

12. The privacy of the dead

Human dignity in digital afterlife: an information ethics perspective

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Abstract

There are increasing numbers of products and services offered by the Digital Afterlife Industry that raise complicated questions about human dignity and the digital component of death. In most societies, we have refined moral and legal norms for how to treat someone's remains showing respect for the person to whom it belonged. However, such norms are mostly absent when the treatment concerns someone's digital remains. In particular, the approach to privacy issues has not been established. In this chapter, we explore how Information Ethics, as proposed by Luciano Floridi, can offer a meaningful framework to better understand the nature and importance of someone's 'informational body'. We will argue that Information Ethics as patient-oriented, ontocentric and e-nvironmental macro-ethics will lead to a radical rethinking of how to contribute to the realisation of human dignity in the digital afterlife. We briefly conclude with some thoughts on what this would mean for business ethics and law-making.

Key concepts

- ▶ Information Ethics is a non-standard (because patient-oriented), ontocentric and e-nvironmental macro-ethics.
- ▶ Information ethics is a patient-oriented ethics: it aims to analyse actions or events in terms of the influence they have on the entities that are impacted. It has the goal of evaluating, from a moral standpoint, the opportunities presented to the entities impacted in terms of 'informational flourishing'.
- ▶ Information Ethics is ontocentric. It gives value to informational things, whatever they are, based on the degree of informational arrangement they represent.
- ▶ 'E-nvironmentalism' recognises that the environment in which humans behave and human civilisations grow is increasingly formed by artificial things manufactured by humans.
- ▶ Just as they are part of the living world (the biosphere), humans, being semantic entities, participate in an information universe, which Floridi calls 'the infosphere': an information universe.
- ▶ A reductionist argument claims that privacy is required to avoid the negative effects of personal data exploitation.
- ▶ A property argument claims that personal information is the private property of people, and that any sort of undesired publication or appropriation of this data can be considered as theft.
- ▶ An ontological argument is based on the idea that our information is a constitutive part of our identity rather than a possession.
- ▶ Personal information is a relational structure that describes the existence of a human being as a semantic being participating in the infosphere.

12.1 Do dead people have a right to privacy?

Case 12.1 Inheritance law and email accounts.

In 2017, a Dutch man passed away. The beneficiaries of his estate claim the release of credentials and content of his email account. The account is part of a service provided by Microsoft, who does not want to release the account for various reasons: first, because digital correspondence cannot be seen as 'goods' that are part of an estate; second, because the contract governing the provision of email services was between the testator and Microsoft, and in the contract, legal obligations towards e.g. the next of kin are not included; last, because the testator has a right to privacy under the GDPR.

In casu, the Dutch district court (Midden Nederland) considered the case, and struggled considerably in dealing with this issue due to a lack of clarity in the legislation relating to offline property. It held that, in the case of inheritance law, it is unclear whether digital data can be regarded as goods. The prevailing position in the literature seems to be that digital data cannot be regarded as goods within the meaning of the applicable Article 3:2 of the Dutch Civil Code, while the possible proprietary status of digital data has not yet been clearly crystallised either. Something that is neither a good nor a debt cannot be inherited. The court ruled that an appeal to inheritance law could not, therefore, be accepted for digital data at that time. It argued that it was up to the legislator to decide on these matters, and that additional lawmaking was required.

The court considered that, in principle, the heirs were also bound by contractual obligations concluded by the testator, with regard to both the rights and obligations arising from the agreement. The provision of the email account is the characteristic performance to which the email provider has committed itself. As the testator and Microsoft had not arranged anything about the consequences of death, the next of kin had the right to access the testator's email account.

Finally, the court did not consider Microsoft's appeal to the GDPR, because the GDPR regime only covers personal data of living (and not dead) persons.

In conclusion: Microsoft had to release the credentials and content of the email account on behalf of the dead man's next of kin.

The Dutch case shows a court struggling to apply legislation designed for application in offline matters to an online affair. Not without reason, the court explicitly held that the Legislature should modernise its inheritance laws, and regulate in what manner someone's digital identity and footprint should be dealt with after their death.

The Delaware Legislature (USA) did, for instance, regulate the fiduciary access to digital assets and digital accounts in a separate chapter of its Decedents' Estates and Fiduciary Relations Act⁵⁴. It explicitly states that:

(a) A fiduciary with authority over digital assets or digital accounts of an account holder under this chapter shall have the same access as the account holder, and is deemed to: (1) Have the lawful consent of the account holder; and

⁵⁴ Delaware code, TITLE 12, Decedents' Estates and Fiduciary Relations, Fiduciary Relations, Chapter 50. Fiduciary Access to Digital Assets and Digital Accounts, sections 5001-5007.

