo said no, citing its own terms of service and federal privacy law, and only handed the emails over after a Michigan court ordered it; even then, they gave the family a CD of the messages rather than actual account access, because, in Yahoo's view, the account itself still wasn't something that could be transferred. In re Ellsworth is usually cited as the case that pushed US lawmakers to actually do something about this problem, because it showed how powerless even a sympathetic, grieving family was under the existing rules.

**Since then, platforms have built their own tools to deal with this, sort of as a private workaround:**

- Facebook/Meta's Legacy Contact – lets you pick someone in advance who can manage (not fully access) your account after death, once it's "memorialised."
- Google's Inactive Account Manager – lets you decide in advance what happens to your Gmail, Photos and Drive if your account goes inactive for a set period.
- Apple's Legacy Contact – lets you choose a person to unlock iCloud photos and files using a death certificate and an access key, though anything you actually bought on iTunes or the App Store stays locked regardless.

Here's the part that surprises most people, including some lawyers: in most legal frameworks, whatever you set up through one of these tools legally beats a contrary instruction in your will. So, if you named a Legacy Contact on Facebook years ago and then wrote something different into your will later, the Legacy Contact wins. Most people writing a will have no idea this is true.

### **WHO GETS LEGAL ACCESS? — RUFADAA (USA)**

Realising that platform terms of service and privacy law were leaving executors basically powerless, the US developed the Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA) in 2015 (an earlier 2014 version gave fiduciaries too much access and was pushed back on by the tech industry). More than 40 US states have now adopted some version of it.

#### **RUFADAA works through a three-step priority list:**

- Online tools first: if you set up a Legacy Contact or similar, that instruction controls.
- If not, your will/trust/power of attorney controls, but only if it specifically says the fiduciary can access digital assets. Just writing "all my property to my executor" usually isn't treated as enough.
- If neither exists, the platform's terms of service control, and the company still has a lot of discretion: they can demand a court order, only give access to what's "reasonably necessary," charge a fee, or just refuse if it's too burdensome.

One detail worth knowing is that RUFADAA splits content (the actual text of an email or message) from the catalogue (metadata: who emailed who, when, subject lines). Even an executor with full authority isn't automatically allowed to read the content; many states require a separate, explicit grant of that specific right. Basically, the law is more comfortable letting someone administer an estate than letting them read a dead relative's private messages.

**EUROPE — PRIVACY THAT ENDS AT DEATH (MOSTLY):** The EU took a totally different approach. Recital 27 of the GDPR literally states that the Regulation "does not apply to the personal data of deceased persons," while letting individual EU countries make their own rules if they want to. So, the result is a patchwork: France lets people leave binding "post-mortem directives" about their data (similar in idea to organ donation forms), Italy lets heirs access a deceased relative's data, and Germany protects the dead not really through data protection law at all but through a constitutional idea called the "post-mortem right of personality."

The clearest test of this came from Germany in 2018, in what's usually called the Facebook inheritance case. A teenage girl died in unclear circumstances (possibly hit by a train), and her parents wanted access to her Facebook account, hoping her private messages might explain whether it was suicide or an accident. Facebook had already memorialised the account and refused, arguing that the privacy of the other people she'd messaged mattered more than the parents' claim. Germany's highest civil court sided with the parents, holding that a Facebook account, including private messages, passes to heirs the same way a diary or a box of letters would under normal German inheritance law. The contract with Facebook just becomes part of the estate. This is a much broader result than the US content/catalogue split. On the opposite end, the UK doesn't even have a general post-mortem privacy or publicity law at all, so families there are stuck relying on confidentiality law and whatever the platform decides to do.

**INDIA:** India's position is built out of three things that don't really connect yet. First, constitutional privacy. In *Justice K.S. Puttaswamy (Retd.) v. Union of India* (2017), a nine-judge bench of the Supreme Court recognised privacy as a fundamental right under Article 21. But this right is explicitly about living people; nothing in the judgment says it survives death, and this gap was directly used in the one case that actually decided this exact question.

