



Digital Necromancy in the Era of Metaverse: Apprehending IPR Contours

Aniket Bardhan

*PhD Research Scholar, Dept. of Journalism and Mass Communication,
University of Calcutta.*

Prof. (Dr.) Sudeepa Banerjee

*Professor and HOD, Department of MSW & Media Management, IISWBM, Kolkata;
University of Calcutta.*

Imagine years after your death, your great-grandchildren want to talk to you. Immediately, they put on their Virtual Reality headsets and plugin their earphones. Within a few seconds, they are in a world, where everyone is immortal. And you and your great-grandchildren, are seen to be sitting in a virtually created park. Sitting just next to each other and conversing about cinema. Though it may sound unrealistic to many, yet, astonishingly, it is true and going to be true soon. Maybe, the next thought that might pop up is, does society allow this?

Introduction

Metaverse is a digitally created universe.¹ Metaverse is featured with interactive applications that render a feeling of immersion in the digitally created world ^{ibid}. Metaverse is still in its nascent stage. This emerging technological development is poised to revolutionize the landscape of human communication. However, this emerging realm of communication is not beyond the ethical and legal dilemmas. Apart from multiple possibilities unearthed and redefined with the metaverse, posthumous communication is one such. Traces of history reveal that posthumous communication, i.e., communication with the dead, is subtly rooted from the dawn of civilisation. This type of communication practice is also known as *necromancy*. “Digital Necromancy,” is a new age term, that defines the practice of resurrecting a deceased individual by using Artificial Intelligence (AI) tools and other digital technologies. Amidst the ethical and legal controversy that surrounds AI and Metaverse, the domain of digitally

¹ Cheng, S. (2023). Metaverse. Metaverse: Concept, Content and Context, 1-23. Cham: Springer Nature Switzerland.

redefined posthumous communication, i.e., digital necromancy is often overlooked and demands a critical evaluation. This essay surfs and dives into the ocean of complexities associated with digital necromancy. From exploring the digital roots to identifying the contemporary manifestation, this essay tries to find the challenges within the intricate web of Intellectual Property Rights (IPR).

At its core, Digital Necromancy uses the digital database one leaves behind in this mortal world. This database includes- their voice samples, photographs, the nature of their social media post and multiple other digital traces that are crucial in building a clone of the deceased individual. The likeness, personality, and even mannerisms of the deceased person, on different occasions or events or situations; are analysed and extracted with the help of sophisticated digital tools and AI. These extracted data then become the indispensable fuel for the digital resurrection of the deceased. Different AI algorithms, re-create the dead and present them either in the form of an AI-powered chatbot or a holographic image or an avatar for the metaverse. From mimicking the conversational style to the generation of realistic images, the Metaverse along with AI, paves a new world for the deceased. However, this technological magnificence raises complex ethical questions. ‘Data Privacy’ and ‘Ownership’ of one’s digital persona, post-death, are still in a grey area.

Necromancy: Traces in History

Necromancy has a complex history. Different societies have practised this form of communication differently. Multi-dimensional motivations play a crucial role in such practice. To satisfy various psychological needs or to continue with different traditional rituals, necromancy is widely relied upon. Like many other traditional practices, this practice is also open to diverse interpretations. In various historical civilisations, including Egyptians, Mesopotamians, Greeks, and Romans; there existed a belief that the dead possess certain wisdom that a living being lacks.² The term “necromancy” is derived from the Greek word *nekromanteia*; ‘*nekros*’ means ‘dead’ and ‘*manteia*’ means ‘divination’.³

The earliest traces of necromantic practices are evident in the Greek cultural text - “Odyssey”

²Kapcár, A. (2015). The Origins of Necromancy or How We Learned to Speak to the Dead. *Sacra*, 13(2), 30-58. <https://digilib.phil.muni.cz/sites/default/files/pdf/137705.pdf>

