

# DIGITAL AFTERLIVES AND THE INHERITANCE OF ONLINE IDENTITY

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## ABSTRACT

*Online identity requires a new and non-transferable legal category created by amending the Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA). The law governing digital estates has failed to keep pace with the reality that a person's online presence is now a core part of identity. Existing statutory frameworks, including the RUFADAA, treat online materials as "digital assets," with no distinction between them and online identity, risking merging identity into inheritable property and allowing fiduciaries to access and manage accounts by failing to recognize the distinct and personal nature of online identity. The current regime provides no guidance on how to handle the growing issue of social media accounts of the deceased. Without guidance, heirs may continue posting as the deceased for continuous income or popularity. Furthermore, as artificial intelligence increasingly enables the imitation of a person's voice, behavior, and style, the lack of a clear boundary between property and personhood risks posthumous impersonation and erosion of individual autonomy and dignity. This Comment proposes amending the RUFADAA not only to include a separate categorical definition of online identity, but also to make that identity non-inheritable. Under this revision, heirs would still inherit the income from the deceased's social media accounts but would not be able to generate additional revenue by posting to or otherwise using the accounts. By amending the RUFADAA to differentiate between online identity and assets, the law would protect both the public from deception and the deceased from unconsented impersonation.*

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I. INTRODUCTION

People now build communities, livelihoods, and identities online, ultimately cultivating large followings and earning income from online

interactions.<sup>1</sup> In fact, as more of life takes place online, social media has become the driving force that cultivates billions of dollars in economic activity, shaping not only companies' behavior but also the belief that anyone can be an influencer.<sup>2</sup> This has led to an almost complete digital society, in which people post their entire lives and experiences online.<sup>3</sup> The value of that digital presence often continues after death: advertising contracts, affiliate revenue, and sponsored content may still generate income based entirely on the personality that attracted the followers in the first place.<sup>4</sup> Economic value is not the only value an online identity possesses.<sup>5</sup> These unique identities also carry persuasiveness and the ability to advise their followers because of the parasocial relationship between social media influencers and their followers.<sup>6</sup> To the follower, this relationship feels more analogous to a family member or a friend.<sup>7</sup>

Yet, the law has not kept pace.<sup>8</sup> The Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA) addresses only “digital assets” that can be accessed, managed, and passed to heirs, such as bank records or computer files.<sup>9</sup> Under this current regime, the RUFADAA fails to differentiate between a digital asset and an online identity.<sup>10</sup> Meaning, there is no guidance on how to handle the growing issue of social media accounts of the deceased.<sup>11</sup> Without guidance, the heirs' ability to post as the deceased is allowed, whether for continuous income, popularity, or persuasion.<sup>12</sup>

Unlike a digital asset, an online identity is not just files or records; it is an individual's personality and beliefs in digital form.<sup>13</sup> Social media accounts are created with each individual's unique aesthetics, beliefs, presence, and ideas, which are inherent to that individual.<sup>14</sup> So when the law collapses identity into property, it creates the alarming possibility that the

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1. John C. Roach, *The Significance of Social Media Influencers in Today's Economy*, U.S. BUREAU OF LABOR STATISTICS: MONTHLY LAB. REV. (July 2023), <https://www.bls.gov/opub/mlr/2023/beyond-bls/the-significance-of-social-media-influencers-in-todays-economy.htm> [<https://perma.cc/4SUW-FGPH>].

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. Leah R. Fowler, Max N. Helveston & Zoë Robinson, *Influencer Speech-Torts*, 113 GEO. L. J. 415, 422 (2025).

8. Author's original thought.

9. TEX. EST. CODE ANN. § 2001.002(8).

10. *See id.*

11. *See generally id.* (highlighting that there is no mention of social media accounts in chapter 2001 of the Texas Estates Code).

12. *See, e.g.,* White v. Samsung Elecs. Am. Inc., 971 F.2d 1395, 1936 (9th Cir. 1992).

13. Fowler, Helveston & Robinson, *supra* note 7, at 424.

14. Katrine Thielke, *What Is the Difference Between Online Identity and Digital Identity?*, IDURA (Dec. 19, 2024), <https://idura.eu/blog/online-identity-vs-digital-identity> [<https://perma.cc/9686-X3AL>].

dead may continue to post, respond, persuade, and sell, essentially controlling someone else's identity, which the law has never permitted.<sup>15</sup>

This risk is heightened by the use of Artificial Intelligence (AI) and the reality of posthumous impersonation.<sup>16</sup> AI's ability to convincingly impersonate a person's voice, likeness, and unique behaviors continues to improve, making it possible to mimic the deceased.<sup>17</sup>

Moreover, the lack of guidance on the non-inheritable aspects of online identity threatens deeply rooted principles of the law.<sup>18</sup> For example, the law consistently treats personal service contracts as non-transferable, recognizing that some performances are so connected to the individual—relying on their unique skill or presence—that a substitute is legally not allowed.<sup>19</sup> Likewise, the Supreme Court has held that being in control over one's autonomy and self-definition is essential to human dignity.<sup>20</sup> Therefore, the law's failure to distinguish between digital assets and digital identity risks treating identity as transferable, a position the law has already recognized as impermissible.<sup>21</sup>

It could be argued that prohibiting the transfer of the deceased's online identity harms families who depend on the deceased's social media accounts for a continuous revenue stream.<sup>22</sup> However, the truth is that once the revenue stream ends, there is no more money coming in.<sup>23</sup>

Furthermore, Texas Estates Code Section 113.205 and California's property-transfer statutes already separate economic value and identity, proving that these two ideas can and do live in harmony.<sup>24</sup> Like any other estate resource, heirs may inherit funds from ads and endorsements, but may not inherit the identity that generated those funds.<sup>25</sup>

Contractual freedom should not be a loophole to sell one's identity.<sup>26</sup> When a job or role is based on an individual's unique characteristics, judgment, and personality, a substitute is not legally permissible, as the

15. *White*, 971 F.2d at 1398.

16. Hammad Atta et al., *DIRF: A Framework for Digital Identity Protection and Clone Governance in Agentic AI Systems*, ARXIV 1, 1 (Aug. 4, 2025), <https://arxiv.org/pdf/2508.01997> [<https://perma.cc/PFN9-9EWK>].

17. *See generally id.* (highlighting legal uncertainty over non-inheritable online identity).

18. *See Peniche v. Aeromexico*, 580 S.W.2d 152, 156 (Tex. App.—Houston [1st Dist.] 1979, no writ).