(2) Be an authorized agent or user under all applicable state and federal law and regulations and any end user license agreement.

(b) Upon receipt of a valid written request sent pursuant to the requirements of subsection (c) of this section, from a fiduciary seeking access to, transfer of, copy of, or destruction of a digital asset or digital account, a custodian shall provide the fiduciary the applicable access, transfer, copy, or destruction of the digital asset or digital account, unless it would be technologically impracticable to provide access to, transfer of, copy of, or destruction of the digital asset or digital account to the fiduciary or to the account holder. Unless otherwise provided by a governing instrument or a court order, a fiduciary may access:

(1) The content of an electronic communication, as the term is defined by the Electronic Communications Privacy Act, 18 U.S.C. § 2510, sent or received by the account holder only if the custodian is permitted to disclose the content under the Electronic Communications Privacy Act, 18 U.S.C. § 2702(b);

(2) The catalogue of electronic communications sent or received by the account holder; and

(3) Any other digital account or digital asset of the account holder.⁵⁵

As always, the challenge with regulating innovation is that laws cannot be produced at the same pace as we can innovate in technology (Wernaart, 2022). Regulating a fundamental right such as privacy in the context of digital identity and inheritance is not, in itself, a bad idea: law as a regulatory instrument offers direction in how we expect privacy to be governed in a society, and adds consequences for violating these expectations. At the same time, each time when products and services innovations are created, new dilemmas and matters of fundamental rights present themselves. We will have to see whether or not the current legislation offers meaningful solutions to those matters. For instance, what should we think of the development of a so-called ‘griefbot’ (Van der Vorst and Kamp, 2022): a robot charged with personal data such as biometric, online behavioural and vocal data. This robot could mimic the main characteristics of a dead person, and help relatives in their grieving process, or perhaps keep someone’s spirit alive a bit longer. Such technology could in the long run encompass self-learning elements. This way, the griefbot could engage in new relationships with, say, the new-born grandchild who

⁵⁵ § 5005. Recovery of digital assets and digital accounts from a custodian.

never met their grandfather or grandmother due to their untimely death. The griefbot/grandparent could help the child with schoolwork, ask about its day, or give advice on all kinds of matters. On the one hand, such technology would enable people to 'live beyond the grave' and allow young people to engage with dead relatives, while physically this would never have been possible. On the other hand, complicated questions arise that relate to privacy, ownership and autonomy. What if the child builds a relationship with the self-learning griefbot? Whose data does this concern? The Delaware Act would fall short in deciding on this matter, since part of the data, the part that develops the relationship with the child, is produced after the death of the person involved. What if the griefbot develops characteristics that were unforeseen? Can the parents in question decide to terminate the program, even if this is explicitly against the will of the dead grandparent and/or the child the bot interacts with?

This example may have a dystopian undertone and may sound like science fiction. However, considering the current developments in the funeral industry (Jiménez-Alonso and De Luna., 2022), such products may be more realistic than one might expect.

It is time to rethink how we define fundamental rights in at least two ways: first is that our digital identity becomes more important, and prompts us to also consider human rights as not predominantly offline-oriented rights anymore; second, we need to accept that lawmaking and innovation cannot be done at the same pace. Therefore, we need human rights not only as legal concepts (top-down), but also as design principles in innovation (bottom-up). In this chapter, we will explore how Luciano Floridi's framework on information ethics (IE) can help in this process.

12.2 Death in the digital world

There is no doubt that the pandemic has increased the digitalisation of many aspects of our daily activities, both personal and professional, and that there is every indication that many of these activities will continue to be held online (Amankwah-Amoah *et al.*, 2021; Soto-Acosta, 2020). For several months, due to repeated quarantines, many of us had to interact with our loved ones virtually, and at the height of the pandemic, many also had to say goodbye to their dying loved ones through a video messaging service with the help of on-site caregivers. While death rites already had a digital dimension, think for example of the many memorial pages on social networks, the pandemic has undoubtedly increased their digitalisation (Biçer and Yildirim, 2022). The epidemiological situation has also required many families to hold virtual mortuary celebrations for their loved ones, in whole or in part. We now know only too well that the digital traces we leave behind when we are online

represent extremely lucrative data that are often collected and monetised for commercial, ideological and political purposes (Zuboff, 2019). We do not yet necessarily realise that a lot of these digital traces will outlive us and will be used after our death, with or without our consent. In fact, most of us have never really thought about how we want our digital legacy to be handled after our passing (Grimm and Chiasson, 2014). It is undeniable that death now has a digital component and the question of how to manage and protect personal data after death involves ethical and legal issues whose complexity we are only just beginning to grasp. There is pressure exerted by the vast amount of data required to train the numerous AI systems that are increasingly penetrating many of our spheres of activity. While many jurisdictions have undertaken legislative reforms to adequately protect citizens' personal data, the question remains whether such data should be given special protection after death. This question is all the more pressing as the presence of profiles of deceased persons on social networks is growing. In fact, at the current rate, it is likely that by the end of the century, the number of Facebook profiles of deceased persons will outnumber the profiles of living persons (Öhman and Floridi, 2018).

