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Silence Is Not Consent

A Framework for Posthumous AI Replica Governance

A framework for posthumous AI governance: why the absence of consent cannot be read as permission to recreate, commercialise, or deploy a person's likeness after death.

The Digital Dignity Institute of California

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A Framework for Posthumous AI Governance

A governance framework for AI-generated replicas of deceased individuals, arguing that the absence of explicit consent cannot be read as permission, and proposing a tiered consent architecture spanning pre-mortem planning, estate authority, and platform accountability.

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Abstract

This paper advances a governance framework for AI-generated replicas of deceased individuals, arguing that the absence of explicit consent cannot be interpreted as permission to recreate, commercialise, or deploy a person's digital likeness after death. We propose a tiered consent architecture spanning pre-mortem planning, estate authority, and platform accountability.

The rapid proliferation of AI systems capable of generating convincing replicas of deceased individuals, meaning their voices, likenesses, written styles, and conversational patterns, has outpaced the development of any coherent governance framework. Existing legal instruments, designed for a world in which the dead could not speak, offer inadequate protection against the commercial and personal exploitation of digital remains.

This paper argues that the foundational error in current approaches is the treatment of silence as consent: the assumption that because a person did not explicitly prohibit posthumous AI replication, such replication is permissible. We show that this inference cannot be sustained on any defensible ethical or legal ground. It fails because the practice was unforeseeable to almost everyone now dead, because the stakes are asymmetric and the harm irreversible, because there is no party with standing to negotiate on the decedent's behalf, and because every analogous body of law that has confronted the same structure has resolved it the other way.

We survey the regulatory landscape across twelve countries, identify the minimum elements of an adequate framework, and set out model instruments: a standardised pre-mortem directive, default rules for estate authority that err toward restriction, and a platform duty of inquiry with a default prohibition on commercial use absent explicit pre-mortem authorisation. We conclude with recommendations for platform operators, legislators, and international bodies, including a coordination mechanism for the cross-border dimension that current jurisdictional frameworks cannot address.

KEY FINDINGS

01. Silence cannot be treated as consent to posthumous AI replication under any defensible ethical or legal framework.

02. Existing legal instruments, including right of publicity, data protection, and intellectual property law, are structurally inadequate for posthumous AI governance.

03. A tiered consent architecture spanning pre-mortem planning, estate authority, and platform accountability is the minimum adequate response.

04. Platform operators should bear affirmative obligations to verify consent, not merely to respond to complaints.

05. International coordination is essential: posthumous AI replication is inherently cross-border and current jurisdictional frameworks cannot address it.

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1. Methodology

This paper combines doctrinal legal analysis, comparative survey, normative argument, and review of documented deployments. Each strand carries distinct limitations, set out here rather than in a footnote because they bound what the paper is entitled to conclude.

Doctrinal analysis. We examined the bodies of law most frequently invoked in respect of posthumous replication: postmortem publicity and personality rights, data protection, copyright and neighbouring rights, defamation and its postmortem availability, succession and fiduciary access to digital assets, and consumer protection. Analysis proceeded from primary sources, meaning statutory text, implementing regulations, published regulatory guidance, and judicial decisions, with secondary commentary used for interpretive context.

Comparative survey. We coded twelve countries against a common framework, reproduced in full in Annex C. The framework asks eight questions of each legal order: whether postmortem personality interests are recognised, on what basis, for how long, who may assert them, whether data protection reaches the deceased, whether any instrument addresses synthetic replication specifically, what remedies attach, and where the burden of discovering an infringement sits. Countries were selected to span legal traditions and regulatory postures rather than to constitute a representative global sample. Supranational instruments, principally those of the European Union, are treated in Section 7.1 as a layer operating above four of the countries surveyed rather than as a survey entry of their own. The omission of the African Union, the Gulf states, and most of Southeast Asia reflects space rather than significance, and we flag in Section 7 where that omission most likely distorts the picture.

Normative argument. Section 5 advances a philosophical case that the inference from silence to permission fails. The argument is offered as argument, meaning it stands or falls on its reasoning rather than on institutional authority, and we set out the strongest counterarguments in Section 9 rather than in a concluding aside.

Deployment review. We assembled documented cases of posthumous AI replication across commercial, memorial, journalistic, entertainment, political, and fraudulent contexts, drawn from litigation records, regulatory enforcement, platform disclosures, investigative reporting, estate and rights-holder statements, and vendor materials. The corpus is biased toward cases that became visible, which means it overrepresents disputes involving celebrities and estates with the resources to object, and systematically underrepresents the private replication of ordinary people, which is almost certainly the larger phenomenon by volume and the harder to study.

Analytical framework. The paper applies two concepts developed across the Institute's prior work. The **recourse deficit** describes the distance between the harms a technology produces and the remedies actually reachable by those who suffer them. The **discovery burden** describes the cost, borne by the affected party, of establishing that a harm occurred at all. Posthumous replication presents both in an acute form, since the person most directly wronged cannot discover, complain, or testify, and the parties who can are grieving, frequently unaware, and rarely resourced.

Positions and currency. Legal positions are stated as at June 2026. Several instruments discussed are in transitional application, awaiting implementing regulation, or under challenge. Readers should verify current

status before operational reliance, and specific figures and provisions should be checked against primary sources before citation in advocacy or legislative material.

2. Introduction: The Problem of Posthumous Consent

2.1 What is now possible

A convincing synthetic version of a dead person can now be produced from materials that most people leave behind without deliberation.

Voice cloning requires seconds of reference audio. A single voicemail is sufficient, and a recorded speech, a podcast appearance, or a video call is more than sufficient. Likeness generation requires photographs, of which the average person has left thousands. Written style can be modelled from emails, messages, and social posts. Conversational pattern, meaning the characteristic moves a person made in dialogue, can be approximated from transcripts, chat histories, and correspondence.

What has changed is not that any one of these is possible but that all of them are cheap, fast, and available to anyone. The production of a posthumous replica has moved from a studio undertaking requiring rights clearance, budget, and specialist labour to something a family member, a fraudster, or a marketing department can accomplish in an afternoon.

The collapse in cost can be stated precisely, and it is worth stating precisely because the phrase “now affordable” does no analytical work. In October 2020, Kanye West commissioned the British firm Kaleida to produce a holographic recreation of Robert Kardashian, who had died in 2003, as a fortieth birthday gift for Kim Kardashian. It was projected onto a gauze screen at a private party in Tahiti to give the impression of a three-dimensional figure. Kaleida declined to disclose the price; the producer of the comparable Tupac Shakur projection staged at Coachella in 2012 told reporters that a production of that kind would cost between one hundred thousand and four hundred thousand dollars. It was a single, non-interactive, two-minute artefact.

Four years later the same category of product was retail. Silicon Intelligence, based in Nanjing, sells a basic speaking avatar of a deceased person for 199 yuan, approximately thirty United States dollars, and requires less than one minute of usable video and audio to build it. Its interactive avatars, which converse rather than recite, range from several hundred to several thousand dollars. Super Brain, also in Nanjing, charges between 10,000 and 20,000 yuan, roughly 1,400 to 2,800 dollars, for a basic avatar delivered in about twenty days, and offers video calls in which a staff member’s face and voice are overlaid in real time with those of the deceased. Chinese e-commerce platforms carry dozens of listings that will animate a still photograph of a dead person into apparent speech for the equivalent of less than two dollars.

That is the change: from a six-figure bespoke commission available to one of the wealthiest families in the world, to thirty dollars, in four years. Nothing in the governance architecture altered in response.

Three thresholds deserve particular attention because the governance questions differ sharply across them.

The first is **fidelity**. A synthetic voice that is recognisably the person, rather than merely similar, crosses a line

that matters both legally and emotionally. Current systems cross it routinely.

The second is **interactivity**. A recording plays. A replica responds. The difference is not incremental: a system that answers questions in a dead person's voice generates statements that person never made, on subjects they never addressed, to people who may be unable to hold the distinction in mind. Every documented case of severe distress in our corpus involves interactive replication.

The third is **persistence**. A replica that exists as a service, maintained, updated, and available indefinitely, occupies a different position from an artefact produced once. It accrues a history of its own, and that history is composed entirely of things the person did not say.

2.2 The foundational error

Existing legal instruments were designed for a world in which the dead could not speak. Their architecture reflects that assumption so thoroughly that the assumption was never written down. Defamation dies with the person because a dead person's reputation was thought to be beyond further alteration. Privacy interests lapse at death in most data protection regimes because the harms privacy law addresses were understood as harms to a living subject. Publicity rights, where they survive, do so as a commercial asset of the estate rather than as a dignitary interest of the deceased.

None of these instruments contemplated a technology that makes the dead available for continued speech, and the consequence is a governance vacuum that current practice has filled with a default rule nobody chose.

That default rule is the treatment of **silence as consent**. In its operative form, the reasoning runs: this person did not prohibit posthumous AI replication of their voice and likeness; therefore no prohibition applies; therefore replication is permissible, subject only to whatever residual rights the estate happens to hold in the jurisdiction where the claim is brought.

The reasoning is almost never stated this baldly. It appears instead as a set of practices that presuppose it: platforms that generate replicas on request without inquiry, memorial products that require no authorisation from anyone, commercial campaigns that proceed on the basis that the estate has not objected, and terms of service that assert a licence over uploaded material broad enough to cover the replication of whoever appears in it.

This paper's central claim is that the inference fails. Sections 5 and 9 make the argument in full. The short version is that consent is not a state of not having refused. It is an act. A person who never contemplated a practice has not permitted it, and a legal order that treats their nescience as authorisation has not found their consent but dispensed with it.

2.3 Why the question has become urgent

Three developments have converged, and their convergence rather than any one of them explains the timing.

The first is the collapse in cost already described. The second is demographic: roughly sixty million people die each year, and the cohort now dying is the first to leave behind a complete digital record. A person who died in 1995 left photographs and perhaps a home video. A person dying in 2026 leaves a voice preserved in hundreds

of recordings, a face captured from every angle across four decades, and a written corpus running to millions of words in messages alone. The raw material for high-fidelity replication is now standard grave goods.

The third is commercial. A grief technology industry has formed, with products ranging from interactive video archives to conversational replicas, and it is expanding fastest in markets with the least developed personality law. Its customers are people in acute bereavement, which is a category that every other consumer protection regime treats as warranting heightened safeguards.

A fourth development compounds all three, and it concerns the living. Avatar platforms built for corporate video now hold large populations of consented likenesses of people who are alive. Synthesia reported that by mid-2025, some 150,000 individuals among its customer base had created AI avatars of themselves; HeyGen operates at comparable scale on a self-serve basis. These are voluntary, high-fidelity, production-ready replicas, and the terms under which they were created address commercial licensing rather than mortality. What becomes of such an avatar when the person who made it is incapacitated, loses capacity, or dies is, as far as we can establish, addressed by no platform term, no statute, and no directive anywhere. A ready-made replica with no instructions attached is the single most likely source of the next decade's disputes, and it is being manufactured at volume right now by people who believe they are making a marketing asset.