That case is *Krishna Kishore Singh v. Sarla A. Saraogi & Ors.* (Delhi HC, 2021) The Sushant Singh Rajput case. SSR's father sued to stop a biopic from being released, arguing he'd inherited

his son's privacy, publicity and personality rights as a legal heir. The Delhi High Court rejected this. It held that privacy, publicity and personality rights are "not heritable" and are "extinguished with the death of the person concerned," relying directly on Puttaswamy. The court did say an heir could still sue separately for defamation of the dead person's name, but the main holding is clear: under current Indian law, a dead person's identity is not something that passes on as property to their family, unlike in Germany or under many US state laws.

This creates a strange contrast, because Indian courts have actually been very protective of living celebrities. Since 2022, the Delhi High Court has passed a string of broad personality-rights orders for people like Amitabh Bachchan, Anil Kapoor, Jackie Shroff and Aishwarya Rai Bachchan, blocking unauthorised use of their name, voice, image, and even catchphrases, including AI deepfakes, and in Jackie Shroff's case, an actual unlicensed AI chatbot built to sound like him. *Anil Kapoor v. Simply Life India* (2023) is now basically the template order courts copy; it blocks not just lookalike merchandise but "artificial intelligence, face morphing, GIFs" generally, and directs domain registrars and ISPs to block infringing websites. These protections are real and enforced fast. But according to Krishna Kishore Singh, they seem to switch off the moment the person dies.

The second thread is statutory, and it's actually more interesting than people give it credit for, because it's buried inside a data protection law rather than framed as an inheritance issue. Section 14 of the Digital Personal Data Protection Act, 2023 (now in force, after the DPDP Rules were notified in November 2025) lets a person nominate someone to exercise their data rights access, correction, and erasure if they die or become incapacitated. This is being called India's first statutory recognition of anything like a post-mortem data right. But it's worth being careful about what it actually does: it's a nomination, closer to naming a nominee on a bank account than to actually inheriting something. Indian courts dealing with insurance nominees have generally said the nominee holds the asset in trust for the legal heirs, rather than owning it themselves. Whether the same logic applies to a DPDP nominee and what happens if the nominee and the legal heirs disagree, say, about whether to delete a dead relative's Instagram hasn't actually been tested in court yet.

So overall, India's current position is a bit unusual: a constitutional privacy right that explicitly doesn't survive death, a personality-rights doctrine that's very strong for the living and, per Krishna Kishore Singh, basically non-existent for the dead, and a brand-new statutory

nomination system that lets someone manage a dead person's data without clearly settling who actually owns anything they find.

**Copyright: The one part that's actually settled:** Compared to everything above, copyright law is refreshingly simple. Original creative work someone made while alive photos, writing, music, code is protected by copyright that survives them and passes to their estate just like any other asset. In India, this is life plus 60 years under the Copyright Act; in the US and EU, it's usually life plus 70 years. The tricky part isn't the copyright itself; it's that the copyright and the account holding the copyrighted content are two separate legal things. You can inherit the copyright in ten years of your parent's photos and still have zero legal way to actually get into the Google Photos account those photos are sitting in because that's an access question, governed by fiduciary-access or nomination law, not by copyright law at all.

## AI AND DIGITAL RESURRECTION

The fastest-changing part of all of this, by far, is what happens when AI can recreate a dead person's voice or face well enough to make them "say" things they never actually said.

The US has responded with a wave of new state laws over roughly the last two years. Tennessee's ELVIS Act (2024) extended publicity-style protection to AI-generated voice and likeness specifically. California's AB 1836 bans commercial use of a deceased performer's "digital replica" without the estate's consent. This came right after comedian George Carlin's estate successfully sued over an AI-generated podcast that copied his voice and style without permission. New York went further in December 2025, requiring prior consent from a deceased performer's heirs before any digital replica of their voice or image can be used commercially, replacing an older rule that just required a disclaimer. At the federal level, the proposed NO FAKES Act cleared a Senate committee in June 2026 and would create a nationwide right against unauthorised digital replicas, though it isn't law yet, and critics say it still puts the burden of enforcement on the family rather than the platform.

