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DIGITAL IMMORTALITY AS A CIVIL LAW CHALLENGE: PROTECTION OF POSTMORTEM DIGITAL IDENTITY

Abstract: The development of digital technologies and artificial intelligence has led to a transformation of the traditional understanding of personal rights and their duration after the death of a natural person. In a modern digital society, data, photographs, video recordings, voice reproductions and social media accounts continue to exist even after the death of an individual, where they can be subject to further processing, reproduction and AI reconstruction. The aim of the paper is to analyze the possibilities of civil law protection of postmortem digital identity, with special emphasis on the protection of privacy, dignity and other personal rights in the context of the development of artificial intelligence and digital platforms. The paper starts from the hypothesis that existing civil law mechanisms are not fully adapted to the challenges of digital immortality and AI reproduction of deceased persons. The research is based on the normative and comparative law method, with an analysis of relevant literature, contemporary technological phenomena and existing regulatory solutions in the field of data protection and personal rights. The research results indicate that modern law has not yet developed a coherent legal framework for the protection of postmortem digital identity, especially with regard to AI-generated reproductions of the personalities of deceased

persons. It is concluded that the development of digital technologies requires the redefinition of traditional civil law institutions in order to more effectively protect dignity, privacy and identity after death.

Keywords: *digital immortality, postmortem digital identity, personality rights, artificial intelligence, civil law.*

INTRODUCTION

The development of artificial intelligence, machine learning and digital technologies has led to a fundamental change in the way human identity is understood and its legal boundaries. While the digital traces of deceased persons until recently represented static records in the form of photos, e-mails, accounts on social networks or other digital content, modern systems of generative artificial intelligence enable the creation of interactive digital avatars, voice replicas, virtual assistants and other forms of reconstruction of the personality of the deceased. In this way, the concept of digital immortality goes beyond the idea of preserving digital legacy and growing into the possibility of continuous digital reproduction of an individual's identity after his biological death. Thus, biological death no longer necessarily represents the end of an individual's digital existence, which poses questions to civil law that the existing legal institutes still do not fully answer.

Contemporary legal literature has devoted considerable attention to the issues of digital legacy, postmortem privacy, protection of personal data and inheritance of digital assets. At the same time, the development of generative artificial intelligence has opened up a completely new dimension of this problem, since artificial intelligence systems no longer serve exclusively to preserve existing digital content, but can create new photos, videos, voice reproductions and textual content that faithfully simulate the identity and behavior of deceased persons. Despite this, the issue of civil law protection of such AI-generated manifestations of personality has remained insufficiently explored. Most of the existing research is focused on the protection of privacy or digital remains, while the possibility that postmortem digital identity represents a special good that deserves independent civil law protection is much less often considered.

Based on the above, the subject of this paper is the analysis of the civil law aspects of postmortem digital identity protection in the conditions of the development of artificial intelligence. Special attention is paid to the

relationship between the right to personality, the right to privacy, human dignity, the right to one's own image and voice, as well as the legal consequences of AI-generated avatars, voice replicas, digital twins, deepfake technology and other forms of digital reconstruction of deceased persons.

The goal of the research is to examine whether the existing civil law mechanisms provide adequate protection to the postmortem digital identity, to identify the key shortcomings of the valid normative solutions and to offer guidelines for the development of a modern civil law framework that would respond to the challenges of digital immortality.

The basic hypothesis of the work is based on the view that the existing civil law mechanisms are not fully adapted to the challenges that the development of generative artificial intelligence creates in the field of postmortem digital identity protection. Although certain legal systems provide a certain degree of protection through personality rights, privacy protection, inheritance law or special regulations, such protection remains fragmentary and is not adapted to situations where artificial intelligence systems autonomously create new digital manifestations of the personality of deceased persons.

The research is based on the normative method, with the application of dogmatic and comparative law methods. Relevant international and national sources of law, case law and contemporary legal literature in the field of civil law, personal rights, protection of personal data and regulation of artificial intelligence were analyzed in order to identify existing normative solutions and observe their advantages and limitations in the context of postmortem digital identity protection.