³ Faraone, C. A. (2009). The Collapse of Celestial and Chthonic Realms in a Late Antique “Apollonian Invocation”. In *Heavenly Realms and Earthly Realities in Late Antique Religions* (pp. 213-232). Cambridge University Press. <https://doi.org/10.1017/CBO9780511497889.014>

by Homer; where rituals to communicate with the dead are found⁴. Ranging from traditional practices of offering blood, sleeping on tombs, and visiting oracles to reframing corpses and skulls; there were multiple ritualistic methods to summon the dead.⁵ The motivation behind such a type of communicational practice is either emotional drive, i.e. to replace the void of the dead; or, pragmatic desires, to gain knowledge or assistance from the dead.^{idib} Society, over the ages, has been divided into two strands - one describing it as a knowledge-seeking practice but the others, the majority of them, condemning it or questioning its validity. Necromancy, in the Middle Ages, was labelled as ‘demon magic’ by the Church authorities thus restricting such practice in the society.⁶

Cut to 21st-Century

Technological advancement has touched the boundaries of not only the physical realm but also the metaphysical realm. Modern-day necromancers are not found in robes or chanting incantations. They are either data scientists, AI specialists or digital (graphical) artists using sophisticated tools like huge datasets, large language models (LLMs) and creative graphics-generating software.⁷ Though the practice of digital necromancy is not profoundly found among individuals around the globe yet it has not missed the limelight.

In *Rogue One: A Star Wars Story* (2016), cine lovers were stunned by the appearance of Peter Cushing. This movie brought back the actor who died in 1994. Peter Cushing was seen playing the character of Grand Moff Tarkin, 22 years after his death; this was possible through ‘*Digital Resurrection*’.⁸ At present, digital resurrection uses Artificial Intelligence (AI) to recreate a deceased person from one’s voice sample, facial architecture, and behavioural data.⁹ The new age technology has progressed to use the digital footprints of the past to resurrect the dead in the digital form. It even extends further, by facilitating interaction with the dead through chat

⁴ Kapcár, A. (2015). The Origins of Necromancy or How We Learned to Speak to the Dead. *Sacra*, 13(2), 30-58. <https://digilib.phil.muni.cz/sites/default/files/pdf/137705.pdf>

⁵ Ogden, D. (2002). *Greek and Roman Necromancy*. Princeton University Press. <https://doi.org/10.1515/9780691207063>

⁶ Tuczay, C. A. (2015). *Magic and Divination*. De Gruyter. <https://doi.org/10.1515/9783110377637-009>

⁷ Hutson, J., & Ratican, J. (2023). Life, death, and AI: Exploring digital necromancy in popular culture—Ethical considerations, technological limitations, and the pet cemetery conundrum. *Metaverse*, 4(1), 1-12. 10.54517/m.v4i1.2166.

⁸ Sargeant, A. (2017). The Undeath of Cinema. *The New Atlantis*, 53(Summer/Fall), 17-32. https://thenewatlantis.com/wp-content/uploads/legacy-pdfs/20171117_TNA53Sargeant.pdf

⁹ Hutson, J., & Ratican, J. (2023). Life, death, and AI: Exploring digital necromancy in popular culture—Ethical considerations, technological limitations, and the pet cemetery conundrum. *Metaverse*, 4(1), 1-12. 10.54517/m.v4i1.2166.

apps or avatars.¹⁰ Resurrection is not a new phenomenon in this world. For centuries, civilisation has preserved different voicemails, letters, daily usable or even videos and photographs of the dead and used them to satisfy their (relatives of the deceased) emotional desire posthumously.^{idib} The new attachment to this practice is the emergence of digital form. The creation of human-like chatbots or avatars, developed with the help of digital network footprints (data); composed and compiled by AI, and brought into the virtual arena through computer-generated imagery (CGI) and voice cloning mechanism, makes this impossible thing to happen in virtual reality realm.

