When the Dead Text Back: Using AI to Talk to the Deceased

Samantha Peacock

I. Introduction

For centuries, whether they have used the services of mediums or spiritualists, people have attempted to reconnect with deceased loved ones.[1] Now, with the help of digital afterlife businesses such as Seance AI, Replika, and HereAfter AI, people can feed data through AI to create chatbots that provide immersive interaction.[2] Some of these chatbots are created proactively, in anticipation of a person's death, while others are created after the death of a loved one using data that they left behind.[3] The ability to create immersive interactions builds on older practices of preserving the memory of the deceased such as preserving letters, photographs, diaries, and other tangible personal belongings.[4] Through AI, users can be immersed in interactions with lifelike avatars that are built on a range of personal data such as images, videos, and social media content.[5]

For example, Seance AI provides users with the opportunity to have short conversations with an AI chatbot designed to imitate a deceased loved one after the user provides pieces of information about the loved one.[6] HereAfter AI allows users to have text conversations with avatars of deceased loved ones based on interviews that were conducted while the person was alive.[7] Alternatively, Replika encourages users to develop relationships with personalized AI avatars in order to help them develop their own personalities and memories, by allowing users to text or call the avatar.[8]

While the desire to resurrect a deceased loved one is not new, technology that gives users the ability to create chatbots or other imitations of a deceased person is.[9] While some people find comfort in this new technology, others may consider it a violation of the deceased's privacy.[10] There is a wide array of data stored online in the ordinary course of living that may be used to create a digital replica of a person, such as emails, text messages, and social media posts.[11] The use of such data to generate these digital replicas create serious data privacy concerns for the deceased and their survivors.[12]

---

[1] Samantha Murphy Kelly, *When Grief and AI Collide: These People Are Communicating with the Dead*, CNN (May 6, 2024), https://www.cnn.com/2024/05/06/tech/ai-communicating-with-dead [https://perma.cc/YEX3-TKXR].
[2] Victoria J. Haneman, *The Law of Digital Resurrection*, 66 B.C. L. REV. 1569, 1576 (2025).
[3] *Id.* at 1576–77.
[4] Adelaide Sabre & Threasa Meads, *Be Right Back—The Promise and Perils of AI Resurrection: Ghosts, Hauntings, and Digital Necromancy as Speculative Audiomedia*, LIFE WRITING, 1–13 (2025), https://doi.org/10.1080/14484528.2025.2553712.
[5] *Id.*
[6] Maggie Harrison Dupre, *AI Company Says It'll Perform a Seance on Your Dead Loved Ones*, FUTURISM, (May 18, 2023), https://futurism.com/ai-seance [https://perma.cc/4QTK-8AHC].
[7] Murphy Kelly, *supra* note 1.
[8] *Id.*
[9] Haneman, *supra* note 2, at 1578.
[10] *Id.*
[11] *Id.* at 1571.
[12] *Id.* at 1573.

II. Current Law

There are several areas of law that may effectively address the issue of unauthorized digital resurrection; however, it is important to understand the scope of legal protections that currently exist.[13] The right to privacy does not extend to the deceased.[14] Current law does not consider a decedent's dignitary and privacy concerns sufficient justifications for restricting the activities of the living.[15] The law keeps postmortem legal protections to a minimum, typically safeguarding rights to dignified burial and medical privacy.[16] On the other hand, the interests of the living are given considerable deference, because any legal protection safeguarding a decedent's dignity implicates the free speech interests of outsiders and can also have consequences for living family members who may be bound by unreasonable testamentary instructions.[17]

Trademark law may provide recourse for deceased celebrities or public figures, but likely cannot protect the personal data of the average person.[18] Similarly, while copyright law may offer some limited protection, relying upon it for data protection presents two major problems.[19] First, a large portion of the personal data used for digital resurrection, like emails or text messages, is not protected by copyright law. Second, copyright law does not give rise to a right to deletion of data, and it does not provide exclusive use of data; therefore, copyright law arguably does not provide the kinds of rights required to protect against digital resurrection.[20]

III. Proposed Solutions

Digital resurrection can be categorized in two ways: commercial and non-commercial. Non-commercial digital resurrection, the focus of this article, is the use of AI to recreate deceased people for non-commercial reasons. Commercial digital resurrection occurs when a celebrity or public figure is digitally recreated for advertisement or endorsement purposes.[21] Because commercial digital resurrection is done for different reasons than non-commercial digital resurrection, they should be regulated separately.[22] A regulatory framework for non-commercial digital resurrection should focus on regulating access to the deceased's data, rather than focusing on the outcome.[23]