The scientific contribution of the work is reflected in the development of the concept of postmortem digital identity as a special object of civil protection. Unlike the majority of existing research, which primarily deals with postmortem privacy, digital legacy or protection of personal data, this paper starts from the assumption that AI-generated reproductions of deceased persons open qualitatively new legal issues that go beyond traditional privacy protection frameworks. In this sense, the paper seeks to contribute to the development of a modern civil law approach that would enable more effective protection of identity, dignity and other personal rights after death in conditions of digital immortality.

DIGITAL IMMORTALITY AND THE TRANSFORMATION OF PERSONALITY RIGHTS

The development of information and communication technologies has led to a fundamental change in the way an individual's identity is formed, manifested and survives in the digital environment. In contrast to the traditional understanding according to which death represents the final termination of legal relations related to personality, the modern digital environment enables various aspects of identity to continue to exist even after biological death. Social media profiles, electronic communications, photos, videos, voice messages, data stored in the cloud, search history, location information and numerous other digital traces remain available long after the death of their bearer. Thus, the issue of postmortem protection is no longer an exclusive issue of digital asset management or protection of personal data, but grows into a broader civil law issue of identity protection, human dignity and individual autonomy in the digital space.

The first attempts to look at this phenomenon legally were based on the concept of digital legacy, which refers to digital content created or published by an individual during his lifetime, which continues to exist after his death. In that period, the attention of legal theory was focused on the issues of access to user accounts, inheritance of digital assets, management of electronic mail and protection of data contained in digital services, with the assumption that the basic subject of protection is a set of already existing digital contents (Kohl, 2022; Conti, 2025a).

Such an approach was a logical consequence of the then level of technological development. Digital contents were mostly static - the platforms stored, transferred or deleted them, but did not independently change them or create new information. Hence, the legal issues were aimed at determining the persons authorized to access those contents, protecting their confidentiality and resolving the relationship between the interests of the heirs, digital service providers and the right to privacy of the deceased.

Further development of the digital environment has shown, however, that the digital legacy represents only one segment of the postmortem digital presence. Modern use of the Internet produces a vast amount of data generated automatically or as a consequence of various forms of digital interaction, including metadata, search history, behavioral patterns, location data, health information, content stored in the cloud, and information generated by the information systems themselves. For this reason, the concept of digital remains (digital remains) is increasingly used in recent literature, which tries to include the entire information trail that an

individual leaves in the digital environment, regardless of whether it was created by his active action or automatic data processing (Conti, 2025b).

This expansion of the concept represents a significant theoretical step forward, because it no longer considers digital identity as a set of individual files or user accounts, but as a unique information entity that continues to produce legal and social consequences after death. This shifts the focus of protection from the question of ownership of digital content to the protection of identity, autonomy and human dignity in the digital environment. As Conti (2025a) points out, the analogy between bodily and digital remains shows that the legal reason for their protection is not their material nature, but the fact that they represent an extension of an individual's identity. If the legal order protects bodily remains in order to preserve the dignity of the deceased person, the same normative basis can justify the protection of digital remains. Such an understanding is based on Floridi's theory of information identity, according to which data is not only the subject of property or obligation relations, but an integral element of personality, which is why the violation of digital data can simultaneously represent a violation of an individual's identity (Floridi, 2016; Öhman & Floridi, 2017). At the same time, the development of digital technologies shows that the nature of the risks to which the postmortem identity is exposed is continuously changing. Nwabueze and Hancock (2022) point out that the Internet and social networks have enabled the permanent availability and uncontrolled dissemination of digital representations of deceased persons, thus taking on a completely new dimension to traditional issues of postmortem privacy. The development of generative artificial intelligence represents the next phase of this technological evolution. Unlike earlier digital environments, where the main problem was the unauthorized use or distribution of existing content, modern AI systems enable the creation of completely new manifestations of identity based on the digital traces of a deceased person. Thus, the subject of civil law protection is no longer limited to the preservation of existing digital remains, but also extends to AI-generated forms of digital reproduction of the personality (Nwabueze & Hancock, 2022).