India doesn't have a specific AI-replica law yet, but its courts have already dealt with basically this exact fact pattern just for a living person. The Jackie Shroff order didn't only block fake merchandise; it specifically shut down an unlicensed AI chatbot trained to talk like him. There's no reported Indian case yet asking whether a family could get a similar order for someone who's already died, and given Krishna Kishore Singh, the honest guess is probably not, at least

not through personality rights. A copyright or trademark argument might work instead, depending on the facts.

There's also a separate, harder-to-legislate issue: so-called "griefbots", AI chatbots built from a dead person's old texts, voicemails and recordings so a grieving relative can keep "talking" to them. No country currently requires the heirs' consent before someone builds one of these. Whether that's a legal gap that needs closing, or just a private way of grieving that the law shouldn't touch, is still being argued more in ethics papers than in actual court cases.

**When These Layers Collide:** The genuinely hard cases are the ones where more than one of these frameworks applies and gives different answers. An executor might have full legal authority under a will (satisfying RUFADAA) while the platform's own terms of service still demand a court order before doing anything. Someone might die in a country where privacy dies with them, like India under Krishna Kishore Singh, while their commercial identity would have had real, protectable value if they'd died a few thousand miles away in California instead. An AI company might argue that training a model on a dead person's public posts doesn't involve any privacy law at all because in most of these frameworks, privacy law just stops applying at death while a right-of-publicity statute reaches the exact same conduct if the output is used commercially.

Courts tend to fall back on the oldest available tool when this happens: ordinary succession law, treating a digital account the way probate law has always treated a locked diary or a safe deposit box something the deceased controlled during their life, whose fate is decided by their instructions (or by default inheritance rules if there aren't any), subject to whatever contract they'd already signed while alive.

## TAKEAWAYS

For anyone actually dealing with these students, lawyers, or just people planning their own estate, a few things follow directly:

- Set up the platform's own tools first. Since these usually override a will, leaving them blank (or setting them up inconsistently with the will) just creates an unnecessary conflict.

- Be specific in the will. "All my property to my spouse" is routinely treated as not covering digital-asset access. Name the authority clearly, and say whether it includes message content or just account access.
- Keep a private list of accounts somewhere separate from the will, since a will becomes a public document during probate and shouldn't have your passwords in it.
- Think about AI likeness if it's relevant to you. Anyone with a public profile or commercial identity value should decide in writing whether their heirs can license an AI version of their voice or face, instead of leaving it to whatever the local law happens to say.
- Remember jurisdiction changes everything. The same facts get a different legal result in California, Germany, and India not because of interpretation, but because the underlying law is genuinely different in each place.

## CONCLUSION

Ask "who controls a person's digital identity after death" and the honest answer is: it depends entirely on which legal system gets to the question first, and increasingly, on whether AI-specific law has caught up with the technology at all. US law treats an account as a license a fiduciary can partly step into. German law treats it as ordinary inheritable property, basically digital letters. Indian law, per Krishna Kishore Singh, currently says the underlying right just dies with the person while quietly building a nomination system through data protection law that might end up doing some of the same job through a different route. And AI-specific statutes, most of them barely two years old, are trying to answer a question none of the older laws was built for: not just who gets to read a dead person's old messages, but who gets to decide whether they can be made to speak again.

Until these different frameworks actually converge, and given how fast new laws are being passed in this area, that still looks years away, the safest approach is probably the oldest one available: write down, clearly, while you're still alive, what you want to happen, at every single layer of law that could otherwise decide it for you instead.

This paper is for academic and informational purposes only and is not legal advice. The law in this area is genuinely unsettled and changes fast; anyone with a real situation should speak to a qualified lawyer in the relevant jurisdiction.

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