19. *Id.*

20. *See Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 851 (1992).

21. *See generally, Peniche*, 580 S.W.2d at 156; *Planned Parenthood of Se. Pa.*, 505 U.S. at 851 (arguing that losing control of one's identity conflicts with established legal principles).

22. *What Happens If an Estate Runs Out of Money Before Paying Debts?*, FERGUSON L. GRP., <https://ferglawgroup.com/estate-runs-out-of-money/> [<https://perma.cc/NFL6-SJVH>] (last visited Feb. 25, 2026).

23. *Id.*

24. CAL. CIV. CODE § 3344.1(a)(7)(A)(West 2025); CAL. PROB. CODE § 6132(a) (West 2025); TEX. EST. CODE § 113.205.

25. CIV. § 3344.1(a)(7)(A); PROB. § 6132(a); EST. § 113.205.

26. *See generally, Peniche*, 580 S.W.2d at 156 (explaining that contracts to substitute someone's identity are generally not permissible).

substitute cannot perform the duties in the same manner or capacity as the initial performer.<sup>27</sup> If courts permit an online identity to persist through contract or inheritance, they will blur the well-established line between property (which is transferable) and personhood (which is not).<sup>28</sup> The law treats identity as something that cannot be exchanged, delegated, or performed by someone else.<sup>29</sup> An online identity must be treated as a separate category.<sup>30</sup>

Thus, none of the objections withstand scrutiny: economic interests are already protected, contracts cannot authorize a replacement self, and the public cannot be deceived about who is speaking to them or their beliefs.<sup>31</sup> The only principled solution is one that protects autonomy, dignity, and truth: online identity must end when life does.<sup>32</sup>

To address this issue, this Comment proposes an amendment to the RUFADAA that creates a distinct legal category for online identity, officially separating it from digital assets and making it non-transferable.<sup>33</sup> Part II of this Comment provides background on our society's reliance on and use of social media, as well as the practice of account persistence after death, which raises the question of what happens to these accounts when the person behind the screen passes away.<sup>34</sup> Part III argues that to resolve the growing issue of posthumous impersonation through a decedent's social media account, there should be an amendment to the RUFADAA that officially establishes a distinct legal category for online identity, ensuring it is non-transferable, and preventing online identity from being lumped in with transferable digital assets or controlled by current legal regimes, which are inadequate in governing online identity.<sup>35</sup>

## II. LEGAL TREATMENT OF DIGITAL ASSETS AND THE EMERGING CHALLENGE OF ONLINE IDENTITY

Online identity has not only become an integral part of today's society, but also a way for people to express their identities digitally, sometimes for fun and at other times for income, popularity, or persuasion.<sup>36</sup> An issue that

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27. *Id.*

28. *See generally* RESTATEMENT (SECOND) OF CONTS. § 317(2)(a) (A.L.I. 1981) (explaining that contractual rights are not assignable when assignment would materially alter the obligor's duty or risk).

29. *Id.*

30. *See id.*

31. *See id.*

32. Author's original thought.

33. *Id.*

34. *See* discussion *infra* Part II; *see, e.g., Too Many People Want to Be Social-Media Influencers*, THE ECONOMIST (Oct. 29, 2024), <https://www.economist.com/business/2024/10/29/too-many-people-want-to-be-social-media-influencers> [<https://perma.cc/56SF-D45C>] (explaining society's usage of social media).

35. TEX. EST. CODE ANN. § 255.001; RESTATEMENT (SECOND) OF CONTS. § 317(2)(a) (A.L.I. 1981).

36. THE ECONOMIST, *supra* note 34.

comes with the growth of digital accounts is that they persist beyond death, raising concerns about who may inherit them or what should happen to them in general.<sup>37</sup> In a society where the law has never had to deal with a digital graveyard, the law remains unequipped to handle online identity.<sup>38</sup> Instead, the law only addresses transferable digital assets, lumping online identity into that category when it's not an asset but an extension of identity itself, which should not be inheritable.<sup>39</sup>

### *A. The Rise of Online Identity and Its Persistence After Death*

People use their identities to generate revenue on social media platforms. This revenue is not generated just because it's on a digital platform, but because of the identity using the platform.<sup>40</sup> The person behind the screen, their unique experiences, and their personality are the reasons for success in a digital space; therefore, when that user passes, their digital content remains accessible to others, persisting indefinitely.<sup>41</sup>

#### *1. The Growth of Social Media as Income because of Identity*

It is increasingly common for people to leave their jobs to pursue careers online; in fact, for some, it is considered a reputable career choice.<sup>42</sup> For example, 57% of Generation Z aspire to be social media influencers, and 53% consider it respectable.<sup>43</sup> That aspiration is not misplaced or misleading, as the economic value in the digital world has substantially escalated, turning content creators into billion-dollar investments.<sup>44</sup>

With a considerable number of consumers residing in the digital sphere, many brands are now using influencers who have built their platforms around their identities and private lives to promote their products.<sup>45</sup> Eighty-six percent of brands now allocate money to the influencer community, a 37% increase since 2017, spending roughly \$7 billion, showing not only the growth of social media, but also the fame and fortune that awaits online users.<sup>46</sup> Furthermore, a more recent study by the National Bureau of Economic Research shows that the influencer marketing economy has gone

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37. Carl Öhman & David Watson, *Are the Dead Taking Over Facebook? A Big Data Approach to the Future of Death Online*, ARXIV 1, 1 (May 6, 2019), <https://arxiv.org/pdf/1811.03416> [<https://perma.cc/E2W9-4W7F>].

38. See TEX. EST. CODE ANN. § 2001.002(8).

39. *Id.*

40. Öhman & Watson, *supra* note 37, at 10.

41. *Id.*

42. THE ECONOMIST, *supra* note 34.

43. *Id.*

44. *Id.*

45. Arianna Kiaei, *Under the Influence: Duties, Deception, Disclosures, and Due Diligence of Social Media Influencers*, 82 WASH. & LEE L. REV. 365, 400 (2025).