On this basis, the modern theory of postmortem privacy was developed, which seeks to justify the protection of digital traces after death through various theoretical foundations. Edwards and Harbinja define postmortem privacy as the right of an individual to maintain a certain degree of control over his reputation, dignity, secrets and digital data even after death (Edwards & Harbinja, 2013). Harbinja later further develops this idea by indicating that digital remains represent an extension of the individual's

autonomy and his informational self-determination (Harbinja, 2017). Buitelaar rightly points out that digital traces are a continuation of the informational identity of an individual, which is why they deserve an independent place in the legal system (Buitelaar, 2017), while Davey emphasizes that postmortem privacy does not only protect the interests of the deceased, but also the privacy and legitimate interests of his family members. Although the mentioned authors differ in determining the legal basis of protection, all these approaches have in common that they consider digital remains as a continuation of an individual's identity, and not as a simple set of data.

A particularly significant contribution to this debate is made by Conti (2025a), who develops an analogy between bodily and digital remains and concludes that digital traces represent a kind of "informational corpse", i.e. an extension of the deceased person's identity which, just like his bodily remains, deserves protection based on human dignity. Thus, the focus of legal protection finally shifts from the issue of data ownership to the protection of the individual.

Nevertheless, despite the undoubted theoretical importance, the commonality of almost all mentioned approaches is that the subject of protection still remains the digital traces created during the life of the individual. In other words, the discussion is about who can access the existing data, under what conditions to use it and who is authorized to decide on its further fate. Such a starting point was justified at a time when digital platforms were not capable of independently creating new content. However, the development of generative artificial intelligence fundamentally changes the nature of this problem.

Unlike earlier information systems, modern AI models are not limited to storing or reproducing existing data. By analyzing large amounts of digital traces, they can create completely new texts, voice reproductions, videos, digital twins (digital twins), virtual avatars and conversational agents that faithfully simulate the manner of expression, communication, emotional reactions and even certain patterns of behavior of the deceased person (Wilkinson, Roughley & Shrimpton, 2024; Savin-Baden & Mason-Robbie, 2020). Thus, digital traces cease to be a passive object of preservation and become the basis for the creation of new manifestations of identity.

It is in this context that the concept of digital immortality is being developed. In contrast to the digital legacy, whose basic function is the preservation of existing contents, digital immortality implies the active reconstruction of the personality by means of systems based on artificial intelligence. The goal of these systems is no longer just to preserve digital

memories, but to create an impression of identity continuity after death. AI systems today enable the creation of digital replicas capable of communicating with family members, answering questions, reproducing the voice and style of expression of a deceased person or simulating their behavior in different life situations (Wilkinson, Roughley & Shrimpton, 2024).

This fundamentally changes the nature of the civil law problem. A voice that was never spoken, a response that was never written, or a video that was never recorded do not constitute digital remains in the classic sense of the word. They are created by subsequent algorithmic processing of existing digital traces and represent new manifestations of identity, not its preserved remains. This is precisely the basic limitation of the previous literature. Regardless of the different theoretical bases of protection, almost all existing approaches remain related to the protection of digital content created during the lifetime of an individual, while the issue of AI-generated manifestations of personality remains beyond their regulatory reach.

Based on the above, we believe that it is necessary to clearly distinguish between digital legacy, digital remains and postmortem digital identity as three interrelated, but legally distinct concepts. While digital legacy and digital remains refer to a set of digital content and data created during an individual's life that survives after his death, postmortem digital identity represents a set of AI-generated personality manifestations that arise only after the death of a physical person based on his digital traces. Precisely because of this, it cannot be fully covered by the existing concepts of postmortem privacy or personal data protection rules, but represents a new object of civil law protection that requires the development of a special normative framework.