Digital Necromancy in and as a Business

In a seminal book *“Death Glitch”* by Tamara Kneese, She brought in the concept of ‘uncertainty’ in the arena of digital presence. The ‘uncertainty’ is the discontinuance of a digital user due to death in real life. The death of a user in real life impacts the economy of a digital platform. Thus, she labelled real-life death as an ‘eternal bug’ for any digital platform.¹¹ According to her, this glitch can be resolved. In this era of technological advancement, many platforms are coming forward with ‘digital resurrection’; thus, providing a path for escaping the ‘eternal bug’ for all stakeholders. Amidst these praising statements, she also raises concern by stating that ‘no technology is without cost’. What cost she is talking about? Is it the ethical cost? This question is yet to be answered.

Early in 2016, James Vlahos, founder of Hereafter, built a chatbot named DadBot. This chatbot replied just in the manner of his deceased dad. Soon, it caught other people's attention, and a commercialisation possibility was unearthed.¹²

In China, the Qingming festival is a traditional festival observed in honour of the deceased. This festival takes place fifteen days after the spring equinox and families reach out to the graves of their ancestors and pay tribute. In 2023, this festival witnessed a revolutionary event. That year, an influencer shared an AI-generated clip of her grandmother on Bilibili.^{idib} Bilibili

¹⁰ Haneman, V. J. (2024). The Law of Digital Resurrection. B.C. L. Rev. __ (forthcoming 2025). Haneman, Victoria J., The Law of Digital Resurrection (July 17, 2024). __ B.C. L. Rev. __ (forthcoming 2025)., Available at SSRN: <https://ssrn.com/abstract=4899324> or <http://dx.doi.org/10.2139/ssrn.4899324>

¹¹ Kneese, T. (2023). *Death Glitch: How Techno-Solutionism Fails Us in This Life and Beyond*. Yale University Press.

¹² Lanlan, H. (2024, March 28). Bringing back deceased beloved ones through AI technology becomes a new, controversial business in China as ‘era of digital humans’ approaches. *Global Times*. Retrieved January 19, 2025, from <https://www.globaltimes.cn/page/202403/1309721.shtml>

is a digital video-sharing application, operating primarily within the periphery of China. This gave rise to, a fresh type of content, derived from the dead, for such types of user-generated platforms. Digital necromancy thus becomes content and reveals itself as a new profit-generating content, in the eyes of both the platform developers and the content creators. Thus, *dead is the new raw product*.

Though it is hard to gauge the size of this grief tech industry, one cannot ignore its existence. Surprisingly, this industry is valued at around \$123 billion globally.¹³ Tamara Kneese sees the untimely death of millions of people, during the COVID-19 pandemic, giving a boost to this industry. Not only emotional loss but also the desire of many to see life after death is acting as a catalyst in the growth of digital necromancy, mostly observed among young people.^{idib}

Deceased Individual as a Gift. Kim Kardashian received a gift from Kanye West, on her 40th birthday, one can hardly imagine. Kanye West gifted a holographic image of Robert Kardashian, the father of Kim Kardashian. Even the holographic father, was seen praising Kim for marrying Kanye.¹⁴ Holographic reimaging is also a form of digital necromancy but differs slightly from digital resurrection, it is generally used in the entertainment industry like concerts or for educational purposes, like recreating holographic images of historical figures in museums or memorials. Thus, at the core of digital necromancy, apart from technological advancement, lies a vital resource - data. Terabytes of data traces that we leave behind each day while using social media, email or other digital applications are knowingly or unknowingly turning into valuable resources for these grief tech companies.

Metaverse: A New Universe for the Dead

*“The Metaverse is the post-reality universe, a perpetual and persistent multiuser environment merging physical reality with digital virtuality.”*¹⁵ The phrase “post-reality” used in the definition refers to the extension of the physical realm. Blurring the line between the digitally created virtual world and the real world. The core principle of necromancy is also the same, an extension of communication stance beyond physical mortality.