46. THE ECONOMIST, *supra* note 34.

from \$2 billion to almost \$13.8 billion in 2021, with around 50 million content creators, suggesting that the increase of social media users and brand spending has and will only continue to grow with no sign of slowing down.<sup>47</sup> From lifestyle influencers to gamers, these creators receive hundreds, sometimes thousands, of dollars from third parties who pay them for endorsements and ads.<sup>48</sup>

This influencer marketing economy attributes its success not just to the platform and consumer reach, but also to the unique influencers behind the screens.<sup>49</sup> “Influencers build their entire brand upon inviting a public audience into their private lives,” often by tailoring their content to their own unique skills or aspects of their lives that markets or subscribers want to see.<sup>50</sup> The more specific the content, the more specific the brand deals.<sup>51</sup> By targeting influencers who tailor their content, brands have a higher chance of reaching their intended audience; for example, a brand of weight-loss vitamins would not reach out to an account tailored to gamers.<sup>52</sup> Each platform is specifically tailored to each user’s identity, making the influencer behind the screen the content.<sup>53</sup> The relationship between a follower and an influencer is based on trust, credibility, and likeability; therefore, it is more akin to a friendship, which cannot be replaced by just any other influencer.<sup>54</sup>

Each relationship is unique, and typically, the sole reason followers purchase endorsed products.<sup>55</sup> The purchases have less to do with the product and more with who is selling it.<sup>56</sup> For example, in *In re JUUL Labs, Inc., Marketing Sales Practices and Products Liability Litigation*, JUUL (a vape company) used influencers to advertise its product in ways that injured young buyers.<sup>57</sup> Expert Dr. Emery, who had experience in the study of media marketing, explained that “the algorithms used by social media platforms to grow membership and user engagement among key audiences significantly enhance the ability of brands and influencers to target youth audiences . . . .”<sup>58</sup> Dr. Emery went on to explain that JUUL used influencer marketing to reach its intended audience (young adults), underscoring that brands do rely on influencers to push products.<sup>59</sup> In fact, influencers and their

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47. Lin William Cong & Siguang Li, *A Model of Influencer Economy*, NBER 1,1 (May 2023), [https://www.nber.org/system/files/working\\_papers/w31243/w31243.pdf](https://www.nber.org/system/files/working_papers/w31243/w31243.pdf) [<https://perma.cc/F587-DC3S>].

48. Fowler, Helveston & Robinson, *supra* note 7, at 428.

49. Cong & Li, *supra* note 47, at 24.

50. *Id.*; Kiaei, *supra* note 45, at 386.

51. THE ECONOMIST, *supra* note 34.

52. THE ECONOMIST, *supra* note 34; Kiaei, *supra* note 45, at 380.

53. Fowler, Helveston & Robinson, *supra* note 7, at 18.

54. *Id.*

55. *Id.*

56. *Id.*

57. *In re JUUL Labs, Inc., Mktg. Sales Prac. & Prods. Liab. Litig.*, 609 F. Supp 3d 942, 1010 (N.D. Cal 2022).

58. *Id.*

59. *Id.*

relationships with followers are so persuasive that 70% of followers deeply trust influencer recommendations, again, not necessarily because of the product, but because of the relationship.<sup>60</sup> The argument that this persuasiveness of influencers only pertains to prominent influencers is also a mistake, as macro-influencers (a couple of hundred thousand followers) and micro-influencers (three-thousand to one-hundred thousand followers) influences their followers, regardless of size, because their influence “and their messaging are [still] effective because their followers perceive them to have certain qualities that make them influential.”<sup>61</sup>

Essentially, the growth of social media as a source of income is attributable to user identity and the unique personalities behind every screen.<sup>62</sup>

## 2. The Longevity of Digital Accounts and the Concept of the “Digital Afterlife”

When someone creates a social media account, they are not just signing in for the duration of life; they are logging in for the indefinite afterlife as well.<sup>63</sup> A research article in *Big Data and Society* warns of the inevitability of deceased accounts and the lack of an effective policy for handling them.<sup>64</sup> The research posed two scenarios in which the dead will outnumber, or come close to outnumbering, the living on Facebook, one of the largest social media platforms.<sup>65</sup> In scenario A, the researchers assumed no new users join the platform, leading to an estimated 1.4 billion deceased accounts in about fifty years, outnumbering the living.<sup>66</sup> In scenario B, the researchers assumed a 13% annual growth rate in new users (standard growth), leading to an estimated 4.9 billion deceased accounts and eventually becoming equivalent to the living.<sup>67</sup> While the researchers caution that these statistics are estimates, and further warn of the false positives, “an exact estimate is almost beside the point . . . Facebook will undoubtedly have hundreds of millions of dead users by 2060 if not sooner.”<sup>68</sup> Therefore, even if this research proves false, it is undeniable that there will be, and already are, dead users on every platform.<sup>69</sup>

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60. Kiaei, *supra* note 45, at 367.

61. Fowler, Helveston & Robinson, *supra* note 7, at 424.

62. *See generally id.*; Kiaei, *supra* note 45, at 379.

63. Öhman & Watson, *supra* note 37, at 9.

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.* at 4.

68. *Id.*

69. *Id.*

The issue with having dead users is the uncertainty of how to handle their accounts and data.<sup>70</sup> Many legal and academic professionals have shown significant interest and concern in the inheritance of digital estates, as the number of dead accounts has only grown.<sup>71</sup> The core issue is that there is no clear answer, and while this research predicts years in the future, it is happening now.<sup>72</sup> “The results should be interpreted not as a prediction of the future, but as a commentary on the present, and an opportunity to respond with thoughtful and effective policy interventions.”<sup>73</sup> Moreover, while this research approach was tailored specifically to Facebook, it cautioned that Facebook is merely the first in a line of platforms with global reach.<sup>74</sup>

### *B. The Current Treatment of Digital Assets and Online Identity in Estate Planning*

Online identities are inherent to the person behind the screen, posting, commenting, or liking posts; the two are inseparable, unlike a digital asset, which can be transferred to another person for execution or use.<sup>75</sup> However, the law currently does not distinguish between the two, raising concerns about the ability to inherit someone’s identity, especially with the advancements in AI.<sup>76</sup>

#### *1. The Difference Between a Digital Asset and an Online Identity*

At present, the distinction between digital assets and online identities is unclear, which risks merging the two distinct concepts into the single term: “digital assets,” thereby turning identity into property.<sup>77</sup> Take, for instance, the definition of digital assets in the Federal Banking Law 12 U.S.C.A Section 5901(6) as “any digital representation of value that is recorded on a cryptographically secured distributed ledger[,]” in other words, any digital thing that has a monetary value and is securely recorded.<sup>78</sup> Likewise, the Department of Treasury regulations treat digital property as “any digital representation of value that is recorded on a cryptographically secured distributed ledger (or any similar technology), without regard to whether each individual transaction involving that digital asset is actually recorded on that ledger . . . .”<sup>79</sup> These definitions propose the principle that anything with

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70. *Id.* at 5.