3. COMPARATIVE LEGAL APPROACHES TO POSTMORTEM DIGITAL IDENTITY

The absence of a single legal framework for the protection of postmortem digital identity has led to the development of various regulatory solutions, which differ not only according to the normative instruments they use, but primarily according to the legal interest they seek to protect after the death of a natural person. For this reason, it is not justified to base the comparative analysis on the geographical distinction of legal systems or individual national legislations, but on the subject of their legal protection. Seen from that perspective, three basic regulatory concepts can be distinguished in modern law. The first starts from the protection of personal

rights and human dignity as values that survive to a certain extent even after death. The second protection is based on the rules on the protection of personal data and control over the digital data of the deceased person. The third approach was developed primarily in American law and ties the protection of postmortem identity to its economic value and prevention of unauthorized commercial exploitation. Although these concepts differ in terms of the legal basis of protection, they have in common that they were created at a time when the subject of protection was an existing digital identity, and not its subsequent algorithmic reconstruction using a generative artificial intelligence system.

The oldest and normatively most developed approach bases the protection of postmortem identity on personal rights and human dignity. Its starting point is that the death of a natural person does not lead to the complete cessation of all legally protected interests arising from his personality. Although legal capacity ends with death, certain aspects of identity, such as honor, reputation, the right to one's image and human dignity, continue to produce legal consequences. This understanding was developed under the influence of the continental European legal tradition, and especially the German constitutional law doctrine, in which human dignity represents an absolute constitutional value that does not end with the biological death of an individual.

The theoretical foundation of this approach lies in the understanding that an individual retains a certain degree of autonomy even after death. In this sense, institutes such as the German Totenfürsorge and the Italian ius sepulchri were developed, which enable the pre-expressed will of the deceased person regarding the treatment of his body remains to be legally respected even after death. Their common denominator is not the protection of property or the interests of heirs, but respect for autonomy and human dignity as permanent legal values. This is precisely why part of the contemporary literature considers that the same normative basis can be the starting point for the protection of digital remains, since they represent an extension of an individual's identity in the digital space (Harbinja, 2013; Buitelaar, 2017; Conti, 2025).

The most consistent expression of this concept was developed in German law through the institute postmortales Persönlichkeitsrecht. Its development begins with the decision of the Federal Constitutional Court in the Mephisto case (BVerfGE 30, 173, 1971), in which it was confirmed that the protection of human dignity does not end with the death of a natural person. The court took the position that serious damage to the identity or memory of a deceased person can represent a violation of constitutionally

protected human dignity, which laid the foundation for the subsequent development of postmortem rights of the person. The significance of this decision is not reflected in the digital context, which did not exist at the time of its adoption, but in the fact that it was clearly confirmed for the first time that death in itself does not mean the end of all legally protected interests related to personality.

Further development of this concept is visible in the decision of Marlene Dietrich (BGH, I ZR 49/97), in which the Federal Supreme Court recognized that the name, face and other recognizable features of identity also have a property component that can survive after death and pass to the heirs. This confirmed that the identity of a deceased person is not an exclusively moral category, but can represent an independent civil law asset that enjoys protection from unauthorized use. Later, in the Facebook Account Case (BGH, III ZR 183/17), the same court took the position that the digital user account is part of the inheritance and that the heirs have the right to access its content according to the general rules of inheritance law (Maget Dominicé & Haux, 2020). This decision confirmed that digital content created during an individual's lifetime does not remain beyond the scope of civil law after his death.

However, viewed from the perspective of the development of generative artificial intelligence, the aforementioned case law also shows the limits of this regulatory concept. In all the mentioned cases, the subject of protection was existing elements of identity or digital content created by the individual during his lifetime. Courts have not considered the possibility of using the same data as the basis for the creation of new digital manifestations of personality, such as voice replicas, digital twins or conversational avatars. In other words, the German model successfully protects the continuity of the existing identity, but does not provide an answer to the question of whether legal protection should include the identity that is created only by the algorithmic reconstruction of digital traces.

A similar logic can be observed in French law, although it has not developed a separate institution of postmortem personal law. Jurisprudence consistently recognizes the right of family members to oppose degrading or commercial use of the likeness and memory of the deceased person, based on the fact that the protection of dignity represents a legitimate interest that survives even after death. In Serbian law, there is no special regime for the protection of postmortem digital identity, but a certain degree of protection is achieved indirectly through general rules on the protection of personal rights, protection of the memory of the deceased, and inheritance law institutes. However, as in German and French law, existing elements of

identity remain the subject of protection, while the issue of their algorithmic reconstruction is not normatively regulated.