As will be discussed in this section, we are also witnessing the proliferation of posthumous digital data management and processing services. These range from information managing services to what is advertised as nothing less than 're-creation' services, which allow descendants to 'interact' with their deceased loved one, resurrected in the form of an AI-powered chatbot created from the deceased's personal data retrieved from social networks. The many products and services offered by the startups that form what can now be described as the *digital afterlife industry* (DAI) (Öhman and Floridi, 2017) raise multiple ethical and legal issues that we are ill equipped to deal with at the moment. Indeed, it appears that we are not ready, either legally or conceptually, to deal with the thorny issues related to the management of personal data after death nor are we ready to face the wave of digital mortuary and posthumous services and products that is arriving at breakneck speed. Considering the difficulties encountered by the judge in dealing with the case presented in Case 12.1, it is clear that there can be a legal vacuum regarding the issue of posthumous processing of personal data. In this case the judge even felt the need to call on the legislator to act in this regard. The question of how to provide an appropriate legislative framework for the posthumous processing and use of personal data is fundamentally an ethical one. It therefore requires in-depth philosophical reflection. We believe that Information Ethics (IE), as developed by Luciano Floridi, can make an important contribution to the discussion about the responsible handling of posthumous personal data and, as a corollary, to the reflection on the appropriate legislative framework for such data.

Patrick Stokes is a philosopher who is specifically interested in the issues surrounding digital death. He stated (2015) that, despite the fact that the phenomenon of digital death has engaged the attention of sociologists and anthropologists, it seems that the philosophical and ethical issues related to this question have remained relatively unexplored, with the exception of work by Öhman and Floridi (2017, 2018) and of course Stokes himself (2015, 2021). In an article that critically addresses the DAI, Öhman and Floridi (2017) point out that the possibility of leaving an imposing digital legacy, is now somehow democratised because of the traces we leave behind when we act online and on social networks. Such a legacy was previously reserved for celebrities whose work and existence had been widely documented, photographed and filmed. Indeed, because the architecture of the web is made in such a way as to harvest our personal information, we can reasonably assume that this information will outlive us and will be used for various purposes after our passing. For example, after loved ones have passed away, many descendants will want to access the digital information that they have left behind during their lifetime. However, because of the frequent absence of specific instructions from the deceased, and given the legal vacuum that characterises these issues in many jurisdictions, it is not surprising that these requests have given rise to numerous legal conflicts such as the one discussed in Case 12.1. Öhman and Floridi underline that these are conflicts reminiscent of the legal disputes that break out in the families of celebrities regarding their succession.

In addition to the legal issues raised by the different services offered by the DAI, these new phenomena also raise several ethical issues. Starting from the classification established by de Oliveira *et al.* (2015) and with the aim of identifying the different moral problems associated with these services. Öhman and Floridi (2017, 2018) sort them into 4 categories: (A) information management services, (B) online memorial services (C), posthumous messaging services and (D) re-creation services.

**purpose of
information
management
services**

The purpose of information management services (A) is to organise the management of digital possessions after death. Many of the companies that offer these types of services provide a form of digital will in which individuals indicate whether they want their digital data, such as their social network profile or Google account information, to be passed on or destroyed.

**posthumous
messaging services**

Other companies provide posthumous messaging services (B), which, often combined with information management services (A), allow a person to schedule messages to be sent to individuals or groups of individuals after their death. These messages can contain passwords or personalised messages.

online memorial services

Several online memorial services (C) also exist, and often include a platform and a means of communication so that the relatives can gather on the 'digital grave' of the deceased person and interact. One can publish photos, testimonies, exchange with mourners, etc. For example, Facebook offers to plan the memorialisation of a user's profile at the time of their death. For some years now, they have also offered the possibility of designating a legacy contact to manage the memorialised profile of deceased persons. The designated legacy contact can control the publications on the site, request its deletion, answer new contact requests and upload new profile photos. However, the legacy contact cannot log into the account, read private messages that have been sent during the lifetime of the user nor delete contacts. Even if this service is not publicised as such and though you need to look closely into the preferences to access it, Facebook also offers users the possibility to request the automatic deletion of their account after their death. It is also possible to report a deceased person on Facebook and request, as a close relative, that their account be memorialised or suppressed.