71. *Id.* at 8.

72. *Id.*

73. *Id.*

74. *Id.*

75. *See* Kiaei, *supra* note 45, at 379.

76. Atta et al., *supra* note 16, at 1.

77. *See* TEX. EST. CODE ANN. § 2001.002(8).

78. 12 U.S.C. § 5901(6).

79. Treas. Reg. § 1.6045-1(a)(19) (2025).

economic value is a digital asset that can be transferred and owned; therefore, as already established, online identity is among the greatest forms of economic value in brand endorsements and influencer revenue.<sup>80</sup>

Nevertheless, an online identity is not just a tangible economic asset that can be handed over from one person to another; it is part of the individual behind the screen.<sup>81</sup> “Online identity is the persona we project in the digital realm[,]” meaning media users intentionally create these internet identities to demonstrate the way they desire to be looked at, and by doing so, they form characters with their own will, beauty, and distinctive traits.<sup>82</sup>

Other than platform guidelines, users are free to express themselves however they choose.<sup>83</sup> Each account is particular to the person behind the screen, incapable of accurate replication.<sup>84</sup> “Influencers themselves are a brand,” and this authentic brand invites relationships with followers that cannot just be handed over to another, like any other item of property.<sup>85</sup> Followers often develop parasocial relationships with influencers because the influencer’s identity and content appeal to the follower.<sup>86</sup> This relationship is often even stronger because of the nature of social media; followers can interact with influencers at the touch of a button, almost as if the two were family or friends.<sup>87</sup>

Despite the difference between digital assets and online identity, the lack of differentiation between the two has led some courts to apply standard property law principles to digital lives.<sup>88</sup> In *JLM Couture, Inc. v. Gutman*, the court used traditional property law to guide its decision.<sup>89</sup> There, the dispute was as to who owned the account, basically, whether it was a company account or if it was tied to a user’s identity.<sup>90</sup> The court held that the “[d]isputed [a]ccounts should be treated . . . like any other form of property.”<sup>91</sup> The court ran through the basics of who originally created the account, allowing “traditional principles of property law [to] guide [its] analysis.”<sup>92</sup> However, online identities cannot be handed off as easily as an email account; they are inherent to the person behind the screen and should be guided by their own principles.<sup>93</sup>

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80. Fowler, Helveston & Robinson, *supra* note 7, at 431.

81. Thielke, *supra* note 14.

82. *Id.*

83. See *Community Guidelines*, FACEBOOK HELP CENTER, <https://www.facebook.com/help/477434105621119> [<https://perma.cc/W93B-SK4N>] (last visited Apr. 2, 2026).

84. Fowler, Helveston & Robinson, *supra* note 7 at 431.

85. *Id.*

86. *Id.*

87. *Id.*

88. *JLM Couture, Inc. v. Gutman*, 91 F.4th 91, 102–03 (2nd Cir. 2024).

89. *Id.*

90. *Id.*

91. *Id.* at 102.

92. *Id.* at 103.

93. Fowler, Helveston & Robinson, *supra* note 7, at 461.

## 2. *The Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA) and the Lack of Guidance for Online Identity for Both States and Platforms*

The lack of guidance on how to handle online identity is transparent in the law.<sup>94</sup> For example, in *In re Vital Pharmaceutical*, the court was forced to create its own test for deciding who owned a disputed social media account, because Florida law did not have a statute “governing ownership of digital assets, such as social media accounts, like it does for (among other things) real property and motor vehicles.”<sup>95</sup> The court went on to state that “[u]nfortunately, given the rise of influencer marketing, the existing test for determining ownership of the rights to social media accounts is outdated[,]” explaining that “[p]erhaps it is time for Congress or State Legislatures to adopt a statutory framework . . . [b]ut that has not happened yet. Until it does, the court must fashion a standard . . . .”<sup>96</sup>

This lack of guidance is evident not only in Florida courts but also in other state statutes.<sup>97</sup> For example, in Texas, the Estates Code Section 2001.102(a) provides that “[u]nless the deceased user prohibited disclosure of digital assets or the court directs otherwise, a custodian shall disclose to the personal representative of the estate of a deceased user a catalog of electronic communications sent or received by the user and digital assets,” defining digital assets as “an electronic record in which an individual has a right or interest.”<sup>98</sup> This showcases the lack of distinction between digital assets and online identity, risking the collapse of the two terms into a single one.<sup>99</sup> Similarly, Georgia and Oregon have adopted the RUFADAA and follow the same definitions and processes as those listed above for Texas, all of which risk collapsing identity into property.<sup>100</sup> In contrast, Louisiana takes the approach that this Comment expressly opposes.<sup>101</sup> Louisiana allows “[s]ubject to any restrictions provided in a valid testament of a decedent or an order of a court of competent jurisdiction, a succession representative shall have the power and authority to take control of, handle, conduct, continue, distribute, or terminate any digital account of the decedent.”<sup>102</sup> Regardless of the approach taken by the states, the bottom line is clear: there is no uniform

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94. *In re Vital Pharm.*, 652 B.R. 392, 406 (Bankr. S.D. Fla. 2023); TEX. EST. CODE ANN. § 2001.102; GA. CODE ANN. § 53-13-14 (2025); OR. REV. STAT. § 119.026 (2025); LA. CODE CIV. PROC. ANN. art. 3191 (2023).

95. *In re Vital Pharm.*, 652 B.R. at 398.

96. *Id.*

97. TEX. EST. CODE ANN. § 2001.102; GA. CODE ANN. § 53-13-14 (2025); OR. REV. STAT. § 119.026 (2025); LA. CODE CIV. PROC. ANN. art. 3191 (2023).