In contrast to the model based on personal rights, another regulatory concept has been developed within the framework of personal data protection rights. Its starting point is not the protection of identity as such, but the protection of digital data and the determination of entities authorized to dispose of them after the death of their holder. Unlike the civil law approach, which starts from human dignity, this concept developed primarily through the right to privacy and informational self-determination. Even before the adoption of the GDPR, Harbinja pointed out that postmortem privacy represents an independent legal interest that cannot be reduced to issues of inheritance rights or ownership rights over data. According to her understanding, the protection of digital data after death stems from the autonomy of the individual and the need to respect the decisions he made during his lifetime, whereby postmortem privacy should remain part of the human rights protection system, and not be transformed into property rights (Harbinja, 2013). This set a theoretical framework that later significantly influenced the development of the European debate on digital rights after death.

The normative development of this concept, however, did not follow the development of the theory. The General Data Protection Regulation (GDPR) in Recital 27 expressly stipulates that its provisions do not apply to the data of deceased persons, leaving Member States the possibility to independently regulate this area. The consequence of such a regulatory solution is not only the absence of a single European standard, but also the creation of a highly fragmented protection system. French law allows any person to leave binding guidelines on the storage, deletion and disclosure of their data after death, with the possibility of specifying the person who will take care of their execution. Hungarian law starts from a similar concept of autonomy of will, allowing an individual to authorize a third party in advance to exercise certain rights related to the protection of his data after death. In contrast, Italian, Portuguese, Slovenian and Spanish legislation primarily regulates the position of heirs and other authorized persons, enabling them to exercise certain rights in relation to the data of a deceased person, except when the latter expressly excluded such a possibility during his lifetime. In addition, some countries, such as Denmark, provide protection for the data of the deceased and a certain period after death, while others still do not have special rules, so protection is achieved indirectly through the general rules of civil or inheritance law. Although these solutions differ from each other in terms of authority holders and scope of

protection, they have in common that they regulate the management of existing digital data, and not the legal status of the content that generative artificial intelligence systems subsequently create based on that data. That is why, despite the significant development of national legislation, the European model of data protection still does not provide a complete answer to the challenges of postmortem digital identity in the era of generative artificial intelligence (Harbinja, 2013; Conti, 2025; Ciani Sciolla & Pagallo, 2025)).

The analysis of national solutions shows that two basic regulatory approaches can be distinguished. The first one allows the individual to determine the fate of his digital data after death while the other one recognizes certain powers to the heirs or other close persons to manage the digital data of the deceased if such a will is not expressed in advance. This tendency is confirmed by some practical solutions developed in the digital environment. Harbinja cites as significant examples the Google Inactive Account Manager, which allows the user to determine in advance the fate of his account and digital data in the event of long-term inactivity or death, Facebook Legacy Contact, with which the user can authorize a specific person to manage certain aspects of his memorialized profile, as well as the American Uniform Fiduciary Access to Digital Assets Act (RUFADAA), which regulates access to digital assets by executors of wills and other trustees. Although these solutions differ in terms of the legal nature and extent of protection, their common importance is reflected in the recognition of the possibility that an individual can express his will regarding the handling of digital content after death, which gradually affirms postmortem autonomy as a relevant legal value (Harbinja, 2017). In the literature, these powers are referred to as the right of disposition of digital remains and the right of management of digital remains, which seeks to establish a balance between the autonomy of the individual and the interests of his heirs (Conti, 2025a).

Although this approach represents significant progress compared to the earlier regulatory gap, its subject of protection still remains the existing digital data created during the individual's lifetime. The focus of protection is on access, storage, deletion or transfer of that data, while the question of their subsequent use to create new content remains outside the reach of existing rules. This is precisely the basic limitation of this regulatory concept. With the development of generative artificial intelligence, digital traces are no longer just an object of storage or processing, but become the basis for the creation of new texts, voice reproductions, videos and digital avatars that can simulate the identity of a deceased person. Starting from the

previously analyzed literature and comparative legal solutions, it can be concluded that the existing European data protection regime is not adapted to the challenges brought by generative artificial intelligence. Although it provides a certain degree of protection to the existing digital data of deceased persons, it does not regulate the legal status of AI-generated manifestations of identity resulting from their algorithmic processing (Conti, 2025b; Ciani Sciolla & Pagallo, 2025). Taken as a whole, the data protection model represents an important step in recognizing the postmortem autonomy of the individual, but does not provide a complete answer to the challenges of digital immortality. Its fundamental weakness stems from the fact that it regulates the management of digital remains, while the question of the legal status of AI-generated of postmortem identity remains outside his regulatory reach.