re-creation services

Given the large number of Facebook users who will die in the coming decades, we can assume that Facebook sees this as a very lucrative business model (Öhman and Floridi, 2017). Not only do users generate data while they are alive, but they continue to do so and to generate traffic long after their death. Finally, the impressive progress made by deep learning in natural language processing since the 2010s, coupled with the abundance of personal data collected on social networks and other online platforms, has allowed start-ups to develop products that were considered mere science fiction just a few years ago. However, these are advertised as re-creation services (D), i.e. services that claim to use an individual's personal data to reproduce their behaviour based on an artificial intelligence system (AIS), in other words to re-create their personality. These services allow the generation of new publications on social networks or, in their most complex forms, interaction with the digital version of the deceased, exactly as one would do with Siri or Alexa. They present in the form of chatbots and may or may not be accompanied by an animated image of the deceased, akin to deepfake videos.

questions

In the light of this brief, and admittedly incomplete, inventory of the different services offered by the DAI, several ethical issues emerge and many questions are left unanswered. Is it morally acceptable to create an interactive device using an AI algorithm, fed from the online activities of a deceased person, without their consent? Given the unpredictable nature of machine learning algorithms, is consent sufficient to justify the creation of such a device? Should we analyse the impacts of the new offer of mortuary and afterlife services on the mourning process of relatives and the social effects of these new practices (Van der Vorst and Kamp, 2022)? If someone is harmed after interacting with the digital

version of a deceased person, who should be held responsible? Is it morally problematic that social media platforms keep their users' accounts active by default, while families in the absence of specific instructions from the deceased struggle to access information relating to their loved one? But what if social media platforms simply deleted the account and the information it contains? Could that be considered as the destruction of a person's legacy? And if so, as suggested by Stokes (2015), should all the information that we leave on social media be preserved, from the picture of our beloved cat to the one of the sunset we captured while on holiday? If so, how should we view the environmental impact of such a practice, knowing the quantity of energy that would be required to store this astronomical amount of data? Could the monetisation of digital personal information by DAI businesses be considered a form of instrumentalisation of the dead and therefore an infringement of their dignity? More generally, should individuals' privacy and personal information be protected beyond life? If so, what is the justification for placing a moral value on the personal data of a deceased person? The amount of ethical and fundamental rights questions raised by these new practices around digital afterlife is rather unsettling, but they actually converge on a more fundamental question: What moral status should be given to the personal information of the deceased? While we do not claim to offer an answer to all these questions here, we do believe that the ethics of information elaborated by Luciano Floridi is particularly useful when analysing the ethical issues related to the moral obligations we have in relation to what we can call digital remains. We will first present the foundations and main concepts on which IE is built, and we will then analyse the moral obligations we have towards digital remains, based on these principles.

12.3 The ethics of information

In order to explore the question of the moral status of our personal information both above and beyond the grave, it seems necessary to define the very idea of information and the place that it occupies in our personal identity. In order to do so, we believe that the approach developed by Luciano Floridi in his philosophy of information is particularly interesting. First, he argues that it is necessary to re-examine what we understand by the term 'information' (Floridi, 2010). Furthermore, he proposes that our personal identity is completely informational in its nature (Floridi, 2013). These theses, which we will explain in the next few pages, imply a revision of our usual understanding of information and, in our opinion, allow us to fill the conceptual void exposed by the question of online death and digital remains. Such a reconceptualisation of information also, necessarily, leads us to reconsider the very idea of privacy, not only after death, but also when the persons generating information are alive and well.

information

Before addressing these questions about privacy, let us ask ourselves this: Is information really at the heart of our personal identity? According to Floridi (2013) this is indeed the case, and it becomes all the more clear given that we live in information societies that have been profoundly transformed by the ubiquity of information and communication technologies (ICT) over the past decades. We have previously presented the main characteristics of Floridi's approach (Bruneault and Sabourin Laflamme, 2021, 2022), so we will only focus here on some of the main aspects of his philosophy. The exponential use of ICTs requires that we completely rethink the philosophical premises from which we understand information, society and ourselves. A classical interpretation of information, including Shannon's mathematical theory of information (1948), tends to reify information as a 'thing' that can be possessed, exchanged, negotiated, transmitted and abandoned. However, it seems that the development of ICTs highlights the limits of this understanding, especially because of the centrality and preponderance of the concept of information for individuals and society today. Following Copernicus' rejection of the idea that the Earth is at the centre of the universe, Darwin's questioning of our particular position in the lifeworld, and Freud's undermining of the Cartesian idea of an individual in perfect control of themselves and their thoughts, Floridi claims that the digital revolution is a fourth revolution confronting our self-understanding. The name of Turing is unmistakably linked to this new revolution. We are no longer the only beings capable of making meaning and manufacturing information, as we have now developed our own machines, especially ICTs, capable of creating and manipulating this information, particularly through AI. This is a new decentering that questions some of the most deeply rooted philosophical premises in our traditions.