98. TEX. EST. CODE ANN. §§ 2001.102, 2001.002(8)

99. *Id.*

100. GA. CODE ANN. §§ 53-13-14, 53-13-2 (2025); OR. REV. STAT. §§ 119.026, 119.006 (2023).

101. LA. CODE CIV. PROC. ANN. art. 3191 (2023).

102. *Id.*

guidance on how to handle or differentiate digital assets and online identity for deceased persons' social media accounts.<sup>103</sup>

The uniform code that these states, and others, have adopted from is the RUFADAA.<sup>104</sup> The RUFADAA defines a digital asset as an “electronic record in which an individual has a right or interest.”<sup>105</sup> The act provides no separate definition of online identity or its non-transferability, which has proved to be the core problem.<sup>106</sup>

Furthermore, platforms lack guidance on how to handle the deceased's social media accounts.<sup>107</sup> For instance, Facebook offers various options for the accounts of the deceased: making the account a memorial, assigning a legacy contact, or deleting the account completely.<sup>108</sup> When the account is transformed into a memorial, no one can log in to post or make changes; instead, it becomes a page where family members and friends can share memories or write their condolences.<sup>109</sup> Moreover, the term “remembering” is placed right next to the profile’s name to inform other users that it is an account of a deceased person.<sup>110</sup> In contrast, a legacy contact is someone assigned to look after the deceased’s profile; they can continue the account by accepting friend requests, editing profiles and cover pictures, or deleting the account.<sup>111</sup> Permanent deletion is the last remaining option for the deceased’s account.<sup>112</sup>

Instagram follows a similar approach by allowing an account to be memorialized, which locks the account, so it remains true to the original user and notifies users with the word “remembering” that it belongs to the deceased.<sup>113</sup> On the other hand, TikTok does not provide any guidance on closing a deceased account.<sup>114</sup> Those who wish can provide directions for their families or, if they prefer, simply wait for the account to be deactivated.<sup>115</sup> Furthermore, while memorialization may sound like it has solved the transferability of online identity issue in one fell swoop, memorialization only addresses how the account is “remembered,” preserving it as a passive archive.<sup>116</sup> Memorialization does not specify how,

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103. *Id.*; *In re Vital Pharm.*, 652 B.R. 392, 406 (Bankr. S.D. Fla. 2023); TEX. EST. CODE ANN. § 2001.102; GA. CODE ANN. § 53-13-14 (2025); OR. REV. STAT. § 119.026 (2025).

104. TEX. EST. CODE ANN. § 2001.002(8).

105. *Id.*

106. *Id.*

107. FACEBOOK HELP CENTER, *supra* note 83.

108. *Id.*

109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.*

113. FACEBOOK HELP CENTER, *supra* note 83.

114. *What Happens to Your TikTok Profile When You Die*, QLaw (Jan. 4, 2024), <https://qlaw.co.uk/probate/what-happens-to-your-tiktok-profile-when-you-die/> [<https://perma.cc/3W3U-L3Q3>].

115. *Id.*

116. *Id.*

or even whether, online identity is protected, leaving the underlying issue of posthumous identity control unresolved.<sup>117</sup> Further, memorialization is not present on all platforms.<sup>118</sup> Regardless of the different ways platforms and states have adopted to tackle the issue, the discrepancies between them make it clear that no standard has been set for how the online identities of the deceased should be handled.<sup>119</sup>

Imagine the following scenario: Bailey, a social media user, shares her life and struggles with a terminal disease with the world; her posts are crafted to uplift and encourage others facing similar experiences or tough times through her vulnerability.<sup>120</sup> Bailey was the content.<sup>121</sup> Bailey built a genuine brand based on her life, which nobody outside her world could really understand.<sup>122</sup> Once Bailey passes away unexpectedly, her sister, Tabitha, gains access to her login details and takes over her account.<sup>123</sup> At first, Tabitha shared old pictures and videos of Bailey, trying to copy her distinctive style and aesthetics; however, because Bailey's posts were so deeply personal and part of her identity, her followers noticed the lack of authenticity and did not connect with them.<sup>124</sup> Thus, many of her followers felt that the account had become inauthentic.<sup>125</sup> Consequently, her posthumous reputation suffered, leaving the audience with a strong sense that the account was not genuine.<sup>126</sup> In addition, while some people knew that Bailey had died, others thought Bailey was still alive and posting.<sup>127</sup> Over time, Tabitha started doing paid promotions for hair-care gummies or weight-loss products, turning Bailey's account and identity into labor for commercial purposes.<sup>128</sup>

While this is a posed hypothetical, it is a reality.<sup>129</sup> For example, the death of Charlie Kirk, a popular social media user, swept the nation.<sup>130</sup> It was evident from his posts, arguments, and speeches that he was irreplaceable.<sup>131</sup> Charlie Kirk was the content.<sup>132</sup> After Charlie Kirk's passing, his X account (formerly Twitter) began posting about his non-profit organization, Turning

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117. *Id.*

118. *See generally*, FACEBOOK HELP CENTER, *supra* note 83.

119. *Id.*; *Community Guidelines*, INSTAGRAM HELP CENTER, <https://help.instagram.com/231764660354188> [<https://perma.cc/E4TS-CTKR>] (last visited Apr. 2, 2026); QLAW, *supra* note 114.

120. Author's original thought.

121. *Id.*

122. *Id.*

123. *Id.*

124. *Id.*

125. *Id.*

126. *Id.*

127. *Id.*

128. *Id.*

129. *See generally*, Video posted by Charlie Kirk (@charliekirk11), X, *The Epstein Emails + Coalition Building and Breaking* (Nov. 13, 2025, 10:59 AM), <https://x.com/i/broadcasts/1kvJpMQNVvXxE> [<https://perma.cc/EX7V-PRLE>].

130. *Id.*

131. *Id.*

132. *Id.*

Point USA (TPUSA).<sup>133</sup> Even though TPUSA and Charlie Kirk are closely tied, those posts can be seen as leveraging Charlie's deceased account to promote TPUSA's agenda.<sup>134</sup> What was once Charlie Kirk is now someone else behind the screen, leveraging his social media and online identity as a tool.<sup>135</sup>

Social media users have also expressed their discomfort with posthumous posts and social media interaction.<sup>136</sup> One user commented that posts by people on the accounts of the deceased are "creepy and cruel," and "just gross."<sup>137</sup> With another user noting that posting on a deceased user's account felt "performative," or "false in tone and message."<sup>138</sup>

The lack of guidance is evident, as shown by statutory law and cases, and the need for guidance is even more pronounced given the risks of merging online identity into transferable property, which is already happening.<sup>139</sup>

### 3. *The Increasing Role Artificial Intelligence Plays in Resurrecting Digital Identities*

The dangers of allowing someone to inherit the rights to a deceased's online identity are only heightened by the capabilities of AI.<sup>140</sup> Modern AI can now "convincingly imitate human identity, including voice, visual impersonation, behavior mimicry, and even memory recycling."<sup>141</sup> Meaning, someone could easily mimic the deceased for continued economic profit, influence, or popularity.<sup>142</sup> The artificial replication of a human by AI has resulted in identity fraud that has cost more than \$35 billion in losses to date.<sup>143</sup> This alone should be enough to convince lawmakers and regulators of the urgent need for effective legislation or guidance to secure people's identities.<sup>144</sup> AI replication can fool traditional detection systems and thereby commit identity fraud, so think of what AI can do and has done in a social

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133. *Id.*

134. *Id.*

135. *Id.*

136. *How Do You Feel About People Posting Stuff on Their Dead Relatives' Social Media and Make It Sound Like They're Making Comments from Heaven?*, QUORA, <https://www.quora.com/How-do-you-feel-about-people-posting-stuff-on-their-dead-relatives-social-media-and-make-it-sound-like-they-re-making-comments-from-heaven> [https://perma.cc/3Z78-3525] (last visited Apr. 2, 2026).