India had already experienced one such resurrection on 6th February 2022. A young couple

¹³ Bassett, A. (2024, May 28). The Digital Afterlife Industry Is Burgeoning—And It's Worrying A.I. Ethicists. Observer. Retrieved January 19, 2025, from <https://observer.com/2024/05/generative-ai-griefbot-privacy-issue/>

¹⁴ BBC. (2020, October 30). Kanye West gives Kim Kardashian birthday hologram of dead father. BBC. Retrieved January 19, 2025, from <https://www.bbc.com/news/entertainment-arts-54731382>

¹⁵ Mystakidis, S. (2022). Metaverse. Encyclopedia, 2(1), 486-497. <https://doi.org/10.3390/encyclopedia2010031>

from Tamil Nadu, namely Dinesh Kshatriya and his fiancée Janaganandhini Ramaswamy, designed their wedding reception in Hogwarts-themed Metaverse.¹⁶ They even featured their wedding by making one deceased person attend the wedding. It was the bride's late father.¹⁷ Metaverse is indeed redefining the way to look forward to death. With tools supporting more realistic and immersive digital necromancy, death is not the end anymore.

"Instead of my kids having to hear stories of me and kind of make an idea of what they think I am in the past, they can actually talk to me and really know who I was, and that will give them a stronger sense of self." - Artur Sychov, founder of Somnium Space, a company based in Prague, Czech Republic; commented on digital necromancy.¹⁸

Somnium Space is a virtual world that facilitates immortality (virtually). In that digital platform space, they have prepared a virtual tool called *"Live Forever Mode"*. Since its availability on the internet, the application has been downloaded 3 lakh times, and 50 to 250 people use this platform daily.^{idib} The motivation behind this usage, is to see what *'life after death'* looks like. As reported by a user, it takes only 30 minutes to create a digital clone of themselves by scanning their voice, mannerisms, and movements.^{idib}

Meta chief, Mark Zuckerberg praised the grief-tech industry in providing emotional relief to grieving people; but also acknowledged that such technology could become *"unhealthy"* & *"complex"*.¹⁹

Ethical Quandaries

In a civil society, every human being is bound by ethical norms from their birth to their last breath. The death of one person does not only leave behind mortal remains but also the legacies of that individual. After the death of any person, one loses control of all the materialistic belongings. For instance, all physical assets of the deceased are passed on to their legal heirs.²⁰

¹⁶ Menon, P. (2022, January 16). For better or for metaverse: Couple in Tamil Nadu weds in VR | Chennai News. Times of India. Retrieved January 20, 2025, from <https://timesofindia.indiatimes.com/city/chennai/for-better-or-for-metaverse-couple-in-tamil-nadu-weds-in-vr/articleshow/88925935.cms>

¹⁷ Kaur, A. (2022, February 3). Indian Couple to Host Wedding Reception in Metaverse. Fortune India. <https://www.fortuneindia.com/technology/indian-couple-to-host-wedding-reception-in-metaverse/106998>

¹⁸ Nachiappan, A. (2024, April 1). The new tech bringing loved ones back to life through AI. skynews. <https://news.sky.com/story/we-all-want-to-live-forever-the-tech-letting-people-create-avatars-for-loved-ones-to-meet-after-they-die-13101996>

¹⁹ Sankaran, V. (2023, October 03). Zuckerberg says Metaverse can bring back the dead – virtually. Independent-Asia Edition. <https://www.independent.co.uk/tech/metaverse-bringing-back-the-dead-zuckerberg-b2422876.html>

²⁰ Carney, M., Gedajlovic, E., & Strike, V. M. (2014). Dead Money: Inheritance Law and the Longevity of Family Firms. *Entrepreneurship Theory and Practice*, 38(6), 1261-1283. <https://doi.org/10.1111/etap.12123>

There are laws to guide this process of transferring.