infosphere

According to Floridi, this new situation, brought about by the rapid development of ICTs, emphasises the fact that people live in what he calls the infosphere. Just as humans are part of the living world, the biosphere, he argues that human beings, being semantic entities, participate in an information universe that he calls the infosphere. This universe has always been a fundamental (implicit) component in earlier stages of human society's development, but has since become an essential (explicit) component of social evolution. Floridi states 'only very recently has human progress and welfare begun to depend mostly on the successful and efficient management of the life-cycle of information management' (Floridi, 2013: p. 3), as ICTs have unleashed informational management capabilities beyond the limitations that existed in earlier historical phases.

Floridi also proposes the expression 'onlife', a word he coined that characterises our current relationship with the digital world (Floridi, 2015). It no longer seems truly useful (at least ever less useful) to try to mark a clear-cut difference

between ‘offline’ and ‘online’ life. Our lives are now constantly connected to the digital world due to ICTs and their ubiquity – via smartphones and the various devices that have become an integral part of our daily activities. Our onlife blurs the distinction between real and virtual worlds in addition to the differences between nature, people and artificial creations. Another fundamental characteristic of our current situation is the fact that we are now evolving in a situation of ‘infoglut’, of information overload, which contrasts with the informational scarcity that has previously been the lot of humanity. It goes without saying that these changes imply a significant modification of our relationship to information.

Information Ethics (IE)

In order to highlight the implications of these changes for our moral obligations, Floridi (2013) developed his Information Ethics (IE). According to him, this IE differs from classical, normative, ethical frameworks, since it ‘is a non-standard (because patient-oriented), ontocentric, and e-nvironmental macroethics’ (Floridi, 2013: 97, our translation). We will examine these characteristics, but for a more detailed explanation, see Bruneault and Sabourin Laflamme (2022). Unlike classical ethical frameworks that grant moral value based on: (1) an evaluation of the moral agent (as in virtue ethics) or (2) a moral evaluation of the action taken (as in consequentialist and intentionalist ethics), Floridi (2013) insists on the idea that the IE he proposes is a patient-oriented ethics. Instead, IE aims to analyse actions or events in terms of the influence they have on the entities that are impacted, with the goal of morally evaluating the opportunities presented to these entities in terms of ‘informational flourishing’. To determine whether an action (or an idea, or an omission, etc.) is acceptable or not (and possibly to determine its degree of acceptability in comparison to other potential actions, ideas, etc.), one must determine to what extent it contributes to the development of the entities affected. It is assumed that the development of these entities will ultimately be based on their informational development, all existing entities presenting a certain degree of informational structuring in order to maintain themselves in being.

patient-oriented ethics

ontocentric

Furthermore, IE is ontocentric (Floridi, 2013: p. 65). It gives value to all informational things based on the degree of informational arrangement they represent. Floridi refers to the most abstract perspective of the universe as the informational Level of Abstraction (LoAi), and believes that it allows all entities to be characterised in informational terms (for a more detailed explanation, see Bruneault and Sabourin Laflamme, 2022). It is impossible, within the span of this work, to completely explain the rationale that drives Floridi to this belief. It should be emphasised, however, that this concept allows for the application of intrinsic (but not absolute) value to all entities – in distinction to Kant, who notoriously restricts this feature to rational beings, and in distinction to

biocentric ethics, which extends this intrinsic value to sentient beings or all living beings, excluding inanimate objects (see Floridi, 2013: pp. 112-124). Because all existent entities are informational entities, no matter how rudimentary, Floridi believes that they should all be evaluated in the ethical appraisal of acts or circumstances, at the very least. In contrast to anthropocentric ethics, which only consider human beings in the ethical evaluation, and biocentric ethics, which only consider living beings (or sentient beings), Floridi proposes including any form of informational entity and thus any existing entity, i.e. all beings, in the ethical evaluation, at least in an infinitesimal way.

The ‘e-nvironmentalism’ (Floridi, 2013: p. 18, 2014: p. 217) of IE must not contrast the artificial world created by human beings with an unspoiled and inviolable nature that would comprise the environment of the human world. In this it must, therefore, be distinct from ethical environmentalism as it emerged in the twentieth century. ‘E-nvironmentalism’ recognises that the environment in which humans behave and human civilisations grow is increasingly formed by artificial things manufactured by humans. As a result, it is essential to consider the ethical component of human behaviour not just in terms of the natural environment (in the traditional sense), but also in terms of the reality that this environment is, in large part, the product of human action and past generations’ decisions. Current actions and decisions must be assessed in terms of the role they will play in defining the environment in which future generations will be able to and should behave. This part of IE therefore serves as a link between persons of the same epoch and generations, taking into account the social dimension of human existence.