In contrast to the previous two regulatory concepts, which base the protection of postmortem identity on personal rights, i.e. the protection of digital data, the third approach starts from its economic value. Its basic starting point is not the preservation of human dignity or the protection of postmortem privacy, but rather the prevention of unauthorized commercial exploitation of the deceased person's identity. This concept has been most consistently developed in American law through the right of publicity institute, which allows the holder of the right, i.e. after his death, the persons to whom these rights have been transferred or who exercise them in accordance with the law, control over the commercial use of the name, likeness, voice and other recognizable features of identity. Unlike European systems, which primarily associate postmortem protection with dignity or privacy, American law views identity as a good that can have significant market value and therefore deserves legal protection from unauthorized exploitation (Allen & Rothman, 2024).

This approach is particularly developed in certain federal states, primarily in California and Tennessee. California legislation recognizes a posthumous right of publicity for seventy years after death and provides heirs with protection against unauthorized commercial use of a name, likeness, voice and other recognizable features of identity. Tennessee has traditionally provided even broader protection of publicity rights, which was further enhanced by the enactment of the ELVIS Act, which extended legal protection to AI-generated voice reproductions, in response to the increasingly frequent use of technologies that enable the faithful imitation of the voices of celebrities. Thus, American law represents one of the first legislative attempts to adapt traditional civil law institutions to the challenges brought by generative artificial intelligence.

However, despite its undoubted importance, this regulatory concept shows certain limitations. Its main purpose is not to protect identity as an expression of personality, but to protect its market value. Consequently, the scope of legal protection largely depends on the commercial significance of the identity, which is why in practice it is most often associated with public figures, artists, athletes and other persons whose identity has an economic value. Such a solution leaves open the question of protecting the digital identity of ordinary citizens, whose data, although they have no market value, can be equally abused by the application of generative artificial intelligence. Therefore, it is rightly pointed out that the protection of postmortem identity cannot be based solely on the right of publicity, but must also include broader interests related to human dignity, autonomy of will, privacy and family protection (Allen & Rothman, 2024).

Among the regulatory approaches examined, the American model is distinctive in explicitly addressing AI-generated identity replicas. By extending the right of publicity to AI-generated reproductions of voice and face, it represents one of the first legislative attempts to adapt traditional civil law institutes to the challenges brought by generative artificial intelligence. However, its regulatory focus is still limited to preventing unauthorized commercial exploitation of identities. Therefore, issues of protection of human dignity, authenticity of postmortem digital identity and non-commercial forms of misuse of AI-generated reproductions largely remain outside its normative reach.

Comparative analysis shows that modern legal systems have not developed a single concept of postmortem digital identity protection, but rather different regulatory approaches based on different legal interests. The model based on personal rights protects the human dignity and identity of the deceased person, the data protection model focuses on control over digital remains and achieving postmortem privacy, while the American concept of the right of publicity primarily protects the economic value of identity from unauthorized commercial exploitation. Each of these approaches provides a partial solution and responds to a specific segment of the problem, but none of them manage to encompass the legal consequences arising from the development of generative artificial intelligence.

Their common limitation stems from the fact that they were formed at a time when the subject of legal protection was the existing digital trail that an individual leaves during his lifetime. Modern AI systems, however, no longer only store or process existing data, but use it to create new texts, voices, videos and digital avatars that can autonomously reproduce the deceased person's identity. This changes the very subject of civil protection

- it is no longer only about digital data or its processing, but about new AI-generated manifestations of personality, which can give the impression of the continuation of identity after death.