137. *Id.*

138. *Posting on dead people's FB*, REDDIT, [https://www.reddit.com/r/PetPeeves/comments/1iqkug0/posting\\_on\\_dead\\_peoples\\_fb/](https://www.reddit.com/r/PetPeeves/comments/1iqkug0/posting_on_dead_peoples_fb/) [https://perma.cc/3UZ9-JQ69] (last visited Apr. 2, 2026).

139. Author's original thought.

140. Atta et al., *supra* note 16, at 1.

141. *Id.*

142. *Id.*

143. *Id.*

144. *Id.*

media environment where users do not have to verify themselves before posting.<sup>145</sup>

This threat has been studied by researchers who recognize the critical need for “identity protection frameworks to mitigate the growing threats posed by generative AI.”<sup>146</sup> The current regulations meant to protect identity focus on data security rather than the fundamental issue of identity protection.<sup>147</sup> This emphasizes the complete lack of differentiation between identity and data in the law.<sup>148</sup> Without effective regulation that focuses on the actual issue of identity rights, this problem will only continue to grow.<sup>149</sup>

Furthermore, the law has already faced the dangers of AI.<sup>150</sup> In *In re Martin*, two attorneys were sanctioned after using AI to draft a brief that included false cases.<sup>151</sup> The court underlined that AI could undermine credibility and cause significant harm, describing the consequences as “steep.”<sup>152</sup> The sanction imposed on the attorneys included a \$5,500 fine and a course on the dangers of AI.<sup>153</sup> The court referred to this as the “least harsh” punishment.<sup>154</sup> If the court in that case referred to thousands of dollars and a class as light punishment for incorrect citations, then surely the concern for posthumous identity impersonation is greater.<sup>155</sup> Likewise, the court in *Kadrey v. Meta Platforms, Inc.*, was concerned with the use of AI under copyright law.<sup>156</sup> There, copyrighted material was being used to train an AI model.<sup>157</sup> While the court ultimately ruled that there was no copyright infringement, this case shows that AI is encroaching on areas of the law and that if the courts are concerned about human ideas, then surely they are concerned about AI’s implications for human identity.<sup>158</sup>

Additionally, if online identities were inheritable, AI could be used to speak or deceive an audience for endorsements or political purposes by using the decedent’s online platform, which is impermissible.<sup>159</sup> According to the Code of Federal Regulations, “[e]ndorsements must reflect the honest opinions, findings, beliefs, or experience of the endorser” and “may not convey any express or implied representation that would be

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145. *Id.*

146. Atta et al., *supra* note 16, at 2.

147. *Id.*

148. *Id.*

149. *Id.*

150. *See generally In re Martin*, 670 B.R. 636 (N.D. Ill. 2025) (ruling that using AI in legal proceedings can be grounds for sanctioning attorneys).

151. *Id.* at 646.

152. *Id.* at 638.

153. *Id.*

154. *Id.*

155. Author’s original thought.

156. *Kadrey v. Meta Platforms, Inc.*, 788 F. Supp. 3d 1026, 1034 (N.D. Cal. 2025).

157. *Id.*

158. *Id.*

159. Atta et al., *supra* note 16, at 3.

deceptive . . . .”<sup>160</sup> While one could argue that what is being endorsed or said reflects what the deceased would want or believe, there is no way to be sure, as people constantly change and evolve their identities.<sup>161</sup>

In totality, AI raises even more concerns about the lack of guidance and differentiation between digital assets and online identity, as the dead can now exist among the living.<sup>162</sup>

### III. ESTABLISHING LEGAL BOUNDARIES TO PROTECT ONLINE IDENTITY AFTER DEATH

To address the vital issue of online identity impersonation, the law must create a distinct legal category that distinguishes online identity from digital assets.<sup>163</sup> Without creating this distinct legal category, the law risks treating identity as transferable at death, a position it has already deemed impermissible.<sup>164</sup> Furthermore, current legal regimes, such as property and contract law, are incapable of addressing identity concerns and instead point to the need to distinguish assets and online identity through statutory fixes to protect dignity.<sup>165</sup>

#### *A. A Framework Declaring Online Identity Legally Non-Transferable by Modification of the RUFADAA for Setting Apart Assets from Online Identity*

Without clear guidance, the states currently rely on an inconsistent mix of probate statutes and digital-asset laws, none of which provide direction on whether a user should continue speaking online when the user can no longer control what is said in their name.<sup>166</sup> As digital communication expands and online identity becomes more central to personal expression, the absence of rules creates room for practices that will be far harder to limit after they become commercially and socially acceptable.<sup>167</sup> With no statutory boundary separating permissible asset management from identity continuation, fiduciaries are forced to make high-stakes decisions about whether posts, responses, or AI-generated communications constitute illegal impersonation

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160. 16 C.F.R. § 255.1(a) (2024).

161. Patrick van Esch & Yuanyuan (Gina) Cui, *Digital Afterlife: Will Your AI Self Outlive You—and What Does That Mean?*, PSYPOST (Mar. 18, 2025), <https://www.psypost.org/digital-afterlife-will-your-ai-self-outlive-you-and-what-does-that-mean/> [https://perma.cc/RQ2P-EBRX].

162. Atta et al., *supra* note 16, at 1.

163. Author’s original thought.

164. U.S. CONST. art. I, § 8, cl. 8.

165. *Id.*

166. *In re Vital Pharm.*, 652 B.R. 392, 406 (Bankr. S.D. Fla. 2023); TEX. EST. CODE ANN. § 2001.102; GA. CODE ANN. § 53-13-14 (2025); OR. REV. STAT. § 119.026 (2025); LA. CODE CIV. PROC. ANN. art. 3191 (2023).