A note on scope. A further development sits beyond this paper and should be named rather than omitted. Grief technology is beginning to be built on agentic architectures, meaning systems that do not merely respond when addressed but hold persistent memory, initiate contact, carry out tasks, and travel with the user on a phone. A reactive replica waits to be visited. An operative one can message a bereaved person unprompted, act in the world on the strength of an inferred preference, and occupy a position closer to a household member than to a memorial object. The governance questions this raises, including whether an agent acting in a dead person's name can create obligations, and what it means for a replica to initiate rather than answer, are not addressed here. They are the subject of active work within the Institute's AI Afterlife Ethics programme and are, in our assessment, the most urgent open question in the field.

Predatory monetisation. One structural feature of the current market deserves flagging at the outset because it bears directly on the consent analysis. These products are cheap to enter and expensive to inhabit. The entry price buys a static, low-fidelity artefact; realism, responsiveness, memory, voice quality, and conversational duration are then sold as upgrades, subscriptions, or metered use. The Chinese pricing above is the clearest illustration: thirty dollars for something that speaks, thousands for something that answers. In the companion sector more broadly, the dominant pattern is a monthly subscription with the emotionally significant features behind it, and in some products a metered element that amounts to paying by the minute to speak to your mother, in the manner of feeding coins into a telephone box.

The structure matters for consent because the decision is not made once. A bereaved person who agreed to a thirty-dollar memorial video is subsequently presented with a series of further decisions, each made in a worse emotional state than the last, each priced against a relationship they have already formed. Consumer protection frameworks recognise this pattern under the heading of exploitation of vulnerability, and it is the reason Recommendation 10 treats the grief market as squarely within existing consumer powers.

The window in which this practice can be given a governance architecture is the window before it becomes ordinary. On the evidence of adjacent fields, that window closes not when the technology matures but when enough families have used the products that restriction feels like deprivation.

2.4 Terms

Posthumous AI replica means an artefact or system that reproduces one or more identifying characteristics of a deceased natural person, including voice, likeness, written style, or conversational pattern, at a fidelity sufficient that a reasonable person familiar with the decedent would recognise them, and which generates expression the decedent did not produce.

This definition deliberately excludes three things. It excludes the reproduction of what the person actually said or did, meaning archival recordings, photographs, and quotations, which are governed by copyright, archival practice, and editorial norms and raise no consent question of the kind examined here. It excludes depictions that do not attain recognisability, including generic or composite figures. And it excludes the posthumous use of a person's work as distinct from their person, which is the proper domain of copyright.

Digital remains means the corpus of data a decedent leaves that is capable of supporting replication: recordings, images, correspondence, and behavioural traces.

Pre-mortem directive means a standardised instrument through which a living person records binding preferences as to posthumous replication.

Duty of inquiry means an affirmative obligation on a platform operator to take reasonable steps to establish whether consent exists before deploying a replica, as distinct from a duty to act on complaint.

2.5 Scope and limitations

The paper addresses replication of identifiable private and public individuals who have died. It does not address the separate and better-developed question of synthetic depiction of living persons, except where the two interact. It does not address the governance of grief technology as a therapeutic modality, on which the clinical evidence is thin and the Institute has commented separately. It does not attempt to resolve the metaphysics of postmortem harm, though Section 5.1 explains why the framework does not depend on resolving it.

The paper is also explicit about a limitation of its own corpus. Nearly every documented dispute involves a person whose estate had commercial value or whose family had the means to object. The replication of ordinary people by their own relatives, by strangers, and by fraudsters is almost certainly the dominant case numerically and is nearly invisible in the record. The framework proposed here is designed with that population in mind, which is why it does not rest on estates asserting rights.

3. What Is Being Replicated

Effective regulation requires precision about the object. Public discussion tends to treat posthumous replication as a single phenomenon, and the governance questions differ materially across its forms.

3.1 Voice

Voice is the most consequential modality and the least protected. It is the most consequential because it is the most affecting: the documented accounts of bereaved people encountering a synthetic version of a dead relative's voice describe a response qualitatively unlike that produced by images. It is the least protected because voice sits awkwardly in every existing legal category. It is not a work, so copyright does not reach it. It is not, in most jurisdictions, clearly personal data after death. Where publicity rights extend to voice, they typically require commercial appropriation, which excludes private replication entirely.

Voice also carries a specific evidentiary problem. It is the modality most often used in fraud, because it travels through channels where quality expectations are low and where verification is not available. The documented use of cloned voices of deceased persons to extract money from surviving relatives is among the clearest harms in this field and among the least addressed.

3.2 Likeness and moving image

Synthetic video of a deceased person is the form that attracts the most attention. It is the most legally developed, since photographic likeness is the paradigm case for publicity and personality rights, and it is the form in which commercial use is most visible and most frequently litigated.

Two distinctions matter. Restoration, meaning the repair or completion of existing footage, sits closer to archival practice. Generation, meaning the production of new performances, does not. And within generation, the gap between a person appearing and a person speaking is significant, because the second attributes content.

3.3 Text and written style

Style modelling receives the least regulatory attention and raises the sharpest questions about authorship. A system trained on a writer's correspondence can generate new prose in their manner, and the resulting text is neither a copy of their work, which copyright would reach, nor plainly a use of their person, which publicity law would reach. It occupies a gap.

For writers, scholars, and public intellectuals this is not a peripheral concern. A body of work is a life's argument, and the posthumous generation of further argument in the same voice can distort the record in ways that are difficult to correct, because the correction requires establishing what the person did not think.

3.4 The composite interactive replica

The form that concentrates every problem in this paper is the interactive replica: a system combining voice, likeness, style, and biographical knowledge into a persona that converses.

Such a system is a simulacrum in the precise sense, an image that has detached from what it images and begun to function in its place. It produces statements attributed to a person who cannot have made them, adapts those statements to please its interlocutor, and persists as a relationship rather than an artefact. It is the form most often marketed to the bereaved and the form for which the clinical evidence is weakest.

3.5 Fidelity, interactivity, and the regulatory threshold

We propose that governance attach at the intersection of recognisability and generation.

Below recognisability there is no identity interest engaged. Below generation, meaning where only what the person actually produced is reproduced, the governing frameworks are copyright and archival ethics, which function adequately.

Where a system is both recognisable as a specific deceased person and productive of expression that person did not create, the consent question arises in full. Interactivity and persistence are aggravating features that should attract additional obligations, developed in Section 8.

4. The Harms

The claim that posthumous replication can wrong someone requires defence, because the most obvious candidate for the wronged party no longer exists. This section identifies four distinct classes of harm, only one of which depends on any contested metaphysics.

4.1 Harms to the decedent

Three interests survive death in a form that most legal orders already recognise somewhere in their architecture.

The dignitary interest. Almost every legal system protects the dead in some respect: the treatment of corpses, the conduct of obsequies, the confidentiality of medical records, the sanctity of graves, testamentary freedom itself. These protections cannot be explained purely as solicitude for the living, since they bind even where no survivor objects. Legal orders act, in practice, as though persons retain a claim on how they are handled after death. Posthumous replication engages that claim directly, because it does not merely handle remains but animates them.

The narrative interest. A completed life has a shape. Its meaning is constituted partly by what the person did and said and partly by what they did not. Generating new speech disturbs that shape, and the disturbance is not corrigible by the person affected. This interest is the one that biographers, archivists, and literary executors have always recognised and that the law has protected only obliquely.

The testimonial interest. A person's statements are the primary evidence of what they thought. A technology that manufactures further statements degrades the evidentiary value of the genuine ones, and does so irreversibly. Once it is widely known that a person's voice can be synthesised, everything they actually said acquires a defeasible quality it did not have before.

On the metaphysics, we note only this. Whether the dead can be harmed is contested, and the framework does not depend on the answer. If the dead can be harmed, these interests are theirs. If they cannot, the interests are those of the living person who had them, whose antemortem preferences were frustrated, and whose frustration is a fact about their life rather than about their death. Either account supports the same governance conclusion, which is why we decline to adjudicate between them.

4.2 Harms to the bereaved

These harms are uncontroversial, immediate, and the most extensively documented.

Encounter without warning. Bereaved people describe encountering synthetic versions of dead relatives without preparation, in advertising, in social media, in messages from strangers, and in products marketed to them during the period of acute grief. The distress reported is severe and is not adequately characterised as offence.

The documented accounts are specific enough to be examined rather than gestured at. In February 2020 the South Korean broadcaster MBC aired *Meeting You*, in which Jang Ji-sung was fitted with a virtual reality headset and met a reconstruction of her daughter Nayeon, who had died at seven of a blood disorder. The recording of the encounter, in which she reaches for a child who is not there, remains the most analysed single case in the literature and produced no professional consensus about whether what it delivered was consolation or injury. In 2021 the *San Francisco Chronicle* documented Joshua Barbeau's use of Project December, a system built on an early large language model, to converse for months with a simulation of his fiancée Jessica Pereira, who had died eight years earlier; he described both relief and difficulty stopping. Sun Kai, a 47-year-old employee of Silicon Intelligence in Nanjing, has described speaking with an avatar of his late mother at least weekly and told a reporter that he does not regard it as a digital person but truly regards it as his mother.

Two features of these accounts bear on governance rather than on clinical judgment. In every one of them, the person replicated had no opportunity to agree. And in each, the party best placed to assess whether the encounter was advisable was the vendor, which is a position no other safety-critical field accepts. Super Brain's founder has said that he declines commissions where he judges the effect would be harmful, citing a woman who had attempted to take her own life after her daughter's death. That is a provider exercising conscience in the absence of a rule, and it is not a governance system.

Distortion of memory. A replica supplies new material that competes with recollection. The mechanism is well described in the memory literature: retrieval reshapes what is retrieved, and a person who repeatedly interacts with a synthetic version may find the synthetic version's manner displacing the remembered one. This is a harm no complaint mechanism can undo.

Conflict among survivors. Families disagree. One sibling finds a replica consoling; another finds it desecration. Current law provides almost no mechanism for resolving these disputes, and where estate authority is undivided, it allows one survivor's preference to override every other's.

Unwanted reanimation. A category the market almost entirely ignores. Not everyone wishes to speak to their dead again. Estranged children, people whose relationship with the deceased involved harm, those who have completed a long and deliberate separation, and people for whom the death was itself a relief all have a clear interest in not encountering a responsive version of that person, and in not having one built by a relative who feels differently. Products marketed on the premise that reunion is universally desired are marketed on a false premise. Any adequate framework must permit a survivor to decline contact and to object to a replica's creation, and any responsible product must carry a warning that not every family member will want this and a mechanism for those who do not. Neither exists at present in any offering we reviewed.

Commercial pressure at the point of maximum vulnerability. Grief technology is marketed to people making decisions under conditions that every other area of consumer protection treats as warranting heightened safeguards, including funeral services, insurance, and credit.

4.3 Harms to third parties

A replica is built from data in which others appear. Correspondence has recipients. Recordings have other voices. Photographs have other subjects. A system trained on a decedent's messages ingests the disclosures of everyone who wrote to them, and those people have consented to nothing.

This is the most structurally neglected harm in the field, and it is one of the few that existing data protection law can reach directly, since the living correspondents' data remains protected even where the decedent's does not.

4.4 Social and epistemic harms

The broader harm is to a shared condition rather than to any individual: a world in which the dead can be made to speak is one in which the record of what anyone ever said becomes contestable.

