POSTHUMOUS PERSONALITY RIGHTS IN THE ERA OF DEEPFAKES AND DIGITAL RESURRECTION TECHNOLOGIES

Mehak Chaudhary & Sameer Singh

ABSTRACT

Artificial intelligence, deepfake, holographs, and resurrection software are examples of technology that have advanced so quickly that they have radically changed the media and entertainment industry, making it profitable to create dead personas. Today's technology have made it difficult to distinguish between memory, identity, ownership, and commercialization. Examples include holograms of Tupac Shakur and AI-generated voices of deceased musicians. Despite providing prospects for innovative usage, such technologies present numerous ethical and legal challenges pertaining to matters such as consent, privacy, dignity, intellectual property ownership, and the right to utilize the persona after death. Intellectual property rules cannot deal with the digital replication of deceased persons because they were primarily designed to control actual artwork and living people. In light of deepfakes and digital resurrection technologies, this research critically examines posthumous personality rights. It examines the legal status of publicity rights, trademark concerns, copyright protection, and personality rights in the US, EU, and India. In addition to the aforementioned, the study addresses the ethical ramifications of AI-based resurrection methods, concentrating on digital immortality, consent after death, identity commodification, and emotional manipulation. The writers claim that the issue with existing laws is that they are inadequate and do not provide enough safeguards to guaranty that celebrities' legacies are not damaged by any kind of financial exploitation. The researchers suggest creating a sui generis regulatory framework in order to discover a workable answer to this issue, which entails striking a suitable balance between technological advancement and protecting postmortem identity.

Keywords: Posthumous Personality Rights, Deepfakes, Digital Resurrection, Artificial Intelligence, Publicity Rights, Intellectual Property Law.

INTRODUCTION

Technology, identities, and intellectual property have evolved in a whole new way owing to the emergence of AI-driven technology innovations. It is possible to create highly realistic virtual images of people who have passed away due to deepfake technology, machine learning, holograms, and CGI. The phenomenon referred to as "digital resurrection," involving the creation of virtual avatars from deceased celebrities, musicians, politicians, and public persons for films, commercials, concerts, and online media content, has been made possible by such innovations.[1]

Multiple cases of digital rebirth have been witnessed by the global entertainment industry in recent times. The hologram shows by Tupac Shakur in the Coachella Music Festival marked a major breakthrough when it came to the concept of posthumous digital entertainment. Similarly, the creation of digital versions of Paul Walker in the Fast & Furious series and Carrie Fisher in the Star Wars series established the viability of such a venture from a commercial perspective. Ethical issues regarding ownership have emerged in India following the controversies related to the use of artificial intelligence to revive dead celebrities like Sidhu Moosewala.[2]

These problems pose complicated legal puzzles. Can personality rights survive after death? Who owns a dead person's digital avatar? Can one create an image of a person with AI technology without his or her relatives having provided consent? Is there a protection under copyright legislation for such an act of creating the digital version of a personality? The current intellectual property laws have failed to deal with these problems due to the fact that at the time of creation of these rules, it was impossible to do so technologically.[3]

It has become more complex as well in view of the fact that personality rights stand in an uneasy balance between privacy rights, property rights, and commercial factors. While some countries, particularly in the US, provide protection to the right to publicity even after death, some other countries lack laws regarding digital revival of personalities. It is also true of India

[1] WIPO, "Intellectual Property and Emerging Artificial Intelligence Technologies" (World Intellectual Property Organization, Geneva, 2023) 12.
[2] Matthew Bunker, "The Right of Publicity and Human Identity in the Digital Age" (2021) 14 Journal of Intellectual Property Law 87 at 91.
[3] Jennifer E. Rothman, *The Right of Publicity: Privacy Reimagined for a Public World* (Harvard University Press, Massachusetts, 2018) 45.

where the right to personality is defined primarily by the Constitution under Article 21.[4]

The purpose of this paper is to try to examine the connection between personality rights after death and the emergence of digital resurrection technologies, as understood through the prism of intellectual property. The key issue that the essay examines is how technology, which is based on artificial intelligence, introduces new dimensions of challenge for notions of authorship, identity, consent, dignity, and ownership.[5]

Conceptual Framework of Personality Rights

A person's personality rights include various legal rights that involve the protection of certain aspects that define one's personality, such as name, picture, voice, character, or reputation. Personality rights are directly linked to the right of publicity and rights related to privacy.[6]