The question lies with the inseparable aspects of one's existence - their voice, image, behaviour, mannerisms and legacy. This grey area gives rise to multiple other allied questions. Who owns the digital footprints, i.e. the voice data, images, videos, private chats, and online behavioural data? Is it the family or near relatives, just like the legal heirs of physical assets? Or is it the digital platform, where the deceased user had uploaded their data in the past? Or does the ownership end with the deceased individual? And do copyright laws safeguard one's 'digital persona' after death? In the realm of digital necromancy, these questions are becoming increasingly complex to answer.

The ethical quagmires dive even deeper, with dilemmas like whether the person gave consent to be digitally resurrected after death. If not, is a legal heir or executor to the estate, eligible to do so? And what about the remedies to the exploitation possibilities, arising from the development and use, of one persona for commercial purposes? What will happen if the digital afterlife is used against the values of the deceased?

IPR Challenges: Global and Indian Perspectives

Intellectual Property Rights (IPR) facilitate content creators by safeguarding them from unlawful control or possession by others. In the age of digital technologies, IPR and data privacy share complex intertwined connections.²¹ To date, the IPRs that encircle the virtual world - the Metaverse, are still in a grey area.²² The 'death' of an individual in this era is in the penumbral zone. Death shares a strained relationship with the law, thus making room for special attention for the deceased.²³ In the ongoing conversation about the efficiency of the existing laws in protecting the rights of the deceased in the era of AI and Metaverse, the contributors seem to put forward different views; but hardly, any view from the Indian perspective is found in the present. This essay touches upon the contemporary Indian phenomenon of digital necromancy.

²¹ Chakraborty, D. (2023). Copyright Challenges in the Digital Age: Balancing Intellectual Property Rights and Data Privacy in India's Online Ecosystem. Available at SSRN 4647960.

²² Al-kfairy, M., & Alfandi, O. (2024). The Ethical Dilemma of Educational Metaverse. Recent advances in Evolution of Education and Outreach, 1(1), 006-016. <https://orcid.org/0000-0003-3180-3861>.

²³ Haneman, V. J. (2024). The Law of Digital Resurrection. B.C. L. Rev. __ (forthcoming 2025). Haneman, Victoria J., The Law of Digital Resurrection (July 17, 2024). __ B.C. L. Rev. __ (forthcoming 2025)., Available at SSRN: <https://ssrn.com/abstract=4899324> or <http://dx.doi.org/10.2139/ssrn.4899324>

Global Perspective

Frontier among the International IPR laws is undoubtedly, the *Berne Convention for the Protection of Literary and Artistic Works* (1886); also amended on September 28, 1979. Article 2 of this convention deals with the expression “literary and artistic works”. Nothing about the digital persona is explicitly mentioned. The digital resurrection of the deceased by the use of their images, voice samples or digital personality; still stands in front of question.

In other circumstances, for argument's sake, if we labelled the deceased as the “author” or creator of their digital footprints and the ‘digital platform’ is the one who is entrusted with publication rights. Then also, according to the “Moral rights”, in Article 6^{bis} of the Berne Convention; the deceased enjoys certain moral rights. In Article 6^{bis}(1) it is stated “*the author shall have right ...to object any distortion, mutilation or other modification of, ... which would be prejudicial to his honour or reputation*”. Though this provides a moral safeguard to the deceased, it comes with the next blowing question, who owns it after the deceased and for how long?

The clues to the question above can be obtained from Article 6^{bis}(2). The prior mentioned article, of the Berne Convention, says, “*The rights ... shall ... be maintained, at least until the expiry of the economic rights,...*”. That means, the Berne Convention, secures moral rights until economic rights are secured by the convention. In reality, economic rights vary from one country to another. There is no single universal copyright period. So a person from India, if resurrected on the web, which is inherently global, then, what will be the exact period? Even the Berne convention cannot fix an exact period. “*... this Article shall be governed by the legislation of the country where protection is claimed.*”, article 6^{bis}(3) of the Berne Convention, leaves it at the discretion of the individual country; where there is no legislation specifically related to IPR, the rights shall cease to exist. In the context of “ownership”, the convention explicitly transfers the rights to “*...the person or institutions authorised by national legislation*” - as stated in article 14^{ter}(1).