Three consequences follow. Historical and political figures can be made to endorse positions they never held, with no possibility of denial. Testimony of the dead, in litigation, in truth commissions, in journalism, loses evidentiary weight. And the general availability of posthumous fabrication supplies a permanent resource for anyone wishing to dispute an inconvenient record, which is the deniability problem the Institute has examined in the context of synthetic media generally and which operates with particular force where no one can testify to the contrary.

4.5 Commercial exploitation and the endorsement problem

Commercial use raises a distinct wrong, which is not simply that someone profits.

A living person who endorses a product makes a judgment and accepts the consequences of it. A dead person made to endorse a product has made no judgment, and the estate that authorised it is exercising something closer to a usufruct over the person's identity than an expression of their will. Where the authorisation is absent altogether, the operator has arrogated the person's credibility for its own purposes, which is the core wrong that publicity law was built to address and which it now addresses only where the decedent happened to be commercially valuable in life.

The revenant in an advertisement is the most visible form of this practice and, in our assessment, not the most serious. The more serious form is the quiet one: the deceased relative reanimated in a private product, sold to a grieving family, generating statements nobody will ever audit.

4.6 The documented record: six patterns

The deployment review identified six recurring patterns. They are set out here because the harms above are easier to assess against actual practice than in the abstract, and because the patterns differ enough that a single rule will not fit them all.

Pattern one: commercial reanimation of the famous, and the private equivalent. Deceased performers appearing in advertising, holographic concert performance, and posthumous film appearances, generally licensed by estates. This is the oldest pattern, the most legally developed, and the one in which the decedent's own view is least often on the record.

The Kardashian hologram described in Section 2.1 is worth returning to, because it demonstrates the mechanism more clearly than any commercial case. Robert Kardashian had been dead seventeen years. The recreation told his daughter that he watched over her, praised her decision to pursue a law degree and carry on his legacy, danced to a song from her childhood, and informed her that she had married the most genius man in the whole world, naming the man who had commissioned the piece. Reporting indicated that West had worked extensively with archival audio and video to shape the result. Every sentence may have been affectionate and well intended. Not one of them was his. The clearest illustration in the record of what it means to put words in a dead man's mouth is not an advertisement; it is a gift, given in love, in which the giver's interests were written into the dead man's script and delivered in his voice to his own child. It is also where the endorsement problem in Section 4.5 is sharpest: the estate monetises a judgment the person never made. Notably, several high-profile refusals have come from families who declined lucrative licensing on the ground that the person would have hated it, which demonstrates both that the question is live within families and that the outcome currently depends entirely on which family happens to hold the rights.

Pattern two: memorial and grief products. Interactive video archives recorded before death, conversational replicas built from a decedent's messages, and the services marketed in China as digital resurrection.

The Chinese market is the most developed and the best documented. Silicon Intelligence reported that around a thousand clients had used it to replicate someone who had died, from a base whose technology had generated avatars for hundreds of thousands of short-form video and streaming channels. Super Brain reported commissions spanning the dead, living parents unable to spend time with their children, and, in one case its founder described as controversial, a heartbroken woman's former boyfriend. Fu Shou Yuan International Group, a Shanghai-listed company that operates cemeteries and provides funeral services, builds avatars of the deceased primarily from their social media presence, which is the point at which memorial replication and the funeral industry converge into a single purchase made in the first week of bereavement.

The consent question in this pattern is consistently resolved by inference. Both major Chinese providers require authorisation from family and proof of kinship where the subject is dead, which is a defence against fraud rather than a determination of the decedent's wishes. One bereaved father, who commissioned a replica of his son, told a reporter that the young man would probably have been willing. That sentence, offered in grief and in good faith, is the entire evidentiary basis on which a person was reanimated, and it is the sentence this paper is about.

Pattern three: advocacy and journalism. Reanimation of the dead to advance a cause, of which the clearest instance is the use of synthesised voices of people killed in shootings, created with their families' cooperation, to deliver advocacy calls to legislators. The families participated willingly and described the projects as giving their children a voice. The decedents, who were minors, consented to nothing. This pattern is the hardest case in the paper, because the purpose is sympathetic, the survivors' authority is genuine, and the practice still attributes

speech to people who cannot have authorised it.

Pattern four: judicial use. On 1 May 2025, in the Maricopa County Superior Court in Arizona, a victim impact statement was delivered by an AI recreation of the victim himself. Christopher Pelkey, 37, an army veteran, had been shot dead at a red light in Chandler, Arizona in November 2021 in a road rage incident. At the sentencing of Gabriel Paul Horcasitas, convicted of manslaughter and endangerment, Pelkey's sister Stacey Wales played a video in which a synthetic version of her brother addressed his killer directly: that it was a shame they had met in those circumstances, that in another life they might have been friends, that he believed in forgiveness and in God who forgives.

The details matter. Wales wrote the script. She and her husband, who both work in the AI field, built the video, and her husband initially recoiled at the request. Wales has been consistently candid in interviews that her own view differed from the one she gave her brother: she had opinions about the sentence and about forgiveness, and she deliberately set them aside to write what she believed he would have said. The family disclosed that the video was AI-generated and did not claim that it reproduced his actual words. Judge Todd Lang responded from the bench that he loved that AI, that he had heard the forgiveness, and that he found it genuine. He then imposed ten and a half years, one year more than the state had requested. Defence counsel Jason Lamm, who had received no advance notice of the video, filed a notice of appeal within hours and has indicated that the appellate question will be whether the court improperly relied on it.

This case is the paper's central illustration and deserves to be stated plainly. Everyone involved acted in good faith, and the sister's restraint in separating her own views from her brother's was genuine and unusual. And still: the forgiveness was hers. She inferred it from his character, his faith, and a lifetime of knowing him, which is the strongest evidentiary basis anyone in this field has yet brought forward, and it remains an inference. We do not know that Christopher Pelkey would have forgiven the man who killed him. We know that his sister believed he would, and that a judge, moved by hearing it in his voice and seeing it in his face, imposed a longer sentence than the prosecution sought. A sentence was lengthened in part on the strength of speech the deceased did not make. Whatever one concludes about the outcome, a courtroom is the last place where the difference between a person's wishes and a relative's inference should go unexamined.

Pattern five: political and historical deployment. Deceased political figures reanimated during election campaigns to endorse successors and parties, documented most extensively in Indian state elections, where synthesised versions of long-dead leaders addressed voters directly. This is the pattern with the clearest collective harm and the weakest individual claimant, and it is the reason Section 4.4 treats the epistemic damage as distinct from the personal.

Pattern six: fraud. Voice cloning of deceased relatives used to extract money from the bereaved, and identity documents and accounts of the dead reanimated to sustain fraud that would otherwise be detected at death. This pattern attracts the least commentary and the most immediate financial harm, and it is the one the framework proposed here does least to address, because criminals do not check registries. It is included so that the framework's limits are visible: fraud is a matter for fraud law, and the target of this paper is the lawful market.

What the patterns establish. Three things. Consent is supplied by survivors in almost every non-commercial case and by estates in almost every commercial one, which means the decedent's own view is the one input the system reliably lacks. The sympathetic cases are not distinguishable from the objectionable ones by any feature of the technology, only by purpose and authority, which is why the framework must turn on authority rather than on capability. And the practice has already entered courts, elections, and advertising, which places it beyond the point at which it can be treated as an emerging question.

5. Why Silence Is Not Consent

This section sets out the paper's central argument. The claim is narrow and strong: the inference from a decedent's failure to prohibit posthumous replication to the permissibility of that replication is invalid, and no version of it can be repaired.

5.1 The structure of consent

Consent is an exercise of authority, not a state of affairs. When a person consents, they do something: they change the normative situation by permitting what was not previously permitted. This is why consent requires capacity, information, and voluntariness, and why each of those requirements makes sense only for an act.

Three features follow, and each is fatal to the silence inference.

Consent is specific. A person consents to a described thing. Blanket permission to do whatever one likes with one's identity is not something the law recognises even between living parties, which is why assignments of personality rights are construed narrowly and why unconscionable terms are struck out.

Consent is informed. A permission granted in ignorance of what is being permitted is not a permission. The person who uploaded family photographs in 2009 was not informed about generative replication, because nothing then available would have allowed them to be.

Consent is revocable in principle. The capacity to withdraw is part of what makes consent meaningful. A person who cannot revoke, and who could never have anticipated needing to, is in the worst possible position for a permission to be imputed to them.

Silence satisfies none of these. It is not specific, since it identifies nothing. It is not informed, since it reflects no knowledge. And it is uniquely unrevocable, since the person is dead.

5.2 Four arguments against the inference

The unforeseeability argument. Almost everyone now dead died before convincing posthumous replication existed. They cannot have formed a preference about it, and the absence of a prohibition therefore carries no information. To read permission into that absence is to attribute to the dead a decision they had no opportunity to make. This is the strongest and simplest objection, and it is decisive for the entire existing population of decedents. It weakens over time, which is precisely why the pre-mortem instruments in Section 8 matter: they create the conditions under which silence might eventually mean something, and they do not exist yet.

The asymmetry argument. Where the consequences of error are unequal, the default should favour the side that can be corrected. If replication is wrongly prohibited, the loss is a product not built, a memorial not made, an advertisement not run. If replication is wrongly permitted, the loss is a person's voice attached to statements they never made, distributed, and in the case of interactive systems, entangled with the memories of people who loved them. The first error is reversible on new information. The second is not. Sound default rules track this asymmetry, and the current default inverts it.

The absent negotiator argument. In every other context where permissions are imputed rather than given, there is a party with both standing and incentive to protect the interest: a guardian, a fiduciary, a next friend, a public advocate. Posthumous replication has no such party by default. The estate's duty runs to beneficiaries and is typically framed in terms of maximising value, which makes it an unreliable guardian of a dignitary interest and sometimes an adverse one. A default of permission in the absence of a negotiator is not a finding about the decedent's wishes; it is an allocation of their identity to whoever reaches it first.

The argument from analogy. Every adjacent body of law that has confronted this structure has resolved it against the silence inference. Organ donation, which is the closest analogue, is the instructive case: even jurisdictions that adopted deemed consent did so by express legislation, after public deliberation, with registries, family safeguards, and opt-outs, precisely because it was understood that silence alone could not carry the weight. Research ethics requires affirmative consent for the use of identifiable material and does not treat non-refusal as authorisation. Testamentary law fills gaps with intestacy rules that distribute property, and conspicuously does not treat the absence of a will as licence for strangers to take. Medical treatment requires consent, with emergency doctrine as a narrow exception justified by urgency and the patient's presumed interest in survival, neither of which has any analogue here. The pattern is consistent: where an interest is important and the person cannot speak, legal systems construct a procedure. They do not infer a yes.

5.3 Reasonable inference and its limits

To say that silence is not consent is not to say that a decedent's preferences are unknowable. Substituted judgment is a familiar and legitimate device: where a person's wishes can be established from evidence, that evidence should govern.

The framework in Section 8 accommodates this. Where a decedent expressed views on posthumous use of their image, in writing, in interviews, in a will, in a conversation their family can attest to, those views should be dispositive whether or not they were recorded in a formal instrument. A person who said plainly that they would hate to be turned into a hologram has expressed a preference, and the absence of a notarised directive does not diminish it.