Initially, personality rights were created as a way of preventing any misuse or commercial use of a person's personality without his/her permission. The right of publicity, especially in the United States, allows personalities to profit from the use of their personalities.[7]

The origins of philosophical personality rights may be linked to personality property theory by Georg Wilhelm Friedrich Hegel, according to which individuality becomes intertwined with the personality itself and its external manifestation. Thus, an unauthorized infringement on personality violates the principles of autonomy and dignity.[8]

Nevertheless, the posthumous use of personality rights is quite contentious. While one approach considers personality rights to be an inheritable kind of property that is passed down to heirs or estates, another suggests that personality rights expire with death, as there will no longer be any privacy or autonomy posthumously.[9]

Nevertheless, progress in the area of digital resurrection technology has introduced another element into this debate, as these AI technologies are no longer limited to creating pictures, but

[4] Mark A. Lemley and Bryan Casey, "Fair Learning" (2021) 99 Texas Law Review 743 at 751.
[5] Stacey L. Dogan, "An Exclusive Right to Evoke" (2008) 44 Boston College Law Review 291 at 295.
[6] Hegel argued that personality becomes embodied in external objects through property relations. See Georg Wilhelm Friedrich Hegel, *Philosophy of Right* (Oxford University Press, Oxford, 1967) 41.
[7] Margaret Jane Radin, *Reinterpreting Property* (University of Chicago Press, Chicago, 1993) 36.
[8] Jennifer E. Rothman, "The Inalienable Right of Publicity" (2019) 101 Georgetown Law Journal 185 at 192.
[9] J. Thomas McCarthy, *The Rights of Publicity and Privacy* (2nd edn, Thomson Reuters, Minnesota, 2022) ss.1:3.

they create personalities that can speak and even express their emotions.[10]

DEEPFAKES AND DIGITAL RESURRECTION TECHNOLOGIES

The term "deepfake technology" describes the use of deep learning and artificial intelligence to transform visual, audio, and video content in order to produce extremely lifelike synthetic media. These technologies use machine learning techniques, especially generative adversarial networks (GANs), to very accurately mimic human voices, speech patterns, body motions, and facial expressions.[11] Unlike traditional editing programs, deepfakes may automatically create lifelike human simulations that might be nearly impossible to distinguish from actual recordings. Deepfakes have become more sophisticated, widely available, and economically beneficial as artificial intelligence technology continue to progress.[12]

Technologies for digital resurrection are a broader category of AI tools used to produce simulated versions of deceased individuals. These technologies include:

- Generation of deepfake videos,
- Development of voice replication systems,
- Creation of CGI recreations,
- Hologram projections,
- Conversational simulation using AI, and
- Avatars in the virtual world.[13]

These digital resurrection technologies make possible the reincarnation of deceased celebrities, artists, political figures, and public personas for recreational, financial, and memorial purposes.

[10] Madhavi Sunder, *From Goods to a Good Life: Intellectual Property and Global Justice* (Yale University Press, New Haven, 2012) 64.
[11] Robert Chesney and Danielle Citron, "Deepfakes and the New Disinformation War" (2019) 107 *Foreign Affairs* 147 at 149.
[12] Danielle Keats Citron, *The Fight for Privacy: Protecting Dignity, Identity and Love in the Digital Age* (W.W. Norton & Company, New York, 2022) 102.
[13] Hao Li, "Digital Humans and Artificial Resurrection in Modern Media Industries" (2023) 17 *AI & Society* 223 at 229.

The use of AI for the creation of such replicas makes it possible to revive the deceased in the form of performances in movies, concerts, advertisements, and other online platforms.

The digital resurrection technologies have been exploited by the entertainment industry owing to their considerable monetary worth. The film industry often uses CGI techniques to finish uncompleted performances of deceased artists or create digital images of fictional characters in movie worlds.[14] The music industry, on the other hand, makes use of the hologram projectors technology to conduct virtual concerts that involve deceased artists and performers. Additionally, technology firms are developing chatbots that are able to communicate with deceased personalities using the recorded data of their audio, visual, and textual information.[15]This makes the deceased celebrities into a financial asset even after death.