WIPO Copyright Treaty (WCT) of 1996, is a landmark international treaty revolving around computer programs and other digital works.²⁴ At the time of this treaty, computer programs were on the rise, and AI and Metaverse were still far-fetched. For obvious reasons, the domains of AI and Metaverse were not explicitly covered. However, it explicitly deals with the

²⁴ WIPO Lex. (n.d.). WIPO. Retrieved January 21, 2025, from <https://www.wipo.int/wipolex/en/text/283693>

ownership of raw data in the digital age. *Article 5: Compilations of Data* (Databases), states: “*Compilations of data or other material, in any form, which because of the selection or arrangement of their contents constitute intellectual creations, are protected as such. This protection does not extend to the data or the material itself and is without prejudice to any copyright subsisting in the data or material contained in the compilation.*” That means, raw data, that would be used or compiled, to make a specific programme or any digital work, is free to use, only if it is not protected under copyright.

But in the age of AI and Metaverse, digital necromancy is dependent upon user data (raw data) of the deceased. In every step of digital resurrection, various data samples (raw user data) are necessary to create a successful digital resurrection. Then the next question arises, who owns this raw data, in the age of AI and Metaverse, and is it copyrighted? Does this data fall under privacy?

In this digital age, another landmark global legislation is the *General Data Protection Regulation* (GDPR), enacted by the European Union in 2018. Though it is primarily concerned with protecting personal data, its subtle statement and critical interpretations, provide us with provision, to extend it, to IPRs in the focal era as well.²⁵ In the very first article, i.e. Article 1(1) of GDPR it is explicitly stated that the regulations are laid down for the protection of the “*natural person*”. Thus, leaving the digital persona or data related to them in the grey area.

Though it does not directly deal with the deceased; the regulation empowers us with some clues to answer some questions. What falls under the (raw) data in the digital age? As per Article 4(1) of GDPR, data includes “*name, ...; or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity...*”. The next question that pops up is, What will happen to the AI processing of (raw) data? Article 4(2), explicitly states that it covers data, processed automatically through means, through the phrase- “*...whether or not by automated means...*”. And, the core feature of AI is to enhance automation capabilities.²⁶ Thus, data processed through automation facilitated by AI will fall under this regulation. Who can access this (raw) data? As defined in Article 4(11), “*consent*” is required to use any data of such kind, i.e. “*...a clear affirmative action signifies agreement to the*

²⁵ Diker Vanberg, A. (2018). The right to data portability in the GDPR: What lessons can be learned from the EU experience? *Journal of Internet Law*, 21(7), 12-21.
https://gala.gre.ac.uk/id/eprint/24255/15/24255%20VANBERG_The_Right_to_Data_Portability_in_the_GDPR_2018.pdf

²⁶ Sarker, I. H. (2022). AI-Based Modeling: Techniques, Applications and Research Issues Towards Automation, Intelligent and Smart Systems. *SN Computer Science*, 3(2), 158.

processing of personal data...”

The preceding paragraph tries to explain many questions but fails to answer two pivotal questions about the period of use and the purpose of such use. In the context of gathering data for digital necromancy, these two questions are crucial to be answered. Article 5(1)b of GDPR, states that the data can be only used for which it is specified and not beyond that. And, also as defined in Article 4(3), no data shall be stored for processing in the future. That implies, that if the deceased has not given consent to use data for digital resurrection, then by no means their digital footprints (data) can be used for any other purpose and maybe, not even after their death. Some of the states in the US have posthumous rights. In the US right of post-mortem publicity varies with the State.²⁷ The right of publicity, shields from unlawful use of one person’s name, or likeness, for the interest of undue commercial benefits.²⁸ Post-mortem publicity rights safeguard one’s identity, if and when, the US federal law fails to guarantee such.²⁹ Celebrities are the most benefited from this right. Many celebrities throughout their life try to build a unique identity or persona of their own. To prevent any company, from using the image or identity of a celebrity, post their death; the state of California, among some other states, has formulated a posthumous right to publicity.³⁰ This gives power to the family of the deceased to control the unlawful replication of the deceased in the age of immersive virtuality.^{idib} That endorses that even after the death, the deceased enjoys some rights that safeguard unlawful digital resurrection.