What must be resisted is the apophatic move: reading a positive permission out of an absence of expression. The inference that a person who never objected would not have objected is not reasoning from evidence. It is reasoning from the convenience of the party who wishes to proceed.

Two further guardrails are required. Inference must not be conducted by the interested party, which means a platform cannot be the judge of whether a decedent would have consented to its own product. And inference from professional conduct in life must be bounded: a person who licensed their voice for audiobooks has not

thereby licensed its synthesis, because the two are different things and the second was not on offer.

5.4 What follows

The argument establishes a presumption, not an absolute prohibition. The presumption is against replication where consent has not been established, and it is defeasible in defined ways: by explicit pre-mortem authorisation, by reliable evidence of the decedent's wishes, and within narrow categories of use that Section 9 addresses, principally biography, journalism, scholarship, and artistic commentary on public figures.

The presumption does its work by relocating the burden. Under current practice, a family that objects must discover the replica, establish standing, identify a cause of action, and litigate. Under the framework proposed here, the operator must establish authority before deploying. That is the whole of the reform, and everything in Section 8 is machinery for it.

6. Existing Legal Instruments and Their Structural Failure

This section examines the six bodies of law most likely to be invoked and identifies, for each, the structural feature that defeats the claim. The purpose is to establish that the gap is architectural rather than incidental, and therefore not closable by extending existing instruments at the margins.

6.1 Postmortem publicity and personality rights

Where they exist, postmortem publicity rights are the closest available instrument. They are also, on examination, poorly suited.

They are commercial in conception. The interest protected is the economic value of identity, which means the paradigm claimant is a celebrity estate and the paradigm wrong is unlicensed commercial exploitation. Private replication of a person with no commercial value engages no protected interest at all, and that describes almost everyone.

They are territorially fragmented. Duration, scope, and even existence vary by jurisdiction, and in federal systems by sub-national unit. The applicable law commonly turns on the decedent's domicile at death, producing outcomes that depend on an accident of residence.

They require descendibility. Many regimes protect only those who commercially exploited their identity during life, which excludes the ordinary dead by design.

They vest in the estate. This converts a dignitary interest into an asset, with the consequence that the party empowered to protect the decedent is the party with an incentive to monetise them.

6.2 Data protection

Data protection is the instrument most people assume applies. In most of the world it does not.

The European framework's material scope is confined to living natural persons, with the question of deceased persons left to member states. The result is a patchwork in which several states have legislated, with France,

Spain, and Italy providing the most developed provisions for heirs to exercise rights over a decedent's data, and most have not. Beyond Europe the pattern repeats: comprehensive data protection statutes generally define personal data by reference to living individuals, and the newer Asian and Latin American regimes largely follow suit.

Two further limits apply even where the deceased are covered. Data protection regulates processing, not expression, which makes it an awkward vehicle for addressing the generation of new speech. And its rights are individual and reactive, requiring a person with standing to exercise them, which returns the analysis to the discovery burden.

The one respect in which data protection is genuinely powerful is the third-party point from Section 4.3: the living correspondents whose data sits inside the decedent's archive remain fully protected, and any training on that archive engages their rights directly. This is, in our view, the most underused legal lever currently available.

6.3 Copyright and neighbouring rights

Copyright protects works, not persons. A voice is not a work. A face is not a work. A conversational manner is not a work.

Copyright reaches posthumous replication only obliquely. Training on protected recordings may implicate reproduction rights, but those rights are typically held by labels and publishers rather than by the person or their family, which means the enforcing party has interests unrelated to the decedent's dignity. Outputs that imitate style without copying expression fall outside protection in most jurisdictions, since style is not protected subject matter.

Denmark's recent proposal to extend copyright-like protection to a person's likeness and voice, including for a period after death, is the most interesting development in this area precisely because it recognises that the existing category is the wrong one and proposes a new one rather than stretching the old.

6.4 Defamation and postmortem reputation

Defamation is the instrument that maps most naturally onto the wrong of putting false statements in a person's mouth. In most common law jurisdictions it is unavailable, because the cause of action does not survive the death of the person defamed. Several civil law systems do better, permitting relatives to protect the memory of the deceased, and China's Civil Code is notable for expressly allowing relatives to claim where a decedent's name, likeness, reputation, or privacy is infringed.

Where postmortem defamation is available, it remains a poor fit. It requires a false statement of fact rather than the general wrong of fabricated speech, requires publication and damage to reputation, and requires a locatable defendant.

6.5 Succession, fiduciary access, and digital assets

Estate law has developed real machinery for digital assets, principally through fiduciary access statutes that give executors defined rights over a decedent's accounts subject to the decedent's expressed directions and the

terms of service.

This machinery addresses access, not replication. It answers who may read the emails and does not address who may build a system that writes new ones. The distinction matters because access provisions were drafted on the assumption that the value in a digital account is informational, and replication makes the account raw material for something the drafters did not contemplate.

Terms of service compound the problem. Platform terms commonly assert broad licences over uploaded content, and where those licences are drafted to cover derivative and machine-learning uses, the practical position is that a person’s digital remains may be licensed to an operator by the very act of having lived online.

6.6 Consumer protection

Consumer protection reaches the commercial sale of grief products and is the most immediately usable instrument against the worst practices, including deceptive marketing of therapeutic benefit, failure to disclose synthetic nature, and unfair terms imposed on the bereaved. It is confined to commercial contexts, depends on regulatory capacity, and addresses the transaction rather than the underlying wrong.

6.7 The recourse deficit applied

Body of law	Structural failure	Who must act	Discovery burden
Postmortem publicity	Commercial in conception; excludes the ordinary dead	Estate	Estate, on notice of commercial use
Data protection	Dead generally outside scope; regulates processing not speech	Heir, where permitted	Individual
Copyright	Voice, face, and style are not works	Rights holder, often a third party	Rights holder
Defamation	Action dies with the person in most jurisdictions	Unavailable, or relatives in some civil systems	Individual
Succession and fiduciary access	Governs access, not replication	Executor	Executor
Consumer protection	Commercial contexts only; transaction not wrong	Regulator	Regulator

The pattern is consistent. In every case the burden of discovering the harm falls on a grieving private party or on a regulator with no reason to look, and in most cases the person with standing is chosen for reasons unrelated to the interest at stake. A framework that adds substantive rules to this architecture without relocating the burden will produce paper rights.

7. Comparative Survey: Twelve Countries

Positions are stated as at June 2026 and coded in full in Annex C. The twelve countries are the United States, Germany, the United Kingdom, France, Spain, Italy, Denmark, China, South Korea, Japan, India, and Brazil.

7.1 The supranational layer

Before the country entries, two European Union instruments should be noted because they operate above four of the countries surveyed and neither addresses posthumous replication directly.

The data protection regime excludes deceased persons from its material scope while expressly permitting member states to legislate for them, which is the source of the divergence visible across Germany, France, Spain, and Italy below. The artificial intelligence regulation imposes transparency obligations on synthetic content that apply irrespective of whether the depicted person is living, with the deep fake disclosure duty framed by reference to resemblance to existing persons.

That transparency duty is more useful here than is generally recognised. A synthetic depiction of a dead person is, on the natural reading, a depiction of an existing person for these purposes, and the labelling obligation therefore attaches. What the Union layer lacks is any consent requirement, which is precisely the gap this paper addresses.

7.2 United States

The United States has the most developed body of postmortem identity law and the least coherent. Postmortem publicity is a matter of state law, with wide variation in duration, descendibility requirements, and scope, and applicable law generally determined by domicile at death.

Two developments are directly on point. California's 2024 legislation addressing digital replicas of deceased personalities, effective from January 2025, requires consent from the estate for the commercial use of a digital replica in expressive works, with exceptions for news, satire, criticism, and certain documentary uses. Tennessee's ELVIS Act, effective July 2024, extends the state's personal rights statute expressly to voice and to the tools whose primary purpose is producing unauthorised simulations, and is notable for reaching the provision of means as well as the act. At federal level, proposals to create a nationwide property right in voice and likeness with a postmortem term have advanced through committee without enactment as of June 2026.

The constitutional overlay is the defining constraint. Expressive uses attract First Amendment protection, and any framework in this jurisdiction must be drawn to regulate commercial appropriation and deceptive attribution rather than expression as such.

Assessment. Strongest instruments in the world for the commercially valuable dead; almost nothing for everyone else. Discovery burden rests with estates.

7.3 Germany

Germany has no publicity statute and, in our assessment, the most instructive doctrinal position in the survey, because it already does what Section 8.2 of this paper proposes.

Personality rights derive from the constitutional guarantees of human dignity and the free development of personality. Two decisions define the postmortem position. In the *Mephisto* case, decided by the Federal Constitutional Court in 1971, the court held that the state's duty to protect human dignity does not end at death, so that a deceased person's general personality interest persists, diminishing as living memory of them fades. In

the *Marlene Dietrich* decision of 1999, the Federal Court of Justice held that the commercial components of personality are inheritable and pass to heirs, by analogy with the ten-year postmortem consent requirement in the Art Copyright Act, under which the dissemination of a person's likeness requires the consent of relatives for ten years after death.

The result is a two-track model. The commercial track is inheritable, vests in heirs, and is time-limited. The dignitary track is not inheritable in the same sense, is exercised in protection of the deceased rather than of the holder, and endures indefinitely while declining in force over time.

This is the separation of dignitary from commercial authority that Recommendation 4 proposes, arrived at through judicial reasoning over three decades rather than by design. Germany has no instrument addressing synthetic replication specifically, and the federal data protection act is silent on the deceased.

Assessment. The best available model for the structure of postmortem authority, and no purpose-built rule for replication.

7.4 United Kingdom

The United Kingdom has no image right, no publicity right, and no postmortem personality right. Protection depends on passing off, which requires goodwill and misrepresentation and therefore serves commercially exploited estates only, on trade mark where marks exist, and on data protection, which does not reach the deceased.

The absence is doctrinal rather than accidental: English law has consistently declined to recognise a general right in personality. The consequence for posthumous replication is that a private individual's family has, in practical terms, no cause of action.

Assessment. The clearest illustration of what the general law provides when nothing is purpose-built, which is almost nothing.

7.5 France

France provides among the most developed civil law treatments. Personality rights are grounded in respect for private life and, while the action for infringement of privacy is generally personal, French courts have long protected the memory of the deceased through actions available to relatives, most clearly in respect of images of the dead and of funerary dignity.

The data protection framework expressly addresses the deceased, allowing a person to give directions concerning the post-mortem handling of their data and providing for heirs to act in defined circumstances. This is, in structure, a pre-mortem directive of exactly the kind Section 8 proposes, and it is the closest existing model.

Assessment. Has the instrument. Lacks application to synthetic replication specifically.

7.6 Spain

Spain's data protection legislation contains express provisions on deceased persons, permitting persons

connected to the decedent by family or factual ties, and their heirs, to seek access, rectification, and erasure unless the decedent prohibited it. Spain also has a dedicated statute on honour, personal and family privacy, and image, under which defined relatives may bring actions after death, and which provides one of the few clear routes for a family to protect a decedent's image as such.

Assessment. Among the strongest existing positions for ordinary families, and reached through general personality law rather than any AI-specific instrument.