In addition to the aforementioned commercial opportunities, digital resurrection technologies present a myriad of legal and ethical issues. For example, one potential problem pertains to misrepresentation, in which case an AI recreation of a person can make a person appear as if they were speaking or behaving in ways that they would have never approved of while they were alive.[16] Additionally, Deepfake technology can enable identity theft via unauthorized replication of traits including a person's voice, appearance, and behavior. Moreover, digital resurrection technologies allow for manipulation of someone's legacy through manipulation of the public image of the individual who passed away.

One important issue pertains to fraudulent endorsement and deceptive advertising. An AI recreation of celebrities can engage in various activities without any sort of genuine consent on the part of the person being reproduced, and therefore deceive audiences into believing that they endorsed the product or company in question.[17] Another ethical dilemma in terms of digital resurrection technologies is emotional manipulation, which is another way that AI can exploit people's feelings, potentially interfering with societal norms of grief, mourning, and death. Defamation is yet another possible use of deepfakes.[18]

[14] Matthew Fagan, "The Ethics of Digital Resurrection" (2021) 15 *Ethics and Information Technology* 89 at 94.
[15] Lisa Nakamura, "AI and Identity Replication in Platform Capitalism" (2022) 28 *Information, Communication & Society* 741 at 749.
[16] Bobby Chesney and Danielle Citron, "Deep Fakes: A Looming Challenge for Privacy, Democracy, and National Security" (2019) 107 *California Law Review* 1753 at 1760.
[17] J. Thomas McCarthy, *The Rights of Publicity and Privacy* (2nd edn, Thomson Reuters, Minnesota, 2022) §4:12.
[18] Sam Gregory, "Deepfakes and Synthetic Media: What Should We Fear?" (2020) 34 *Philosophy and Technology* 177 at 181.

The quick democratization of generative artificial intelligence tools has only worsened this issue. In the past, state-of-the-art technologies used for digital resurrection could only be used by large movie studios or technology firms that had the expertise and funding to do so. However, through the use of current artificial intelligence technologies and accessible software, everyday people can make deepfakes without any real technological know-how. Through this democratization of technologies, there is a greater number of fake media floating around on the internet, making issues with false information, violation of privacy, defamation, cybersecurity threats, and unauthorized commercialization much more likely.

Deepfake and digital resurrection technologies present many difficulties within the realm of law when it comes to intellectual property, personality rights, privacy, and ethics. The increasing sophistication of deepfake and digital resurrection technologies makes it necessary for there to be strong regulatory measures in place to govern them.

ETHICAL AND SOCIO-LEGAL CONCERNS

Consent After Death

One of the most complicated ethical and legal questions surrounding the practice of digital resurrection technologies relates to the consent process after death. Given that dead people cannot consent to or object to the use of their voice, face, personality, or any other feature that constitutes the digital recreation, deciding about the ownership of such reproductions poses considerable difficulties. As a rule, heirs, estates, film studios, and corporations, which have economic interests in the digital resurrection of the deceased, take responsibility for the consent process. Yet, in this case, the substituted consent can hardly be an accurate representation of the personal wishes, values, or dignity of the dead person. The lack of consent mechanisms raises several questions about the accuracy, authenticity, or exploitation of the digital reconstruction process that portrays the deceased person participating in certain events or actions without having consented to this in life.[19]

Commodification of Human Identity

The use of these technologies has made it possible to turn human identity into a marketable

[19] Danielle Keats Citron, *The Fight for Privacy: Protecting Dignity, Identity and Love in the Digital Age* (W.W. Norton & Company, New York, 2022) 118.

product by allowing celebrities and public figures to generate economic value even after their death through the creation of AI-generated replicas, holographic concerts, CGI performances, and virtual endorsements. The commodification of human identity has thus allowed celebrities to be immortal assets that will keep earning money for technology companies and the entertainment industry. The process of turning human identity into a digital product brings about serious issues of ethics and sociolaw, as this would mean that one's identity is nothing but data to be marketed for monetary gain. Human dignity may thus become questionable as it implies that human life is something that can be constantly used for financial gain.[20]

Emotional and Psychological Manipulation

The digital resurrections of people created by means of artificial intelligence can emotionally impact the audiences as well as mentally manipulate them due to the ability of such digital avatars to create an impression of continued life, which is almost indistinguishable from reality Digital reproductions of deceased persons have the power to induce an emotional reaction on behalf of fans, customers, as well as relatives of the departed person who would view such representations not as a work of art but as a continuation of the person's life. The continuous presence of the deceased person in the digital form might affect the process of grieving, extend emotions and even change collective memory formation.[21]