167. Öhman & Watson, *supra* note 37, at 9.

or routine account access.<sup>168</sup> Likewise, platforms are forced to make decisions without guidance on whether a deceased user's profile should continue to be used, appear active, or be memorialized.<sup>169</sup> Furthermore, the risk that survivors or automated systems will keep users "alive" increases with each advance in AI simulation of voice and personality, making legal intervention necessary before impersonation and deception become normalized features of online life.<sup>170</sup>

Specifically, this lack of differentiation is evident in the RUFADAA, a uniform act that state legislatures draw on to draft their own acts governing the digital realm after a user passes away.<sup>171</sup> This Comment recommends revising the act to separate online identity from digital assets and stipulate that the latter shall not be transferred to anyone after death.<sup>172</sup> The suggested changes are as follows:

(a) Definition: "Online Identity" refers to the personal, expressive, relational, and communicative characteristics of an individual's online presence, including voice, likeness, tone, behavioral patterns, posting style, interactive persona, and social identification markers.

(b) Non-transferability: The online identity of a user is not a digital asset and, therefore, cannot be accessed, transferred, impersonated, replicated, or continued after the user's death. The online identity is closed at death and may not be inherited.

(c) Void provisions: Any provision in a will, trust, contract, or terms-of-service agreement that tries to transfer or authorize the use of a digital identity of a deceased person is deemed void. This prohibition does not preclude memorialization, archival preservation, or good-faith artistic, historical, or scholarly access to existing content, provided that no person or system is permitted to speak, act, monetize, or generate new expression on behalf of the deceased, or to replicate the deceased's identity through artificial or automated means.<sup>173</sup>

If this amendment were implemented, the fictitious situation mentioned earlier would have a very different outcome: Bailey's identity would not be used to trick her followers and be marketed by another as a commodity.<sup>174</sup> Instead, her account would be turned into a memorial where friends and family could visit and leave comments.<sup>175</sup> Therefore, Bailey's identity and

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168. See TEX. EST. CODE ANN § 2001.002(8).

169. FACEBOOK HELP CENTER, *supra* note 83.

170. Atta et al., *supra* note 16, at 1; Fowler, Helveston & Robinson, *supra* note 7, at 420.

171. TEX. EST. CODE ANN. § 2001.002(8).

172. Author's original thought.

173. *Id.*

174. *Id.*

175. *Id.*

reputation after death would be preserved, but history would not be erased.<sup>176</sup> Moreover, this amendment is closely related to the legal precedent governing identity in the real world and is merely an extension of that precedent into the digital world.<sup>177</sup>

In short, amending the RUFADAA to formally recognize digital identity as non-transferable would close the most dangerous gap in current law, ensuring that online identity remains part of the person, not inheritable property.<sup>178</sup>

*B. Existing Legal Analogies and Frameworks for Understanding Inheritance in Property and the Lack of Inheritance for Online Identity*

Current legal regimes are inadequate to protect online identity from impersonation and do not support its transferability.<sup>179</sup> Instead, they provide support in creating a distinct legal category for online identity.<sup>180</sup>

*1. Property Law: Tangible Assets and Intellectual Property*

By comparing existing categories of property law to online identity, the argument for why online identity should be a distinct, non-inheritable category is even stronger; property law concerns things, while online identity concerns who a person is.<sup>181</sup> Intellectual property mainly refers to the rights of creators to their ideas or to the things that can be physically made from them.<sup>182</sup> On the other hand, online identity is not just an idea or something invented; rather, it's a different way of expressing oneself.<sup>183</sup> For example, one category of intellectual property law is patent law, which protects inventions that may not be physically demonstrable, such as an AI algorithm, a medical method for treating a disease, or a chemical formula.<sup>184</sup> Essentially, patent law covers what a person makes, not who a person is; therefore, patent law cannot extend to online identity, since online identity is not just a creation but an extension of human identity.<sup>185</sup>

176. *Id.*

177. *Id.*

178. *Id.*

179. U.S. CONST. art. I, § 8, cl. 8; *Peniche v. Aeromexico*, 580 S.W.2d 152, 156 (Tex. Civ. App.—Houston [1st Dist.] 1979, no writ).

180. U.S. CONST. art. I, § 8, cl. 8; *Peniche*, 580 S.W.2d at 156.

181. 48 C.F.R. § 9904.404-30 (2025); U.S. CONST. art. I, § 8, cl. 8; 35 U.S.C. § 101; 17 U.S.C. § 102(a); TEX. EST. CODE ANN. § 255.001; CAL. PROB. CODE § 6132 (2026); Ewa Michalkiewicz-Kadziela & Ewa Milczarek, *Legal Boundaries of Digital Identity Creation*, INTERNET POL'Y R. (Jan. 14, 2022), <https://policyreview.info/articles/analysis/legal-boundaries-digital-identity-creation> [<https://perma.cc/63JR-FS5X>].

182. U.S. CONST. art. I, § 8, cl. 8.

183. Michalkiewicz-Kadziela & Milczarek, *supra* note 181.

184. 35 U.S.C. § 101 (2026).

185. *Id.*

Copyright law, another sector of intellectual property law, on the other hand, covers only tangible mediums like literary works, architectural works, or sound recordings.<sup>186</sup> Meaning, even though people use tangible mediums to express their identities, like music or logos, identity is not tangible; it is a complex and evolving combination of intangible traits, such as values, beliefs, personality, and experiences.<sup>187</sup>

Overall, the purpose behind intellectual property law is to promote creativity and the progress of science and useful arts.<sup>188</sup> Intellectual property law does so by allowing these inventors to prevent others from stealing or copying their works; however, if the law were to allow online identity to be transferable, enabling AI recreations or the continuation of content, it would only be promoting online impersonation.<sup>189</sup>

Another category of property law concerns tangible assets: physical items with value.<sup>190</sup> For example, according to California Probate Code Section 6132, tangible personal property is “articles of personal or household use or ornament, including, but not limited to, furniture, furnishings, automobiles, boats, and jewelry, as well as precious metals in any tangible form . . . .”<sup>191</sup> In the same way, Texas Estate Code Section 255.001 describes “contents” as “clothing, pictures, furniture, coin collections, and other items of tangible personal property . . . .”<sup>192</sup> On the other hand, you cannot give away your identity the way you could a sofa; an identity is a unique property of an individual, which means it cannot be kept or passed down to another.<sup>193</sup>

## *2. Contract Law: Right of Publicity, Personal Services, and the Non-Transferability of Online Identity*

Personal service contracts explicitly state certain legal interests that are closely bound to an individual and cannot be separated or transferred.<sup>194</sup> A personal service contract is based on the promisor’s personal skills, judgment, or identity, characteristics that a substitute performer cannot imitate.<sup>195</sup> Courts acknowledge that if the performance depends on the identity of a particular individual, rather than what is being produced, the

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186. 17 U.S.C. § 102(a) (2026).