Indian Perspective

In India, the *Copyright Act* of 1957, safeguards against copyright infringements. Remarkably, the amendment of the Copyright Act 2016 adds intangible aspects to copyright as well. A

²⁷ Hopkins, K. B. (2023, April 28). When I Die Put My Money in the Grave: Creating a Federally Protected Post-Mortem Right of Publicity. American Bar Association. Retrieved January 24, 2025, from https://www.americanbar.org/groups/entertainment_sports/publications/entertainment-sports-lawyer/esl-39-01-spring-23/when-i-die-put-my-money-the-grave-creating-federally-protected-postmortem-right-publicity/

²⁸ Right of Publicity. (n.d.). International Trademark Association. Retrieved January 24, 2025, from <https://www.inta.org/topics/right-of-publicity/>

²⁹ Hopkins, K. B. (2023, April 28). When I Die Put My Money in the Grave: Creating a Federally Protected Post-Mortem Right of Publicity. American Bar Association. Retrieved January 24, 2025, from https://www.americanbar.org/groups/entertainment_sports/publications/entertainment-sports-lawyer/esl-39-01-spring-23/when-i-die-put-my-money-the-grave-creating-federally-protected-postmortem-right-publicity/

³⁰ Karpuram, A. S. (2024, September 5). What California's new law regulating use of deceased personalities' likeness says. The Indian Express. Retrieved January 24, 2025, from <https://indianexpress.com/article/explained/explained-law/california-law-regulating-use-deceased-personalities-likeness-9551745/>

change was brought in by inserting “service” in the Copyright Act 2016, along with “goods”. In 2013, the copyright law was amended as well, and Section 69, Part VI of Chapter XIII, created a provision for the inclusion of computer-based data. The amended article states, that “computer databases” will fall under the purview of this law. Then, who owns the data? Is it the Internet-based organisation that is inherently global, or the “First Person” living in India? As it is obvious by now, Metaverse is a global virtual universe, it transcends the boundary of the geo-politics.³¹ For this section 17(a) of the said act comes to rescue; that except for newspapers, magazines or similar periodicals, the copyright belongs to “... the first owner of the copyright in the work”. But also, Section 17 (e), rules out the ownership of the first owner in the case of an International Organisation, where applicable. Here lies the gap, the act fails to define and interpret, what is meant by the “international organisation”. Do International commercial organisations fall under this? There is no explicit answer to this question.

Personality rights are not codified separately in India, but insights can be gathered from contemporary proceedings of the courts. In the case of *R. Rajagopal vs State of Tamil Nadu* (1994), the Supreme Court of India ruled that “...the right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21...”. Though Indian courts have seen the right to publicity with the IPR paradigm, acceptance of publicity rights under the right to privacy is still in its nascent stage in some parts of the world.³² Recently, two notable judgements have been given in two cases by the Hon’ble Delhi High Court. In this scenario, a landmark judgment was provided in the case of *Anil Kapoor vs Simply Life India & Ors* (2023). The court said that any person's name, voice, photograph/ images/likeness, manner of speaking, dialogue delivery and gesture are protected against misuse ... over the internet.³³ Even the court labelled the virtual ‘character generation’ by the available data through AI as unlawful without consent.^{idib} In another case in the Delhi High Court in 2024, the *Jaikishan Kakubhai Saraf Alias Jackie Shroff vs The Peppy Store & Ors.*, the court analysed the law of India through this statement that “*Personality Rights/ Publicity rights... Copyright ...is protectable under The Copyright Act, 1957... as an extension of Moral Rights ...*,”

³¹ Ning, H., Wang, H., Lin, Y., Wang, W., Dhelim, S., Farha, F., Ding, J., & Daneshmand, M. (2023). A Survey on Metaverse: the State-of-the-art, Technologies, Applications, and Challenges. *IEEE Internet of Things Journal*, 10(6), 14671-14688.