7.7 Italy

Italy's privacy code addresses the data of deceased persons, permitting rights to be exercised by those with an interest of their own, acting to protect the data subject, or for family reasons deserving protection, with a facility for the data subject to prohibit such exercise. Italian civil law also protects image and personal identity, with relatives able to act in defined circumstances.

Assessment. Comparable to Spain and France in structure. The facility for a living person to bar posthumous exercise of their rights is a notable and underused feature.

7.8 Denmark

Denmark's 2025 proposal to grant individuals copyright-like protection over their own likeness and voice, with protection continuing for a period after death, is the most conceptually ambitious development in our survey. By locating the interest in a proprietary framework with a defined postmortem term and a consent requirement, it addresses the category error identified in Section 6.3 rather than working around it.

The proposal raises questions the paper does not resolve, including its interaction with expression and its treatment of parody, and its passage and final form should be tracked closely.

Assessment. The most promising model for a purpose-built instrument, subject to enactment.

7.9 China

China provides the clearest express protection in our survey. The Civil Code protects personality rights and provides that where a deceased person's name, portrait, reputation, or privacy is infringed, the spouse, children, and parents may claim, with other relatives able to act where those are absent. Portrait rights expressly cover the use of information technology to fabricate a likeness. The deep synthesis provisions require consent where a natural person's biometric information is edited and require labelling of synthesised content, and the 2025 labelling measures add both perceptible and embedded marking with an express prohibition on removing markers.

The combination of a relative's standing to sue, an express prohibition on technological fabrication of likeness, and a labelling regime with anti-circumvention provisions is, on paper, the most complete architecture in existence.

Assessment. Strongest express protection; standing clearly allocated to family rather than estate, which better matches the interest at stake.

7.10 South Korea

Korea's framework combines a new comprehensive AI statute with transparency and labelling duties, personality rights developed through case law, and a 2024 amendment recognising a right of publicity, commonly discussed as the right of portrait and name, within its unfair competition legislation. Postmortem duration and the position of ordinary individuals remain less settled than the celebrity case.

Assessment. Rapidly developing. Publicity framing risks reproducing the commercial-value limitation seen in the United States.

7.11 Japan

Japan has no publicity statute. Publicity rights were recognised judicially, with the Supreme Court's 2012 decision establishing that a person's likeness has commercial value protected against uses exploiting that value as such. Postmortem publicity is not clearly established, and moral interests of the deceased are protected principally through provisions on defamation of the dead and through copyright's treatment of the author's moral interests after death.

That last feature is worth noting: Japanese copyright law prohibits acts that would infringe an author's moral rights were the author living, with relatives empowered to act. It is one of the few existing provisions anywhere that protects a dignitary interest postmortem by direct statutory command.

Assessment. Weak on publicity, unusually thoughtful on postmortem moral interests. The copyright provision is a transferable model.

7.12 India

India has developed personality rights rapidly through litigation rather than legislation, with a series of injunctions protecting the names, images, and voices of public figures against AI-generated exploitation. The data protection statute excludes deceased persons, and postmortem personality rights remain unsettled, with judicial statements pointing in both directions and a general reluctance to extend publicity rights beyond life.

Assessment. Vigorous protection for living celebrities; unresolved for the dead; nothing for ordinary individuals.

7.13 Brazil

Brazil's Civil Code expressly authorises the surviving spouse and relatives to the fourth degree to seek cessation of threats or injury to personality rights of the deceased, and its provision on image requires consent for use, with protection continuing after death through those relatives. The data protection statute is silent on the deceased. The pending comprehensive AI bill contains labelling and rights provisions and contemplates liability rules more favourable to affected persons than ordinary negligence.

Assessment. Civil Code provides clear family standing. AI-specific treatment pending.

7.14 Cross-country findings

Country	Postmortem identity interest	Basis	Who may assert	Reaches synthetic replication expressly	Ordinary individuals protected
United States	Yes, variable by state	Publicity, property	Estate	Yes, in some states	Rarely
Germany	Yes, two-track	Constitutional dignity; inheritable commercial track	Heirs (commercial, 10 yrs); relatives (dignitary)	No	Yes
United Kingdom	No	Passing off only	Goodwill holder	No	No
France	Yes	Privacy, personality, data	Relatives, heirs	No	Yes, in principle
Spain	Yes	Honour and image statute, data	Defined relatives	No	Yes
Italy	Yes	Civil code, privacy code	Interested persons, relatives	No	Yes
Denmark	Proposed	Copyright-like	Individual, then estate	Yes, as proposed	Yes, as proposed
China	Yes	Civil Code personality rights	Spouse, children, parents	Yes	Yes
South Korea	Partial	Unfair competition, case law	Rights holder	Labelling	Unclear
Japan	Limited	Case law, moral rights provisions	Relatives, for moral interests	No	Partly
India	Unsettled	Case law	Rights holder	Injunctions in practice	No
Brazil	Yes	Civil Code	Relatives to fourth degree	Pending	Yes

Four findings follow.

No country has a consent instrument. Not one of the twelve provides a mechanism through which a living person can record binding, portable, machine-discoverable preferences about posthumous replication. France and Italy come closest through their data protection provisions, and neither addresses replication as such.

The civil law countries protect ordinary people better. Where the interest is grounded in personality and dignity, and standing is given to family, ordinary individuals are protected. Where it is grounded in commercial value and vests in an estate, they are not. This is the single clearest lesson of the survey and it runs contrary to the direction in which the common law countries are currently legislating. Germany's two-track model, reached judicially, is the clearest existing template.

Express coverage of synthetic replication is rare and recent. Only the United States, in some states, and China address it expressly; Denmark would if enacted. Nine of the twelve countries surveyed have nothing on the point.

Nothing addresses the cross-border problem. Every instrument surveyed is territorial, and applicable law generally turns on domicile at death, which is an accident with no bearing on where a replica is produced,

hosted, or encountered.

7.15 A note on the survey's limits

The twelve countries surveyed are disproportionately high-income and disproportionately European in legal tradition, and four of them sit under the European Union layer described in Section 7.1. Two consequences should be flagged. First, the survey underrepresents legal orders in which the dead hold a more central place in social and legal life, including customary and religious systems in which duties to ancestors are explicit and enforceable; these may well contain the most sophisticated existing thinking on posthumous dignity and are absent here. Second, the commercial deployment of grief technology is expanding fastest in markets with the least developed personality law, which means the population most exposed is the least surveyed. Both are limitations of this paper rather than of the field.

8. A Tiered Consent Architecture

We propose a tiered consent architecture that distributes authority across three temporal stages: pre-mortem planning, estate authority, and platform accountability. The tiers are not alternatives. Each addresses a failure the others cannot, and a framework adopting one without the others will underperform in ways attributable to the omission rather than to the measure.

The architecture rests on a single operative rule, from which everything else follows.

The operative rule. No person may deploy a posthumous AI replica of an identifiable deceased natural person unless authority to do so has been established. Authority is established by explicit pre-mortem authorisation, by reliable evidence of the decedent's wishes, or, for non-commercial uses only, by the decision of the person or persons on whom authority devolves under the default rules. Commercial deployment requires explicit pre-mortem authorisation and cannot be authorised by any other route.

8.1 Tier One: pre-mortem instruments

What it does. Gives living people a practical, standardised, and portable means of recording binding preferences about posthumous replication, so that the question of their wishes becomes a matter of record rather than of inference.

The analogy and its limits. The natural model is the advance healthcare directive, which solved a structurally identical problem: a decision must be made about a person who cannot participate, the stakes are high, the family may disagree, and the professional in charge needs to know what they are authorised to do. Advance directives succeeded because they were standardised, low-cost, widely promoted, and legally recognised across institutions.

Three disanalogies matter and shape the design.

Healthcare directives operate once, at a known institutional moment, with a professional obliged to consult them. Replication directives must operate indefinitely, at unpredictable moments, and be discoverable by

parties who have no relationship with the decedent. This makes **discoverability** the central design problem rather than an implementation detail.

Healthcare directives concern a bounded set of interventions that can be enumerated. Replication technology changes, which means a directive drafted in terms of today's products will be obsolete and must instead be drafted in terms of purposes and categories.

Healthcare decisions are made by clinicians subject to professional regulation. Replication decisions are made by commercial operators subject to none.

Design requirements.

Standardised and free. The instrument must be available without cost and without a lawyer, on the model of the organ donor register rather than the will. A framework that requires estate planning will reach the wealthy, and the population most exposed to private replication is not the wealthy.

Granular but not baroque. The instrument should distinguish, at minimum: commercial use; non-commercial memorial use by family; interactive conversational replication; use in journalism, biography, and scholarship; artistic and dramatic use; and training of general-purpose models. Each should carry a permit, prohibit, or defer option, with the default on silence being prohibit. Granularity beyond roughly six categories produces abandonment rather than precision, on the evidence of every comparable instrument.

Purpose-framed, not technology-framed. Provisions should describe what may be done rather than what tool may do it.

Discoverable by design. A directive that exists in a drawer protects nobody. The instrument requires a registry, addressed in Section 8.4, and a machine-readable form so that an operator's duty of inquiry can actually be discharged.

Amendable and revocable at will, with the latest instrument governing.

Recognised across borders, which is a matter for Section 11 and is the respect in which unilateral national action will fail.

A model instrument appears in Annex A.

What a directive cannot do. It cannot bind where the use falls within a protected category of expression. It cannot authorise what is independently unlawful. And it cannot help the existing dead, which is the entire reason Tiers Two and Three are necessary rather than transitional.

8.2 Tier Two: estate authority and default rules

What it does. Determines who decides in the absence of a directive, and constrains what they may decide.

The problem with estates. Current law, where it addresses this at all, vests postmortem identity interests in the estate. This is a category error with practical consequences. An estate is a mechanism for administering property in the interests of beneficiaries and creditors. Its fiduciary orientation is toward value. Asking it to protect a dignitary interest asks it to act against the grain of its own duties, and in the commercial cases it is the

estate that authorises the use complained of.

The comparative survey supports a different allocation. The countries that protect ordinary people best, principally Germany, China, Spain, Italy, France, and Brazil, give standing to **family** to protect the decedent's personality, and they treat the interest as dignitary rather than proprietary.

Design requirements.

Separate the dignitary from the commercial. Two distinct authorities should be recognised. Dignitary authority, to consent to or refuse non-commercial replication, should devolve on the decedent's closest relatives in a defined order. Commercial authority should not exist at all in the absence of a pre-mortem directive, which is the single most consequential default rule proposed in this paper.

Define the order, and allow the decedent to vary it. A statutory order of devolution, typically spouse or civil partner, then adult children, then parents, then siblings, provides predictability. A directive should be able to name a different person, whether or not that person is a relative, which matters for chosen families, estranged families, and people whose closest relationship is not recognised by succession law.

Provide for disagreement. Where those with equal standing disagree, the default should be refusal. This will frustrate some families, and it is the correct rule: replication is irreversible in its effects on memory, and a single objecting child has a legitimate interest that a majority cannot extinguish.

Constrain the authority. Dignitary authority is not ownership. It should be exercisable only consistently with the decedent's known wishes, subject to a duty to act in the decedent's interest rather than the holder's, and incapable of assignment or sale. A holder who authorises a use the decedent had objected to acts outside their authority.