Floridi proposes to interpret his IE in terms of ‘informational flourishing’ and ‘informational entropy’, i.e. what favours informational development and, on the other hand, what leads to informational disorganisation in the infosphere. He uses the concept of entropy, borrowed first from thermodynamics and then from cybernetics (Wiener, 1954). In this regard, he suggests four essential principles for Information Ethics, loosely influenced by Isaac Asimov’s renowned laws of robotics, namely:

0. that one should not cause informational entropy;
1. that informational entropy must be prevented;
2. that we must eliminate informational entropy; and
3. that we must promote the flourishing of informational entities.

In a non-absolute sense, these IE principles should govern activities aimed at any informational entity. It is thus necessary to assess AI systems in terms of their ability to promote ‘informational flourishing’ or create ‘informational entropy’ in the infosphere, taking into account the influence on all informational entities, including human beings as informational and semantic entities.

**reductionist
argument**

As a result, we feel we must consider the ethical challenges surrounding privacy protection within this ethical framework (Floridi, 2013). A reductionist argument and a property argument are the two main basic ethical choices for defending privacy. First, the reductionist argument claims that privacy is required to avoid the negative effects of personal data exploitation. This reasoning, however, appears to be inadequate, because the value of privacy cannot be reduced to the potential misuse of personal information. Even a benign or collectively beneficial use of a release of personal information might be deemed unacceptable in some circumstances. Against this first argument, the second argument, based on the notion of property, is usually proposed. Personal information would therefore be the private property of people, and any sort of undesired publication or appropriation of this data would be considered as theft. Because of the pervasiveness of ICTs and AI, the second argument (the classical liberal argument) is ineffective in the contemporary technological setting. Indeed, using ICTs, it is now feasible to acquire a staggering amount of personal information about individuals in settings that are far from private, such as utilising cameras and face recognition in public areas – public locations where privacy standards are dubious at best. Can an individual truly claim private ownership of information acquired about her travels, conduct, buying habits, and other activities if she is acting in a public setting rather than in the domestic sphere?

**ontological
argument**

IE proposes a rethinking of the concept of personal data as a solution to this challenge. Because humans are informational and semantic entities, personal data is not a property that individuals own in the same way as they do tangible things. 'My information', as Floridi (2013) puts it, is more analogous to our concept of 'my hand' (or 'my body') than 'my car'. Unlike the previous rationales, Floridi proposes an ontological argument to justify the need for extensive protection of personal information that goes beyond the problematic private-public dichotomy. Indeed, within the theoretical framework he proposes, personal data is a depiction of who people are at their core. Since the notion of information is then at the core of our personal identity and, thus, personal data is an integral aspect of who individuals are for themselves, privacy is a crucial component in evaluation of actions and situations for IE. The use of an individual's personal data against them (or their will) is thus more comparable to kidnapping than theft, and as a result, it is important to consider privacy requirements (particularly in the digital age). Information is not a 'thing' that can be given up, sold, abandoned, transferred, or stolen; rather, it is a relational structure that describes the existence of an organism, as well as (and above all) describing the existence of a human being as a semantic being participating in the infosphere (Floridi, 2010). Privacy violations are thus a violation of human dignity (and associated human rights), which will be examined further below.

12.4 Odeath: the informational corpse

odeath

According to Floridi, we are increasingly living online, referring to what he calls the *onlife experience*, but in a way we are now also dying online, an unprecedented experience that we propose describing as *odeath*. In the same way that the infosphere is profoundly transforming the way we live compared to preceding generations (Floridi, 2014), it has become obvious that it is transforming the way that our personal information will be handled and processed after we die. A significant amount of the digital personal data we have produced throughout our lives can be preserved or retrieved from the various digital platforms on which we have left traces. Addition of the processing possibilities offered by digital technologies and AI and by the fact that the DAI is flourishing, produces an unprecedented situation and requires that we address the question of the moral status of our digital remains without further delay. A detailed analysis of the numerous ethical issues and legal disputes raised by personal information management in the context of a digital afterlife would require an in-depth discussion that is not possible within the scope of this article. However, we believe that IE can shed particularly interesting light on the general question of our moral obligations with respect to the digital personal information of the deceased. The ontocentric and patient-oriented nature of IE makes it particularly useful for thinking about these obligations, as it grants a moral status to all informational entities, whatever they may be. As we have seen previously, in contrast to classical ethical theories, it is not the morality of the actions of the moral agent that matters, but the moral effect of these actions on the moral patient, i.e. the receiver of the action. This characteristic of IE, which differs from anthropocentric approaches such as the classical ethical frameworks (at least as they were originally formulated), from biocentric approaches (which extend the object of moral obligation to sentient beings) and from ecological approaches (which extend it even further to include nature) is that the moral patient is even more encompassing and universal. Indeed, since the moral agent is information as such, any informational entity, whether human or not, living or not, natural or not, physical or not, constitutes an object of moral obligation that grants it a sort of inalienable right to persevere in its being. Starting from what Floridi calls the *ontological equality principle*, not only are we morally obligated to prevent the informational entropy that naturally threatens these different entities, but we must also act to foster their flourishing. Indeed, as we stated before, Floridi uses the concept of entropy, the 3rd law of thermodynamics reinterpreted within the framework of cybernetics (Wiener, 1954). Floridi posits that the obligation of the moral agent in the infosphere is to act in a way that does not cause informational entropy, but even more in a way that contributes to prevent and eliminate the destruction of informational entities