This is precisely why we believe that the existing regulatory concepts, considered individually, cannot provide a sufficient response to the challenges of digital immortality. Instead of their partial expansion, it is justified to consider the development of a special civil legal framework that would recognize the postmortem digital identity as an independent object of legal protection. Such a framework should unite the elements of protection of human dignity, autonomy of will, digital data and legitimate interests of family members, while respecting the specificity of generative artificial intelligence. Only in this way would coherent and technologically sustainable protection of identity in the digital age be ensured, instead of its fragmentary protection through institutes that were developed for significantly different technological and social circumstances.

4. TOWARDS A CIVIL LAW FRAMEWORK FOR THE PROTECTION OF POSTMORTEM DIGITAL IDENTITY

The results of the previous theoretical and comparative legal analysis show that the development of generative artificial intelligence has not only led to the emergence of new technological possibilities, but also to a qualitative change in the very subject of civil protection. While existing legal institutes were developed based on the assumption that after death it is possible to protect only existing digital content, modern AI systems enable the creation of new manifestations of identity that never existed during the individual's lifetime. In this way, the legal problem is no longer reduced to the question of access to digital data or the management of digital heritage, but to the question of the legal status of the identity created by their algorithmic transformation. The previous literature justifiably indicates the need to protect postmortem privacy, digital remains and human dignity, but at the same time confirms that existing regulatory concepts were not developed keeping in mind the possibility of autonomous AI personality reconstruction (Harbinja, 2017; Kohl, 2022; Conti, 2025a; Ciani Sciolla & Pagallo, 2025).

Based on that, we believe that the subject of future civil protection should be redefined. Instead of the protection being focused exclusively on digital data or individual contents created during the life of a natural person, it should include the postmortem digital identity as an independent object of civil law. By postmortem digital identity we mean a set of AI-generated

personality manifestations based on the digital traces of the deceased person, which can reproduce or simulate his voice, face, manner of expression, behavior patterns or other individual characteristics to the extent that creates the impression of continuity of his identity after death for third parties. What distinguishes this concept from digital legacy or digital remains is not the source of the data, but the fact that the object of protection is no longer information as such, but a new digital representation of the person created by their algorithmic processing.

Such determination has significant civil law consequences. If it is accepted that the AI-generated replica represents a new manifestation of identity, then the violation does not have to exist only in case of illegal access to the data or its unauthorized processing. A violation can also occur when all the data was obtained legally, but their combined analysis creates a digital manifestation that changes, falsifies or instrumentalizes the identity of the deceased person. In other words, the object of protection is no longer the information itself, but the preservation of the authenticity of identity as an expression of personality. This clearly shows that the existing data protection regime, although necessary, is not sufficient to meet the challenges brought by generative artificial intelligence.

Starting from such an understanding, the future civil law framework, in our opinion, should be based on several basic principles. First, the principle of primacy of individual autonomy. Every person should have the right to decide during their lifetime whether to allow, limit or prohibit AI reconstruction of their identity after death. Such a declaration of will could be contained in a will, a separate digital statement or another legally relevant act. In this way, the protection of the postmortem digital identity would be an immediate continuation of the autonomy of the person, and not a new right that arises only with the death of a physical person.

Second, the principle of subsidiary protection by family members. If the individual has not expressed his will in advance, the right to decide should belong to family members or other persons designated by law. However, their powers would not represent an independent subjective right to the digital identity of the deceased, but a duty to act in accordance with his presumed will, preserving dignity and protecting the integrity of his personality. This would avoid the danger of the digital identity becoming an object of free disposal of the heirs or a means of realizing their economic interests.

Third, the principle of protecting identity authenticity. We believe that future regulation should not prohibit every AI reconstruction of a deceased person, but only those that create a false impression of their attitudes,

behavior or communication, violate their dignity or are contrary to their previously expressed will. This would enable the legitimate memorial, educational, scientific or artistic use of AI technology, while at the same time preventing abuses that lead to identity falsification.

Fourth, the principle of responsibility of providers of AI services and digital platforms. Their responsibility should no longer be limited solely to data protection or the removal of illegal content. The future regulatory framework should establish the obligation to verify the existence of a legal basis for AI identity reconstruction, clear labeling of AI-generated content, establishment of efficient procedures for submitting requests for the removal of digital replicas, as well as preventing their commercial use when there is no appropriate consent or other legal basis for this.