INTELLECTUAL PROPERTY CHALLENGES

Current theories on intellectual property law are insufficient to settle issues on the ownership and control of AI-created virtual reproductions and recreated personalities. The current theories of intellectual property rights have been fashioned for works by human authors and tangible creations.[22]

One such issue that arises here relates to copyright ownership over digital avatars and AI-created duplicates. It is unclear whether copyright shall be granted to the developer of the AI,

[20] Madhavi Sunder, *From Goods to a Good Life: Intellectual Property and Global Justice* (Yale University Press, New Haven, 2012) 64.
[21] Deborah Johnson and Mario Verdicchio, "AI Anxiety" (2017) 7 *Journal of the Association for Information Science and Technology* 87 at 91.
[22] Ryan Abbott, *The Reasonable Robot: Artificial Intelligence and the Law* (Cambridge University Press, Cambridge, 2020) 144.

the production company, the estate of the departed star, or the user of the AI.[23]

An emerging issue is the licensing and use of cloned voices created using artificial intelligence technology. The technology is now capable of reproducing lifelike clones of deceased celebrities' voice, leading to issues pertaining to ownership, consent, and royalties.[24]

Other challenges to trademark law include protection of celebrity image such as the celebrity's:

- name,
- signature,
- appearance,
- and digitally cloned appearance.[25]

Another complicated legal problem is the ownership of AI training datasets. Large amounts of copyrighted audiovisual content from movies, interviews, music videos, photos, and web content are typically used to train deepfake systems without express permission.[26]

Digital resurrection technologies powered by AI may concurrently implicate:

- unfair commercial exploitation, abuses of personality rights, copyright infringement, and privacy issues
- Deepfake systems frequently use copyrighted material for machine learning, which calls into question accepted theories of:
- authoring principles, data mining exceptions, fair use, and transformative usage.[27]

The presence of various stakeholders makes it even more difficult to determine ownership in

[23] Ryan Abbott, *The Reasonable Robot: Artificial Intelligence and the Law* (Cambridge University Press, Cambridge, 2020) 144.
[24] Andrés Guadamuz, "Artificial Intelligence and Copyright" (2017) 41 WIPO Magazine 14 at 17.
[25] Jennifer E. Rothman, *The Right of Publicity: Privacy Reimagined for a Public World* (Harvard University Press, Massachusetts, 2018) 78.
[26] J. Thomas McCarthy, *The Rights of Publicity and Privacy* (2nd edn, Thomson Reuters, Minnesota, 2022) §4:12.
[27] Mark A. Lemley and Bryan Casey, "Fair Learning" (2021) 99 Texas Law Review 743 at 751.

digital resurrection projects. The list of these stakeholders includes:

- AI developers,
- software providers,
- movie production companies,
- artists,
- celebrity families,
- platforms providers,
- and advertisers.[28]

All these factors lead to overlapping claims regarding:

- Copyright,
- license,
- earnings,
- moral rights,
- and commercial rights over digital replica.[29]

As a result, there is a great deal of legal uncertainty and complicated ownership disputes across jurisdictions because of the lack of specialised legislation governing AI-generated identity replication.[30]

NEED FOR REGULATORY REFORM

The rapid development of deepfake technologies, artificial intelligence-generated replicas, and digital resurrection systems has exposed significant holes in the existing legal frameworks

[28] Graeme W. Austin, "Personality Rights and Digital Resurrection Technologies" (2022) 53 International Review of Intellectual Property and Competition Law 411 at 420.
[29] Robert Chesney and Danielle Citron, "Deepfakes and the New Disinformation War" (2019) 107 Foreign Affairs 147 at 149.
[30] Hao Li, "Digital Humans and Artificial Resurrection in Modern Media Industries" (2023) 17 AI & Society 223 at 229.

governing intellectual property, personality rights, and digital identity protection. Most of the restrictions in place today were developed at a period when it was neither socially nor economically possible to mimic human voices and likenesses at such high levels. Because of this, the legal structures in place today are still fragmented, inconsistent, and inadequate to deal with the complex problems caused by posthumous digital copying. The absence of uniform law has led to uncertainty over ownership, permission, ethical limitations, and commercial exploitation of deceased individuals in the digital realm.