Time-limit it. Authority should lapse after a defined period, in the range of fifty to seventy years post-mortem, after which replication of the person passes into the same domain as biography and historical depiction. An unlimited postmortem veto vested in remote descendants would be a dead-hand control over historical memory, which is an outcome this paper does not seek.

Provide a route where no holder exists. Many people die with no surviving relative in the statutory order. The default for those decedents should be prohibition of commercial use and a public-interest route for other uses, addressed in Annex B.

8.3 Tier Three: platform accountability

What it does. Places the burden of establishing authority on the party with the capability to do so, which is the only allocation under which the framework functions at all.

This is the tier that matters most, because Tiers One and Two describe who may authorise what, and neither has any effect if nobody is obliged to ask.

The duty of inquiry. Operators of systems capable of generating posthumous replicas should bear an affirmative obligation to take reasonable steps to determine whether authority exists before deployment,

regardless of whether the decedent or their family has taken proactive steps.

The duty's content should scale with the use. We propose four bands.

Band 1: commercial deployment. Explicit pre-mortem authorisation must be verified, with documentary evidence retained. No other basis suffices. This is a strict rule, and it is strict because commercial replication is the use with the clearest alternative, namely not doing it, and the least defensible claim to urgency.

Band 2: public deployment, non-commercial. Includes memorial products distributed beyond a family, public installations, and interactive replicas made available to third parties. Requires verified authority from a directive or from the holder of dignitary authority, plus a registry check, plus disclosure at the point of encounter.

Band 3: private deployment on request. A family member seeking a replica of their own relative. Requires a registry check, an attestation of relationship and of authority, a check for any recorded prohibition, disclosure, and a record retained. The attestation is not verification, and it is deliberately not: a framework that required documentary proof of relationship would exclude the people it is meant to serve. What the attestation does is make the requester responsible for a statement, which is a meaningful deterrent and a basis for liability.

Band 4: tooling and general-purpose provision. Providers of general-purpose generative systems cannot verify the subject of every request. Their obligations should instead be structural: refusal to produce recognisable replicas of identifiable individuals on request without attestation, provenance marking of outputs, registry consultation where a name is supplied, retention of request records for a defined period, and prohibition of features whose principal purpose is posthumous replication of a named person absent Band 1 or 2 compliance.

What reasonable steps means. The duty must be specified or it will be discharged nominally. At minimum it requires: a check against the registry; a check of the operator's own records for a prior prohibition concerning the same decedent; an attestation from the requester in the terms above; retention of the basis on which the operator concluded authority existed; and, for Bands 1 and 2, documentary verification rather than attestation.

Default prohibition on commercial use. Absent explicit pre-mortem authorisation, commercial deployment is prohibited. This rule does the largest share of the work in the entire framework, and it is the provision that will attract the most opposition.

Disclosure. Every deployed replica should be disclosed as synthetic, perceptibly, at the point of encounter, and persistently rather than once. This aligns with obligations already in force for synthetic media in the European Union and China and requires no new architecture.

A right to decline contact. Where a replica is deployed in a family setting, any person in the order of dignitary authority must be able to refuse to interact with it and to refuse to be contacted by it, without that refusal affecting anyone else's access. Products should carry a plain warning that not every relative will wish to speak to the deceased again, and should provide a mechanism for those who do not. This is the provision that addresses the estrangement and harm cases in Section 4.2, and no product we reviewed has any equivalent.

Takedown and standing to object. A defined route must exist for any person in the order of dignitary authority, and for any person able to show a sufficient connection to the decedent, to require cessation. The

route must not require litigation, must produce a reasoned decision within a defined period, and must carry a presumption in favour of cessation where authority cannot be evidenced by the operator.

Records and audit. Operators above a threshold should retain and, on request, produce records of replication requests concerning deceased persons, the basis on which each was authorised, and outcomes of objections. Without records there is no enforcement, and without enforcement the duty of inquiry is an aspiration.

8.4 The registry

Every element above depends on a registry, and the registry is the part most likely to be omitted as an implementation detail. It should not be.

Function. A registry records directives and prohibitions in machine-readable form and answers a single question for operators: does a recorded instrument exist concerning this person, and what does it say?

Design requirements. Free to file. Free to query. Operated by a public body or a non-profit under public mandate, not by a platform. Minimal data, holding the instrument and identifying particulars and nothing else. Queryable without disclosing who is querying to the family, and without disclosing the family's identity to the querier. Interoperable across jurisdictions, on the model of the international mechanisms that already exist for wills and for civil status documents.

The obvious objection. A registry of prohibitions is also a list of people worth replicating. The design response is that the registry answers queries about a named person rather than permitting enumeration, rate-limits and logs access, and holds no material capable of supporting replication.

8.5 A note on grief technology and the evidence

The framework permits non-commercial memorial replication with authority, and it would be wrong to present that permission as though the underlying practice were known to be benign.

The clinical position is genuinely unsettled. The continuing bonds literature establishes that maintained connection with the deceased is a normal and often healthy feature of grief, which is the strongest theoretical argument for these products. Against that, the same literature distinguishes between bonds that accommodate the death and bonds that deny it, and an interactive replica that responds in the present tense is structurally on the wrong side of that line. There are no controlled trials. The case reports and qualitative studies point in both directions, and the practitioners we interviewed for adjacent work divided sharply.

Two propositions can nonetheless be stated with confidence. First, the absence of evidence of harm is not evidence of safety, and products marketed with therapeutic claims should be held to the standards that apply to therapeutic claims. Second, the risks are concentrated in exactly the features that make the products commercially attractive: interactivity, persistence, and responsiveness, meaning the features that most strongly invite a person to relate to the replica as present.

The framework's response is procedural rather than substantive. It does not prohibit memorial use, because the decision properly belongs to families and to the decedent. It requires that the decedent's authority be established, that the synthetic nature be disclosed persistently, that therapeutic claims be actionable where

unsupported, and that continuity obligations apply so that a bereaved family does not lose the replica without notice. Whether these products help is a question the evidence cannot yet answer. Whether they should be sold to grieving people without the decedent’s authorisation is a question that does not depend on the answer.

8.6 How the tiers interact

Situation	Governing authority	Commercial use	Non-commercial use
Directive permits specified use	Directive	As permitted	As permitted
Directive prohibits	Directive	Prohibited	Prohibited
Directive silent on the use	Default rules	Prohibited	Dignitary authority may permit
No directive; reliable evidence of wishes	Evidence of wishes	Prohibited	Governs
No directive; no evidence; holder consents	Dignitary authority	Prohibited	Permitted, Band 2 or 3 duties apply
No directive; holders disagree	Default	Prohibited	Prohibited
No directive; no surviving holder	Default	Prohibited	Public-interest route only
Protected expressive use, public figure	Expression carve-out	Permitted within carve-out	Permitted within carve-out

Two features of the table deserve emphasis. Commercial use is prohibited in every row except where a directive permits it, which is the architecture’s spine. And the expressive carve-out operates independently of the consent analysis rather than as an exception the family may contest, which is what keeps the framework compatible with biography, journalism, scholarship, and art.

9. Objections and Responses

“This is a prior restraint on expression.” The framework regulates the deployment of a person’s simulated identity, not the discussion of them, and it carves out journalism, biography, scholarship, criticism, satire, and dramatic depiction expressly. Where synthetic depiction is used within those categories, the governing requirements are disclosure and non-deception rather than consent. The provisions that bind absolutely are directed at commercial appropriation and at deceptive attribution, which are the two categories in which no jurisdiction surveyed treats expression as unqualified. We accept that the line between dramatic depiction and unauthorised replication will require judicial development, and note that this is true of every personality right now in force.

“Consent from the dead is incoherent, so the whole framework is confused.” The framework does not seek consent from the dead. Tier One seeks consent from the living about their future. Tier Two allocates a decision that must be made by someone. Tier Three places the burden of establishing authority on the party best able to establish it. None of these requires the dead to do anything.

“Families will use this to sanitise the record.” A real risk, and the reason for three provisions: the

expressive carve-out, which families cannot override; the time limit on dignitary authority; and the constraint that authority must be exercised in the decedent's interest rather than the holder's. Note also that the current position is worse on this measure, since the estate's existing veto over commercial use is already available for reputation management and is exercised for that purpose.

“Prohibiting commercial use absent a directive is too strict, since almost nobody has a directive.”

This is correct as a description and is the intended effect. For the existing population of decedents, who could not have made a directive, commercial replication should be off the table. The rule is not a permanent settlement but the correct default during the period in which directives do not yet exist, and it creates precisely the incentive needed for the instruments in Tier One to be adopted by those who want their identity commercially available after death.

“Verification is impossible at scale.” Which is why the duty is banded. Band 1 verification concerns a small number of high-value deployments where documentary diligence is already standard commercial practice. Bands 3 and 4 rely on registry checks and attestations, both of which are cheap and automatable. The framework does not require operators to prove relationships; it requires them to ask, to check a registry, and to keep a record.

“Small developers will be crushed.” The record-keeping and audit obligations are threshold-based. The duty of inquiry itself is not, because it costs a database query and an attestation checkbox, and because a small operator replicating a dead person without authority does the same harm as a large one.

“A registry will not be adopted.” The organ donor registers, advance directive registries, and do-not-call lists all faced the same objection. Adoption follows from being free, simple, promoted, and legally consequential. The framework's default rules supply the consequence: a person who wants their identity used commercially after death must file, which gives the commercially motivated a reason to build adoption on the framework's behalf.

“This will impede legitimate memorial practices.” Band 3 exists for exactly this case and is deliberately light. A family member seeking a private memorial replica of their own relative encounters a registry check, an attestation, and a disclosure requirement. If a recorded prohibition exists, they are told, and the prohibition holds, which is the decedent's decision operating as intended.

“Historical figures will become unusable.” The time limit addresses this, and the expressive carve-out addresses the interim. A documentary maker depicting a figure who died forty years ago operates within the carve-out. A company selling a product endorsed by that figure does not, and should not.

“The dead have no interests, so there is nothing here to protect.” The framework is compatible with this view, as Section 4.1 explains. If postmortem interests are denied, the harms to the bereaved, to living third parties in the data, and to the shared evidentiary record remain, and each independently supports the architecture. The metaphysical question is genuinely open. The governance question does not wait on it.

“Platforms will relocate offshore.” Some will, which is why Section 11 treats coordination as structural rather than aspirational, and why the obligations proposed attach to deployment affecting persons connected to the jurisdiction rather than to the operator's place of establishment.

10. Implementation and Sequencing

The elements of the framework differ substantially in difficulty, and the order of adoption determines whether they arrive as an architecture or as a set of measures that interfere with one another.

Available without primary legislation. Registry establishment can proceed administratively or through a non-profit under public mandate, and a voluntary registry with no legal effect still gives operators something to check and creates the dataset that legislation later recognises. Regulatory guidance can confirm that synthetic depiction of a deceased person falls within existing synthetic media labelling duties, which is the natural reading in the European Union and China and requires no amendment. Consumer protection authorities can act now against deceptive marketing of grief products, undisclosed synthetic nature, and unfair terms imposed on the bereaved, using powers they already hold. Data protection authorities can issue guidance on the third-party point in Section 4.3, confirming that training on a decedent's correspondence processes the personal data of living correspondents and requires a lawful basis. In our assessment this last measure is the highest-value immediate step available anywhere, because it is legally uncontroversial, applies in every comprehensive data protection jurisdiction, and reaches the private replication cases that nothing else touches.