as well as to promote ‘informational flourishing’ (Floridi, 2013: p. 71). In fact, within the framework of IE, all informational entities, not only living human beings, are worthy of moral obligations:

‘In IE, the ethical discourse concerns any entity, understood informationally, that is, not only all persons, their cultivation, wellbeing, and social interactions, not only animals, plants, and their proper natural life, but also anything that exists, from paintings and books to stars and stones; anything that may or will exist, like future generations; and anything that was but is no more, like our ancestors or old civilizations. Information ethics is impartial and universal because it brings to ultimate completion the process of enlargement of the concept of what may count as a centre of a (no matter how minimal) moral claim, which now includes every instance of being understood informationally, no matter whether physically implemented or not. In this respect, information ethics holds that every entity, as an expression of being, has a dignity, constituted by its mode of existence and essence (the collection of all the elementary proprieties that constitute it for what it is), which deserve to be respected (at least in a minimal and overridable sense)’ (Floridi, 2010: p. 113).

Within the framework of IE, the human being, defined as a semantic being capable of producing meaning, has a particular status. However, as IE is neither anthropocentric nor biocentric, but e-nvironmentalist and ontocentric, in the sense that the object of moral obligation is the Being, understood informatively, the moral agent must act in order to preserve all the informational entities that inhabit the infosphere and must refrain from acting in a way that degrades, alters or destroys them.

informational
legacy

Since human beings are defined as informational entities, as discussed above, any form of violation of informational integrity during their lifetime is considered an infringement of their dignity. The question that must be addressed now is whether or not we have similar moral obligations towards the informational legacy of the deceased, a legacy whose nature and scope have been transformed by the digital revolution. According to Floridi’s ontological interpretation of privacy, based on the idea that ‘we are our information’, living human beings must be granted a fundamental right to informational integrity. From an IE perspective, in the same way that an infringement of this informational integrity is considered morally problematic, an infringement of digital remains is also a moral fault. Drawing on Floridi’s work, Stokes (2015: p. 245) proposes to think of these digital remains not as a mere hyperbolic metaphor used as a comparison with the physical artifacts left behind by the deceased, but rather as an informational entity, or an *informational body*, whose moral status is more akin to that which we can attribute to a dead human body.

informational body

Interestingly, while humans do indeed possess the moral intuition that the bodies of the deceased are worthy of special respect – most jurisdictions do indeed consider improper or indecent interference with a dead human body as a criminal act – conventional ethical frameworks are not designed to address the issue of our moral obligations towards the dead. Again, the particularity of IE is that, as a non-standard and patient-oriented ethics, and since it assigns a moral status to any informational entity, it allows us to conceive contempt for the human corpse as a way of fostering entropy, and therefore as an immoral action. This provides a theoretical justification for the moral intuition that, Floridi (2013: p. 83) reminds us, already existed among the Greeks as evidenced by the unambiguous condemnation of Achilles' degrading treatment of Hector's corpse in the *Iliad*. In this perspective, the alteration of digital remains, which form an informational body, is considered an affront to dignity, in the same way as treating a corpse disrespectfully is. Based on this analogy between the physical body of a deceased person and the informational body formed by their digital remains, Öhman and Floridi propose conceiving of our moral obligations towards digital remains on the model of the treatment of ancient human remains by medical and archaeological museums. Interestingly, the authors note that the international museum codes of ethics are explicitly built on the principle of human dignity (Öhman and Floridi, 2017: p. 656).