The creation of posthumous personality rights under the law is the first significant reform that is necessary. Personality rights in the majority of nations either expire upon death or are only safeguarded by case law. This raises questions around the exploitation of deceased people's names and likenesses, enabling companies to make money using these identities without facing any legal repercussions. Therefore, laws pertaining to the succession of such personality rights and their validity for a certain amount of time after death must be established. These laws must encompass things like image, voice, likeness, personality, and reputation.

The development of obligatory consent frameworks to safeguard individual dignity would be another crucial step.It is clear that a person who has passed away will not be able to consent to his digital recreation, but it is essential that there are some guidelines to regulate what can be done with this information. The creation of systems where individuals can consent to specific actions during their lives or where consent from their estates can serve this purpose would be very useful. If there were no prior consent, then regulators would have to determine whether certain digital recreations go against ethics**.** The rise in commercialisation of AI-based celebrity clones further demands licensing systems that are tailor-made for the digital resurrection technologies. These licensing systems would help in governing the legal usage of the digital image in movies, ads, virtual concerts, gaming industry, and other online applications. With the help of licensed use, the business firms using digital clones can be kept responsible towards the estate, regulation, and ethical considerations. In addition, it will assist in revenue sharing in an equitable manner without any monopoly on dead people through big firms or AI developers.

AI standards for ethics are important for regulating digital resurrection technologies. The artificial intelligence technologies that have been developed for the replication of human identity are very dangerous for their use for nefarious purposes. Therefore, ethical standards

for AI include principles like transparency, responsibility, fairness, and respect for human dignity. Firms that develop AI technologies must be legally responsible for ensuring that the replicated human identities cannot be used for spreading false information, deception, hatred, and defamation.

One of the other critical changes needs to be implemented in terms of disclosure in connection with synthetic media. It becomes quite difficult for audiences to differentiate between original and AI-generated video material due to constant advancement in the field of deepfake technology. The necessity for mandatory disclosure laws would thus compel creators and production studios to disclose information about their use of artificial technology in content generation.

Furthermore, there is an urgent need for regulations to define limitations regarding commercial exploitation of a personality after death. Even though it offers great prospects from a business perspective for the entertainment industry, it would make human beings turn into perpetual intellectual properties which could have several negative repercussions including that of compromising dignity or legacy or any moral aspect related to human beings. Hence, it becomes important to regulate such exploitation, especially through propaganda or misleading commercial activities.

Additionally, it is important to provide safeguards against defamatory deepfakes and other manipulations in digital content. The creation of an AI-based simulation might create the image of a dead person behaving offensively, unlawfully, or immorally, damaging his reputation and bringing trauma to living relatives of that person. Current defamation law proves to be rather ineffective when considering posthumous damages. In this respect, the law must evolve to ensure proper legal protection from digitally created defamatory images, including removal orders, injunctions, and damages.

A need arises for sui generis regulation of digital resurrection technologies against this backdrop. The approach implies the adoption of special legislation addressing all facets of digital resurrection technologies. It may embrace provisions from different areas of the law, including intellectual property law, privacy, personality rights, the law on AI governance, cyber regulation, and ethics, among others.

Since these technologies are used in many countries thru worldwide digital media platforms,

internet streaming, and international entertainment sectors, international harmonization of regulations may become even more important. Inconsistencies and the potential for forum shopping and exploitation are caused by the existence of different national legislation. Therefore, when it comes to developing international norms for posthumous digital identity regulation, international coordination in organizations like the World Intellectual Property Organization and emerging AI governance institutions becomes essential.

CONCLUSION

Deepfake and digital resurrection technologies have drastically changed the relationship between identity, technology, and intellectual property. The current legislation needs to be improved in order to effectively address the growing exploitation of the deceased thru AI-based reproductive technology. The emergence of digital resurrection challenges conventional ideas about authorship, rights to one's public identity, right to privacy, authorization, and human dignity. Uncontrolled exploitation has the ability to transform human individuality into property beyond ethical considerations, even as new technological advancements offer chances for artistic exploration and preservation. This article emphasizes the need for developing a more sophisticated legal theory of posthumous personality rights that can appropriately balance issues of commerce, technology, expression, and dignity.

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