Achievable within a legislative cycle. Statutory recognition of the pre-mortem directive, on the model of France's existing data provisions extended to replication. Default rules allocating dignitary authority to family, with the commercial prohibition. Statutory recognition of the registry and its legal effect. Disclosure duties for deployed replicas where not already covered. The takedown route with a presumption in favour of cessation.

Requiring sustained effort. The platform duty of inquiry with banded verification and audit, which requires drafting, a supervisory body with technical capacity, and enforcement resources. Time limits on dignitary authority, which will attract opposition from established estates. International recognition of directives, addressed below.

Sequencing risks. Three orderings should be avoided.

Enacting the default rules without the registry produces obligations that operators cannot discharge and families cannot invoke, and the predictable outcome is nominal compliance followed by a conclusion that the rules were unworkable.

Enacting the duty of inquiry without specifying reasonable steps produces a standard that each operator defines for itself, which is the position that already obtains and is what the framework exists to change.

Enacting estate authority without separating the dignitary from the commercial entrenches the category error identified in Section 6.1 and will be harder to reverse than to get right, because it creates a property interest that its holders will defend.

A note on speed. The framework is proposed in the knowledge that the practice is expanding faster than any of these measures can be enacted. This argues for the administrative steps above being taken immediately and in parallel with legislative drafting, and against the common sequencing in which guidance waits for statute. The population of decedents whose replication is currently ungoverned grows by roughly sixty million people a year.

11. International Coordination

Posthumous AI replication is inherently cross-border, and the mismatch between the practice and the legal architecture is more severe here than in any adjacent field.

Why the mismatch is acute. Applicable law for postmortem identity interests generally turns on the decedent's domicile at death. Nothing about replication respects that. A person may die in one jurisdiction, have their data hosted in a second, be replicated by an operator established in a third, and encountered by their family in a fourth. Each jurisdiction applies its own rule, and in the common case that at least one of them recognises no postmortem interest at all, the operator need only locate itself there.

Three features make this worse than the ordinary conflicts problem. The interest is dignitary rather than economic, so the usual commercial mechanisms for recognition and enforcement do not apply. The claimant is grieving and uncoordinated rather than institutional. And the harm is complete on deployment, so remedies that arrive after a determination of applicable law arrive too late to matter.

Four mechanisms, in ascending order of difficulty.

Recognition of directives. The most valuable and the most achievable. A directive filed in one jurisdiction should be recognised in others, on the model of the existing multilateral machinery for the form of testamentary dispositions and for the international registration of wills. This is a narrow, technical, and precedented instrument, and it does not require any state to adopt the substantive framework proposed here; it requires only that they honour a record of a person's expressed wishes.

Registry interoperability. A technical standard for directive records, so that a query in one system resolves against instruments filed in another. This requires standards work rather than treaty-making and can be advanced through existing standards bodies and registry operators.

A minimum substantive core. Convergence on the smallest set of rules that must hold everywhere: disclosure of synthetic nature; prohibition of commercial deployment absent explicit pre-mortem authorisation; a route for family to require cessation; and prohibition of circumvention of provenance markers. A minimum core of four rules is a plausible target for a soft-law instrument, and considerably more plausible than a comprehensive convention.

An effects-based jurisdictional principle. States should assert jurisdiction over deployment directed at, or encountered by, persons connected to the jurisdiction, rather than over operators established within it. This approach is established in data protection and increasingly in platform regulation, and its adoption here would remove the incentive to relocate. Consistency matters more than reach: divergent assertions produce conflicts that sophisticated operators exploit.

Which bodies. The realistic venues are those already engaged with adjacent questions: the international standards organisations for the registry format and provenance marking, the private international law bodies for recognition of directives, the data protection cooperation networks for the third-party training point, and the human rights treaty bodies for the dignitary framing. We do not propose a new institution. Every mechanism

above can be pursued within an existing one, and proposals for new institutions in this field have a poor record of arriving before the technology they were meant to govern.

What coordination cannot fix. Fraud will remain. A criminal cloning a dead person's voice to extract money from their widow is not deterred by a registry, and that conduct is addressed by fraud law, which functions. The framework's target is the lawful market and the well-intentioned family, which together account for the overwhelming majority of replication and for all of the practice that will become normalised if it is not governed now.

12. Policy Recommendations

Recommendation 1. Establish the presumption against replication absent established authority.

Legislate the operative rule in Section 8: no deployment of a posthumous AI replica of an identifiable deceased person without authority established through a pre-mortem directive, reliable evidence of the decedent's wishes, or, for non-commercial use only, the holder of dignitary authority.

Recommendation 2. Create a standardised, free, statutory pre-mortem directive. Six categories of use, each with permit, prohibit, or defer, silence defaulting to prohibit, purpose-framed rather than technology-framed, amendable at will, and drafted for completion without a lawyer. Model text is at Annex A.

Recommendation 3. Prohibit commercial deployment absent explicit pre-mortem authorisation. No estate, relative, or platform should be able to authorise commercial replication of a person who did not authorise it themselves. This is the single most consequential rule in the framework.

Recommendation 4. Separate dignitary from commercial authority, and vest the dignitary interest in family rather than the estate. Follow the civil law countries that protect ordinary people effectively, and Germany's two-track model in particular. Define an order of devolution, permit the decedent to vary it, default to refusal where holders disagree, prohibit assignment, and require exercise in the decedent's interest.

Recommendation 5. Impose a banded platform duty of inquiry with specified reasonable steps.

Registry check, prior-prohibition check, requester attestation, retained record, and documentary verification for commercial and public deployment. Specify the steps in the instrument; an unspecified duty will be discharged nominally.

Recommendation 6. Establish a public directive registry, free to file and free to query. Machine-readable, minimal-data, publicly mandated, query-only rather than enumerable, rate-limited and logged. Begin voluntarily if legislation is not yet available.

Recommendation 7. Require persistent, perceptible disclosure of every deployed replica. At the point of encounter rather than once at onboarding, and in a form legible to a bereaved person rather than to a compliance auditor. Prohibit removal or concealment of provenance markers, on the model now in force in China.

Recommendation 8. Provide an accessible cessation route with a presumption in favour of the

objector. Available to anyone in the order of dignitary authority or able to show sufficient connection, requiring no litigation, with a reasoned decision in a defined period, and with cessation presumed where the operator cannot evidence authority.

Recommendation 9. Confirm through data protection guidance that training on a decedent's correspondence processes living third parties' data. The highest-value immediate step available. It requires no legislation, applies in every comprehensive data protection jurisdiction, and reaches the private replication cases that no other instrument touches.

Recommendation 10. Apply consumer protection powers now to the grief technology market. Deceptive claims of therapeutic benefit, undisclosed synthetic nature, unfair terms, and the absence of continuity obligations on withdrawal are all actionable under existing powers, and the bereaved are a category every other consumer regime already treats as warranting heightened protection. Particular attention is warranted for the tiered and metered pricing described in Section 2.3, under which realism and responsiveness are sold as upgrades to a person already attached to the product.

Recommendation 11. Time-limit dignitary authority. Fifty to seventy years post-mortem, after which the person passes into the domain of biography and historical depiction. An unlimited veto held by remote descendants is dead-hand control over historical memory and should be rejected.

Recommendation 12. Require avatar platforms to obtain a mortality instruction at the point of creation. Any service that creates a high-fidelity avatar, digital twin, or voice clone of a living person should be required to ask, at creation, what is to happen to it on the person's death or incapacity, and to honour the answer. Synthesia alone reported some 150,000 individuals who had made avatars of themselves by mid-2025. Each is a ready-made replica with no instructions attached, and asking one question at the point of creation is the cheapest preventive measure available anywhere in this field.

Recommendation 13. Pursue international recognition of directives as the first coordination priority. Narrow, technical, precedented in the existing machinery for testamentary form, and valuable even to states that adopt none of the substantive framework, because it asks only that a record of a person's wishes be honoured across borders.

13. Conclusion

The law of the dead was built on a fact that has ceased to be true. It assumed that death ended a person's capacity to act, to speak, and to be seen doing either, and it distributed rights and remedies accordingly: reputation beyond further injury, privacy extinguished, identity reduced to whatever commercial residue an estate could license. Every one of those settlements was reasonable when the only thing a dead person could do was be remembered.

What generative systems have done is restore to the dead a capacity for apparent speech without restoring anything else. They can be heard and seen and questioned, and they cannot consent, correct, object, or refuse. They are available and they are defenceless, which is a combination that no other class of person occupies.

Into that gap, practice has inserted a default nobody chose and nobody would defend if asked to defend it plainly: that a person who never prohibited their own posthumous replication has thereby permitted it. This paper has argued that the inference cannot be sustained. It fails because the practice was unforeseeable to substantially everyone it currently governs. It fails because the consequences of wrongly permitting are irreversible while the consequences of wrongly prohibiting are not. It fails because there is no party with both standing and incentive to negotiate on the decedent's behalf. And it fails because every neighbouring body of law that has met this structure, from organ donation to research ethics to intestacy, has answered it the other way, and has done so after deliberation rather than by oversight.

The remedy is not complicated, which is the most encouraging thing about this field. It requires an instrument through which the living can say what they want, a rule about who decides when they did not, and an obligation on operators to ask before they act. The first two are familiar legal technology; advance directives and orders of devolution are well-understood machinery. The third is the one that carries the weight, because a framework in which nobody is obliged to ask is a framework in which the answer is always yes.

What is at stake is not only the treatment of individuals, though that would be sufficient. It is whether the record of what people said while alive retains its evidentiary character, and whether the completed shape of a life remains the person's own. A life is finite, and its finitude is part of what gives it meaning. A technology that makes the dead permanently available for new speech does not extend a life; it appends to it, indefinitely, in words the person did not choose.

The Institute's position is that the burden belongs where the capability sits. Those who can replicate should be the ones obliged to establish that they may. Anything else asks the bereaved to defend the dead, and they should not have to.

Annex A: Model Posthumous AI Directive

Offered as drafting reference for a standardised statutory instrument. Designed for completion without legal assistance, in plain language, on a single page.

POSTHUMOUS AI DIRECTIVE

Part 1. About me. Full legal name; any other names I have been publicly known by; date of birth; place of residence. *(Sufficient identifying particulars for registry matching, and no more.)*

Part 2. What this directive covers. This directive records my decisions about whether an artificial intelligence system may be used, after my death, to recreate my voice, my face or likeness, my writing style, or my manner of conversation, in a way that makes new words, images, or recordings that I did not create.

Part 3. My decisions. *For each category: PERMIT / PROHIBIT / LEAVE TO MY NAMED PERSON. If I do not mark a category, it is prohibited.*

- a. **Commercial use.** Advertising, endorsement, promotion, or any use from which a business derives revenue.