³² Luthra, S. K., & Bakhru, V. (2019). Publicity Rights and the Right to Privacy in India. *National Law School of India Review*, 31(1), Article 6.

³³ Singh, P. M. (2023, September 20). *Anil Kapoor vs Simply Life India & Ors* on 20 September, 2023. *Indian Kanoon*. Retrieved January 29, 2025, from <https://indiankanoon.org/doc/113724486/>

...performers have a negative right of restraining others from causing any kind of damage to their performance, which in turn damages their reputation (the Right of Integrity). The Plaintiff enjoys moral rights to prevent the mutilation, distortion or any other modification of his performances such that it maligns his reputation;” Both of the above cases were dealing with a ‘living person’. But hardly one can find, any analysis of Indian courts about digital resurrection or digital necromancy.

Information Technology Act (2000), is one of the premier legislation that guides the cyber world in India. Section 43A of the IT Act safeguards one “personal information” from manipulation. But, this personal information must be of a “natural person”. That means the data of a deceased is under a big question.

Considerations and Recommendations

Banking upon the eternal desire for human immortality, *digital necromancy* is pledging a new hope for netizens in the era of AI and Metaverse. This complex yet easily achievable technological advancement requires a multi-faceted approach that addresses and prepares IPR for the future. ‘Informed Consent’ is one such key, that should be taken into consideration while revisiting the present IPR contours. Framing and establishment of lucid yet effective guidelines that monitor - a) the collection of digital data of one individual during their life span; and b) the use of such data after the death of that person.

Creation of ‘*digital will*’, i.e., a will that regulates the digital footprints of an individual after death. Or, a mechanism that allows individuals to state their wishes about their data’s posthumous use. Explicitly addressing areas like – a) Does that person want to be digitally resurrected? If yes, is there any span? And, who will act as the executor of such a digital estate? *Data privacy and management* is another major area that needs to be paid attention to. Extensive use of encryption technology to safeguard one personal data. Ultimate control over one’s digital footprints should return to the individual or the executor of the digital estate. To ensure the safety of sensitive information of the deceased, a common guideline should be framed internationally. A collaborative platform comprising different stakeholders like technologists, ethicists, legal experts, policymakers and ultimate users, should be included to develop the framework. The framework should explicitly address issues such as – a) *credibility* and *certification* of AI and Metaverse platforms, b) *accuracy* in data management and security, and c) remedies available to the relatives of the deceased, if they face any type of emotional

hazards, rising from the practice of digital necromancy.

Apart from the above two key areas, clear and transparent disclosures should be available to each user. The drive to increase IPR literacy among the users should be taken into consideration by the concerned authorities and if necessary NGOs must be encouraged to spread awareness. Public awareness campaigns should be undertaken on the ethical, social and legal aspects revolving around *digital necromancy*.

Conclusion

In the era of Metaverse and AI, Digital Necromancy puts forward a unique set of challenges and opportunities. While redefining and expanding posthumous communication, it also triggers questions regarding consent, privacy and ownership of one's posthumous digital presence. Ranging from the Berne convention to the WIPO Copyright Treaty, present International IPR architectures are grappling with the complexities of digital necromancy. Though they provide us with some sketchy provisions, they are not completely efficient enough to tackle the issues. It's high time for jurisprudence to evolve at par with technological advancement. In a diversified country like India, these challenges are even more complex. Death is not just a biological phenomenon but is deeply entangled with a variety of religious sentiments. A comprehensive legal framework related to digital necromancy that safeguards the privacy, dignity and rights of every individual is essential in the age of AI & Metaverse because '*death is not the ultimate truth anymore*'.