Fifth, the principle of proportionality between technological development and the protection of personal rights. Civil law protection should not be an obstacle to the development of artificial intelligence, but neither should technological possibilities become the basis for unlimited digital reproduction of the personality. The future regulation would have to establish a balance between the freedom of scientific and technological development, the right to freedom of expression and the need to preserve the human dignity, autonomy and identity of the deceased person.

The proposed concept does not imply the creation of a completely new system of personal rights, but rather their evolutionary adaptation to circumstances in which digital identity is no longer just a passive set of data, but can become the subject of active algorithmic reconstruction. We believe that the change in the subject of protection represents an essential novelty that the existing legal institutes still do not recognize. While traditional protection models focused on data, memory or certain aspects of postmortem privacy, the development of generative artificial intelligence requires that civil law recognizes postmortem digital identity as an independent object of civil protection. Only such an approach can ensure consistent protection of human dignity and autonomy in conditions where biological death no longer necessarily marks the end of an individual's digital identity.

CONCLUSION

The development of generative artificial intelligence has led to a fundamental change in the way civil law must understand identity after death. The digital traces that an individual leaves during his life are no longer just a set of data that survives after his death, but become the basis

for the creation of new digital manifestations capable of reproducing his voice, character, communication style, behavior patterns and other individual characteristics. This shifts the traditional concept of postmortem protection from the issue of preservation of existing digital contents to the issue of the legal status of the identity created by their algorithmic reconstruction.

The theoretical analysis showed that the modern concepts of digital legacy, digital remains and postmortem privacy have significantly contributed to the understanding of the legal consequences of digital existence after death. At the same time, comparative legal analysis confirms that different legal systems protect certain aspects of postmortem identity through personal rights, protection of personal data or the right of publicity. However, the common limitation of all the analyzed regulatory models is the fact that they were developed at a time when the subject of protection was an existing digital trace created during an individual's lifetime. None of them provide a complete answer to situations where generative artificial intelligence systems autonomously create new digital manifestations of personality that can give the impression of continuing identity after death.

The main scientific contribution of this work is reflected in the thesis that the subject of civil protection should no longer be determined according to digital data or digital remains, but according to postmortem digital identity as an independent object of civil protection. Such an approach enables a clear distinction between digital contents created during the life of an individual and AI-generated manifestations of identity that arise only after his death, thereby overcoming the limitations of existing theoretical and normative concepts.

Starting from that point of view, concrete proposals of de lege ferenda were developed in the paper. We believe that the future regulatory framework should be based on several interrelated principles: recognition of the primacy of the individual's pre-expressed will regarding the AI reconstruction of his identity after death; the subsidiary role of family members and heirs in the realization of that will; protect identity authenticity from AI-generated forgeries and manipulations; establishment of special obligations of digital platforms and AI service providers regarding legal basis verification, transparency and removal of illegal digital replicas; as well as establishing a balance between the protection of personal rights and the legitimate development of new technologies. Thus, postmortem digital identity is not viewed as an extension of existing institutions, but as a new civil law category that requires a coherent and technologically adapted normative framework.

The proposed concept does not imply the creation of a completely new system of personal rights, but rather their evolutionary adaptation to changed technological circumstances. Just as the development of the Internet required a new understanding of privacy, and the digital environment redefined the boundaries of personal data protection, so the development of generative artificial intelligence requires a new understanding of identity as a legal asset that can survive and be reconstructed after biological death. Civil law can therefore no longer remain limited to the protection of what an individual has left behind, but must also answer the question under what conditions, in whose name and up to what limits technology can create new manifestations of his personality.

Today, digital immortality is no longer a futuristic assumption, but a technological reality with increasingly pronounced legal consequences. This is precisely why the future development of civil law will not only depend on the adaptation of existing institutions, but on its ability to preserve the basic values on which the protection of the person rests - human dignity, autonomy and identity - in circumstances where biological death no longer necessarily represents the end of an individual's digital existence.

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