12.5 Conclusions

Digital Afterlife Industry

Given the increasing diversity of the products and services offered by the Digital Afterlife Industry (DAI), a detailed and extensive analysis of the ethical issues associated with these different practices from an IE perspective would certainly be beyond the scope of this article. The article does not claim to settle the issue but rather provides an introductory exploration of this extremely vast and complex field of study. Nevertheless, in the light of the above reflection, we can draw a preliminary and general conclusion that can shed light on certain practices relating to the DAI. There is a legal vacuum that characterises this field of activity. The conclusion that the digital remains of deceased persons must be preserved and treated with dignity, might contribute to the reflection on the appropriate legislative measures to regulate these practices. It follows that deleting all digital traces left by the deceased, for example by deleting social network accounts, would not only promote informational entropy, but would also undermine the informational dignity that we must grant to digital remains (Stokes, 2015). At the same time, the amount of data collected online about individuals during their lifetime and the ability to store and easily access it, including memorialised social media accounts, provide new opportunities to outrage the informational body of the deceased. Moreover, the over-capitalisation of digital remains by the growing DAI, especially with respect to AI-powered interactive services, poses significant risks to the integrity of the

informational body constituted by the digital remains (Öhman and Floridi, 2017). Indeed, we know that AI systems are not neutral and convey the values and interests of those who have worked on their design, development and deployment. There is a risk that interactive products are designed whose operation is tinged with strong mercantile intentions that interfere with the personal data of the deceased used to construct the technical device. By instrumentalising their digital remains, such products could undermine the integrity of their informational body:

‘digital afterlife services have an incentive to shape one’s digital remains, the product of one’s work and online identity, according to what is profitable. That is, in order to attract more consumers (either paying with attention or money) services must shape and display digital remains in their most consumable form.’ (Öhman and Floridi, 2017: p. 648).

The offer of services that consist of generating AI-powered conversational agents or deepfakes from the data left behind by the deceased during their lifetime on social networks or other digital platforms may be attractive for grieving relatives and friends. However, given the considerations above, it must be remembered that such an instrumentalisation of digital remains for commercial purposes may compromise the dignity of the informational entity they embody.

business ethics

This impacts how companies in the DAI perceive their moral obligations towards society, and how they act as a consequence. It prompts us to rethink established ideas on how to contribute to the realisation of fundamental rights in business ethics. Phenomena such as Corporate Social Responsibility (CSR), external cost accounting, or sustainable entrepreneurship have a focus on people as living entities. Our proposed Information Ethics (IE) perspective leads to a rethinking of these concepts, with a ‘beyond lifecycle approach’. This means that the ‘people’ in Elkington’s ‘people, planet, profit’ (Elkington, 1997) is not only about those who currently live, but also includes those who live on digitally. Responsible entrepreneurship then means to contribute to the ‘informational flourishing’ of the involved entity. It means that a stakeholder approach at the managerial level (Freeman, 2010) is not limited to those amongst the living who can affect or can be affected by the company, but includes (or even should be centred around) the interest of the informational body itself. It means that in terms of external cost-accounting (Wernaart, 2021), we need to rethink our reporting methods. Where companies now translate their environmental and societal impact into measurable units, e.g. hypothetical costs, Social Development Goals, or calculate CSR targets (Krosinsky, 2012; Unerman *et al.*, 2018), we will need to translate external costs into how business activities have impact on information entities, and how it contributes to

‘informational flourishing’. This would require radically different methods and different measurement units when giving an account of the non-financial performances of a business.

lawmaking

When we go back to the example of the griefbot mentioned in the first section of this chapter, this rethinking of business ethics would undeniably mean that the digital remains of an information entity are to be treated in such a way that it contributes to the information development of that entity. Considering that information is the essential part of someone’s being, in the balancing of interest, the digital remains of the involved entity are likely to be the most affected by the products and services developed in the DAI, and need to be at the core of the design process when innovating within this industry. An IE approach also has consequences for lawmaking. It is now becoming increasingly evident that, from an IE perspective, the personal information of the deceased has a special moral status that generates obligations for the moral agents in the infosphere. It is also important to bear in mind that this moral obligation is all the more burdensome while the moral patients are living human beings that have the right and the power to control information about themselves (again not because they own their information, but because they *are* this informational entity) and that an infringement of their informational integrity is an infringement of their dignity. While the fact that more and more jurisdictions have undertaken to modernise their legislative provisions on the protection of personal data is to be commended, it is problematic that in doing so they have failed to sufficiently emphasise that the right to protection of personal data should be defined as a fundamental right and a prerequisite for respect for human dignity. For Florida, if the presence of the concept of human dignity remains unfortunately marginal in the GDPR, even though this legislation is considered to be at the forefront of personal data protection at the international level, this legal instrument should, undoubtedly, be interpreted in the light of this concept. In fact, information ethics provides a particularly relevant framework for redefining the right to privacy as a condition for respecting human dignity and human rights in our mature information societies.

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