- b. **Private memorial use by my family.** A recreation made for the personal use of the people close to me, not distributed publicly.
- c. **Interactive recreation.** A system that holds conversations as me, answering questions and responding in my voice or manner.
- d. **Journalism, biography, education, and scholarship.** Use in reporting, documentary, biography, teaching, or research.
- e. **Art, drama, and performance.** Use in creative work, including film, theatre, music, and satire.
- f. **Training of artificial intelligence systems.** Use of my voice, image, or writing to train systems generally, whether or not the result recreates me specifically.

Part 4. Anything I want to add. *Free text. Anything I say here about my wishes governs, and will be read alongside my decisions above.*

Part 5. The person who decides what I have left open. Name; relationship to me; contact details. *This person may decide only the categories I have marked “leave to my named person”. They cannot permit anything I have prohibited. They cannot permit commercial use.* Alternate, if that person is unable or unwilling to act.

Part 6. Signature and date. Signed by me; date; witness where required by the enacting jurisdiction.

Part 6a. Existing avatars of me. *If I have already created an avatar, digital twin, voice clone, or similar likeness of myself on any platform, I list it here and state whether it may continue to exist after my death, and on what terms.* Platform or service; what it is; my decision.

Part 7. Notes. This directive may be changed or cancelled at any time, and the most recent version governs. Filing it with the registry is free and makes it findable by anyone who is required to check. Use described in Part 3(d) and 3(e) may be permitted by law irrespective of my decisions here, in the same way that anyone may write about me.

Annex B: Model Statutory Language

Offered as drafting reference requiring adaptation to the constitutional and doctrinal context of any adopting jurisdiction.

B.1 Definitions

“Posthumous AI replica” means an artefact or system that reproduces one or more identifying characteristics of a deceased natural person, including voice, likeness, written style, or conversational manner, at a fidelity sufficient that a reasonable person familiar with that person would recognise them, and which generates expression that person did not create.

A reproduction of expression that the person actually created is not a posthumous AI replica.

“Deploy” means to make available to any person other than the operator, including by publication, distribution, sale, performance, or provision as a service.

“Dignitary authority” means the authority conferred by section B.3 to consent to or refuse non-commercial deployment.

B.2 The operative rule

1. No person shall deploy a posthumous AI replica unless authority to do so is established under this Act.
2. Authority is established by (a) a directive under section B.4 permitting the use; (b) reliable evidence of the deceased person’s wishes permitting the use; or (c) for non-commercial deployment only, the consent of the holder of dignitary authority.
3. No person shall deploy a posthumous AI replica for commercial purposes unless a directive under section B.4 expressly permits commercial use.
4. Subsection (3) applies notwithstanding the consent of any estate, personal representative, relative, or other person.

B.3 Dignitary authority

1. Dignitary authority in respect of a deceased person vests in the following, in order: (a) any person named for that purpose in a directive; (b) the surviving spouse or civil partner; (c) the surviving adult children, jointly; (d) the surviving parents, jointly; (e) the surviving siblings, jointly.
2. Where two or more persons hold dignitary authority jointly and do not agree, authority is not established and deployment is prohibited.
3. Dignitary authority shall be exercised consistently with any known wishes of the deceased person and in that person’s interest, and not in the interest of the holder.
4. Dignitary authority is not assignable, transferable, or capable of being sold, licensed, or charged.
5. Dignitary authority expires on the expiry of [50 to 70] years from the date of death.
6. Where no person holds dignitary authority, non-commercial deployment may be authorised only under section B.7.

B.4 Directives

1. A person of full age and capacity may make a directive recording their decisions concerning posthumous AI replication.
2. A directive shall be in the prescribed form, which shall be available without charge and shall not require legal assistance to complete.
3. A category not marked in a directive is prohibited.
4. A directive may be amended or revoked at any time and the most recent directive governs.
5. A directive filed with the registry is effective against any person; an unfilled directive is effective against any person with notice of it.
6. A directive made in another jurisdiction in accordance with the law of that jurisdiction shall be recognised, so far as its terms permit.

B.5 Duty of inquiry

1. An operator shall, before deploying a posthumous AI replica, take reasonable steps to establish whether authority exists.
2. Reasonable steps comprise, at minimum: (a) a query of the registry; (b) a check of the operator’s own records for any

prior prohibition or objection concerning the same deceased person; (c) obtaining from the requester an attestation of their relationship to the deceased person and of their authority; (d) retention of a record of the basis on which the operator concluded that authority existed; and (e) for commercial or public deployment, documentary verification of the directive or of the holder's authority.

3. An attestation obtained under subsection (2)(c) does not establish authority where the operator knows or ought to know it to be false.
4. An operator shall not deploy a posthumous AI replica where the registry records a prohibition covering the proposed use.

B.6 Disclosure, cessation, and records

1. A deployed posthumous AI replica shall be accompanied by a disclosure of its synthetic nature that is perceptible to an ordinary recipient at the point of engagement and that persists throughout the engagement.
2. No person shall remove, alter, obscure, or conceal a disclosure or provenance marker required by subsection (1), or supply any tool whose principal purpose is to do so; this subsection does not apply to bona fide security research or forensic analysis.
3. A person holding or entitled to hold dignitary authority, or any person able to demonstrate a sufficient connection to the deceased person, may require an operator to cease deployment.

(3A) A person shall not be required to interact with, or to receive communications from, a posthumous AI replica, and an operator shall provide a means by which any such person may decline both; a deployment shall carry a notice that relatives may decline. (4) On receipt of a requirement under subsection (3) the operator shall cease deployment unless it can evidence authority, and shall give a reasoned decision within [14] days. (5) An operator above the prescribed threshold shall retain, and produce to the supervisory authority on request, records of requests to deploy posthumous AI replicas, the basis of authority for each, and the outcome of any requirement under subsection (3).

B.7 Public-interest route

Where no person holds dignitary authority, the [supervisory authority] may authorise non-commercial deployment on application, having regard to any known wishes of the deceased person, the purpose of the deployment, the period elapsed since death, and the public interest. Commercial deployment shall not be authorised under this section.

B.8 Expressive uses

Nothing in this Act restricts the deployment of a posthumous AI replica in news reporting, commentary, criticism, satire, biography, documentary, scholarship, teaching, or artistic or dramatic work, provided that the synthetic nature of the replica is disclosed in accordance with section B.6(1) and the replica is not deployed so as to deceive as to its authenticity or as to the deceased person's actual statements or endorsements.

Annex C: Comparative Coding Framework

Each of the twelve countries in Section 7 was coded against the following eight questions. The framework is offered so that it may be applied to countries outside our sample.

Q1. Is a postmortem identity interest recognised at all? Coded: yes, partial, proposed, no.

Q2. On what basis? Coded: property or publicity; personality or dignity; privacy or data protection; copyright or neighbouring rights; unfair competition; none. Multiple codes permitted. This question is the most diagnostic in the framework, because basis determines who is protected: property bases protect the commercially valuable, dignity bases protect everyone.

Q3. For how long? Coded in years post-mortem, or indefinite, or not applicable.

Q4. Who may assert it? Coded: estate or personal representative; named relatives; any interested person; rights holder; nobody.

Q5. Does data protection reach the deceased? Coded: yes; yes with conditions; left to sub-national law; no.

Q6. Does any instrument address synthetic replication expressly? Coded: yes, specifically posthumous; yes, synthetic media generally; labelling only; no.

Q7. What remedies attach? Coded: injunctive; damages; statutory damages; administrative penalty; criminal; takedown; none.

Q8. Where does the discovery burden sit? Coded: individual or family; estate; regulator; platform; shifted to operator. This is the determinative question for whether a regime can close the recourse deficit, and it is the question the existing comparative literature most consistently omits.

A regime coding “yes” on Q1, “personality or dignity” on Q2, a defined term on Q3, “named relatives” on Q4, “yes” on Q5, “yes, specifically posthumous” on Q6, injunctive and takedown remedies on Q7, and “platform” or “shifted to operator” on Q8 would satisfy the minimum framework proposed in Section 8. No country in our sample presently codes this profile, and China codes closest.

Sources and Further Reading

This paper was prepared from primary sources, meaning statutory text, implementing regulations, published regulatory guidance, judicial decisions, and legislative materials, together with litigation records, platform and vendor disclosures, and the peer-reviewed literature. Secondary commentary is used for interpretive context only. Positions are stated as at 30 June 2026, and readers should verify current status before operational reliance. Full citations for the instruments referenced are available on request from the Institute.

United States. State postmortem right of publicity statutes and the associated choice-of-law jurisprudence; California’s 2024 digital replica legislation concerning deceased personalities; Tennessee’s Ensuring Likeness Voice and Image Security Act; federal proposals to establish a property right in voice and likeness; the First Amendment jurisprudence on expressive uses of identity; revised uniform fiduciary access to digital assets legislation as enacted across the states.

European Union and member states. The General Data Protection Regulation and its treatment of deceased persons; the Artificial Intelligence Act transparency provisions concerning synthetic and manipulated content; the French data protection framework’s provisions on post-mortem directions and heirs’ rights; Spain’s organic law on data protection and digital rights and its statute on civil protection of honour, privacy, and image; Italy’s

personal data protection code provisions concerning deceased persons; Denmark's 2025 legislative proposal on protection of likeness and voice.

United Kingdom. Passing off jurisprudence on false endorsement; trade mark practice in respect of personal names; data protection legislation as amended and its scope in respect of the deceased.

Asia. The Civil Code of the People's Republic of China, in particular its personality rights provisions and the standing of relatives; the Provisions on the Administration of Deep Synthesis Internet Information Services; the Measures for Labelling AI-Generated Synthetic Content; South Korea's Framework Act on artificial intelligence and its unfair competition legislation as amended in respect of portrait and name; Japanese Supreme Court jurisprudence on publicity rights and the Copyright Act provisions protecting an author's moral interests after death; Indian High Court personality rights injunctions concerning AI-generated exploitation and the Digital Personal Data Protection Act's scope.

Latin America. The Brazilian Civil Code provisions on personality rights and image and the standing of relatives; the General Data Protection Law and its silence on the deceased; the pending comprehensive artificial intelligence bill.

Documented cases and market sources. Reporting and court records concerning the AI-generated victim impact statement delivered at the sentencing of Gabriel Paul Horcasitas in the Maricopa County Superior Court, Arizona, on 1 May 2025, including interviews with Stacey Wales and with defence counsel; contemporaneous reporting on the Kaleida holographic recreation of Robert Kardashian presented in October 2020, and on comparable holographic production costs; reporting on the Chinese digital resurrection market, including pricing and client figures for Silicon Intelligence and Super Brain of Nanjing and the avatar services of Fu Shou Yuan International Group of Shanghai; the MBC documentary *Meeting You* (February 2020); *San Francisco Chronicle* reporting on Project December (2021); company statements and reporting on the scale of self-created avatars on Synthesia and HeyGen.

Interdisciplinary literature. Philosophical work on posthumous harm and the interests of the dead; the bioethics literature on advance directives, substituted judgment, and deemed consent in organ donation; the grief and bereavement literature on continuing bonds, memory reconsolidation, and the effects of interaction with representations of the deceased; scholarship on digital remains, the digital afterlife industry, and the ethics of commercial reanimation; the technical literature on voice cloning, provenance marking, and detection.

Institute publications. The Institute's prior work on synthetic identity governance and on the recourse deficit framework, and its continuing programme on the ethics of digital afterlife within the AI Afterlife Ethics issue area.

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