Under the Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA), a fiduciary may gain access to an online account to manage another user's digital assets if the user dies or becomes incapacitated.[24] This law has been widely adopted by states and is structured so that it balances access with respecting the privacy rights of the decedent.[25] Gaining access is

---

[13] *Id.* at 1582.
[14] *Id.* at 1583.
[15] Mark Bartholomew, *A Right to be Left Dead*, 112 CALIF. L. REV. 1591, 1603 (2024).
[16] *Id.*
[17] *Id.* at 1603–04.
[18] Haneman, *supra* note 2, at 1589–90.
[19] *Id.* at 1590.
[20] *Id.* at 1591.
[21] *See* Justin P'ng, *The Resurrection Will Not Be Televised: Legal Remedies for Posthumous Deepfakes*, 8 GEO. L. TECH. REV. 338 (2024).
[22] Haneman, *supra* note 2, at 1614.
[23] *Id.*
[24] *Id.* at 1593.
[25] *Id.*

accomplished through a three-tier system.[26] First, the Custodian, such as a social media platform, can create a tool that allows the user to designate a fiduciary to access or manage the account when the user dies.[27] Under this first tier, the person designated as the fiduciary has a wide grant of authority, superseding testamentary instruments and powers of attorney.[28] The second tier grants access via estate planning documents when social media platforms do not provide a way for users to designate fiduciaries.[29] Third, if there is no tool or the user's estate planning documents do not name a fiduciary, the Terms of Service or Terms and Conditions control.[30]

While RUFADAA provides a framework for regulating access to a decedent's data, it may not go far enough. One practical problem that arises from the RUFADAA framework is that it gives tech companies default control in the absence of estate planning documents or a designated fiduciary.[31] This is a problem for multiple reasons. First, most Americans die intestate, and absent a grant of access via the first tier, they would be subject to the Terms of Service set by the tech company.[32] This framework disadvantages lower income individuals, women, multiracial, and Black Americans, who are historically less likely to have testamentary documentation in place when they die.[33] Second, the Terms of Service or Terms and Conditions are typically drafted to favor the tech company, and research shows that most people completely ignore the Terms of Service or Terms and Conditions.[34] Third, many Terms of Service or Terms and Conditions criminalize password sharing under federal law, demonstrating a lack of consideration for estate planning.[35] Finally, the inconsistency in defining digital assets under RUFADAA means that a fiduciary has unlimited access to things such as digital currency but has no access to the content of emails or text messages.[36] Further, the vague definition for "online tool" gives platforms the ability to determine what options will be available for data management after a user dies, and there are no provisions requiring custodians to maintain certain options, such as permanent deletion.[37]

As such, one proposed solution is to create a right to deletion for the deceased, which would allow the deceased to exert control over their digital legacy via a fiduciary.[38] A right to delete personal data within a twelve-month timeframe would balance the interests of society against the interests of the deceased.[39] Data brokers sell personal information, and data collection processes result in collection and retention of data for much longer than is necessary.[40] A right to deletion would force tech companies to develop solutions to postmortem data management.[41] This will provide basic rights to users who may otherwise be bound by strict Terms of Service or Terms and

---

[26] *Id.*
[27] *Id.*
[28] *Id.*
[29] *Id.*
[30] *Id.*
[31] *Id.* at 1594.
[32] *Id.*
[33] *Id.* at 1614.
[34] *Id.* at 1594.
[35] *Id.*
[36] *Id.* at 1595.
[37] Bartholomew, *supra* note 15, at 1628.
[38] Haneman, *supra* note 2, at 1616.
[39] *Id.* at 1621.
[40] *Id.* at 1620.
[41] *Id.*

Conditions. A legislated right to deletion would prompt tech companies to provide a clear plan for how data of deceased or inactive users will be maintained.[42]

IV. Conclusion

Thanks to AI, the ability to "communicate" with the dead is now a reality. While one may shudder at the idea of being digitally reanimated after they die, there are not many options for legal recourse as a corpse. Fortunately, there already exists a widely adopted framework for regulating digital data postmortem, and with certain amendments or the creation of a right to delete, one may be able to proactively manage their digital legacy.

[42] *Id.* at 1621.