187. Michalkiewicz-Kadziela & Milczarek, *supra* note 181.

188. U.S. CONST. art. I, § 8, cl. 8.

189. See 35 U.S.C. § 101 (2024); Ewa Michalkiewicz-Kadziela & Ewa Milczarek, *supra* note 181.

190. See U.S. CONST. art. I, § 8, cl. 8; see also 35 U.S.C. § 101 (2024); see also 17 U.S.C. § 102(a) (2024); TEX. EST. CODE ANN. § 255.001; CAL. PROB. CODE § 6132 (West 2024).

191. CAL. PROB. CODE § 6132(h)(1) (West 2024).

192. TEX. EST. CODE ANN. § 255.001(1).

193. See Michalkiewicz-Kadziela & Milczarek, *supra* note 181.

194. RESTATEMENT (SECOND) OF CONTS. § 317(2)(a) (A.L.I. 1981) (explaining that assignment is prohibited when performance depends on personal skill or trust).

195. See *Peniche v. Aeromexico*, 580 S.W.2d 152, 156 (Tex. Civ. App.—Houston [1st Dist.] 1979, no writ).

obligation cannot be delegated.<sup>196</sup> For example, in *In re Terry L. McVay*, the clients selected a lawyer who later filed for bankruptcy, and when the trustee sought access to the client-attorney privileged documents—thereby implicitly taking on the clients as his own—the court held that he could not.<sup>197</sup> The court went on to explain that, under personal service contract law, the trustee could not simply assign himself to the clients, elaborating that the clients had chosen and built trust with a specific attorney, and that trust is non-transferable.<sup>198</sup> The court stated that “personal services contracts cannot be assumed or assigned by bankruptcy trustees because they are based upon personal services or skills or upon personal trust or confidence” with another individual.”<sup>199</sup>

Much like how a client trusts their lawyer, followers trust their influencers; it is well established that subscribers will take the advice of and sometimes even purchase items because of the rapport built between them and their influencer.<sup>200</sup> That trust is built between two specific people, meaning online identity cannot be transferable because a substitute does not have those particular relationships and would only be posing as the influencer.<sup>201</sup> Similarly, in *Peniche v. Aeromexico*, the Texas Court of Appeals held that “[r]ights arising out of contract(s) cannot be transferred if they involve a relation of personal confidence,” because trust and individual character are essential to the agreement itself.<sup>202</sup> When the law refuses to permit a stand-in for a person’s labor, it is acknowledging that identity cannot be delegated.<sup>203</sup>

Moreover, although there have been instances in which a contract has been deemed transferable, the courts have recognized that personal services, when tied to someone’s identity, are non-transferable and have made exceptions only because of the contract’s terms.<sup>204</sup> For example, while it was held in *Fransmart, LLC v. Freshii Development* that there was no personal service contract, it was only because the contract was between two business entities, and the terms of the agreement made it clear that anyone could run the business.<sup>205</sup> The terms never specified a single individual who had to perform for the business; instead, they included the word “successors.”<sup>206</sup> The court stated that personal services are for contracts performed by specific

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196. *Id.*

197. *See In re McVay*, 169 B.R. 49, 50–51 (Bankr. W.D. Mo. 1994).

198. *Id.* at 51.

199. *Id.*

200. *See Kiaei*, *supra* note 45, at 385.

201. *Id.*

202. *Peniche v. Aeromexico*, 580 S.W.2d 152, 156–57 (Tex. Civ. App.—Houston [1st Dist.] 1979, no writ).

203. *Id.*

204. *Fransmart, LLC v. Freshii Dev., LLC*, 768 F. Supp. 2d 851, 860 (S.D.N.Y. 2011).

205. *Id.*

206. *Id.* at 856.

people, but that rationale “does not apply in cases where the contract is between two corporate entities and the contract specifically provides that anyone can perform the contractual duties.”<sup>207</sup> Therefore, even though contracts for services are sometimes transferable, they are only transferable when the contract does not rely on a particular person.<sup>208</sup> Online identity would not fall into this category, as it depends on the specific user’s skill and judgment; it is an extension of who the person is, digitally encompassing their experiences and beliefs, and is incapable of being replicated.<sup>209</sup>

If identity-dependent roles in life cannot be reassigned to another person, as in *Peniche, In re Terry L. McVay, and Fransmart*, then an online identity that communicates through the decedent’s voice, attempting to take on the decedent’s relationships and self-expression, should not be treated as transferable at death.<sup>210</sup> Personal-services doctrine, therefore, affirms the underlying principle this Comment advances: in which identity is the substance of the role, the right dies with the person.<sup>211</sup>

These cases emphasize what the Restatement (Second) of Contracts Section 317(2)(a) instructs, that a contractual right cannot be reassigned if a substitute is incapable of replicating the original agreement.<sup>212</sup> This notion clarifies what case law has already shown: if the performance is specific to the individual, the law will not allow a substitute.<sup>213</sup>

These doctrines reveal a simple rule: identity-driven roles belong to the person, not to the estate.<sup>214</sup> A social-media persona is not a collection of marketable attributes; it is a human presence expressed digitally.<sup>215</sup> Treating that presence as inheritable property would give others the power to speak as the dead, collapsing personal autonomy into a commodity.<sup>216</sup>

Furthermore, the argument for the inheritance of online identity falls outside of the scope of publicity rights.<sup>217</sup> While publicity rights can be inherited after death, they pertain only to an individual’s commercial value; they do not confer the right to continue or assume someone else’s identity.<sup>218</sup> Even though both identity and publicity rights involve likeness, publicity

207. *Id.* at 861.

208. *Id.*

209. Michalkiewicz-Kadziela & Milczarek, *supra* note 181.

210. *See Peniche v. Aeromexico*, 580 S.W.2d 152, 156 (Tex. Civ. App.—Houston [1st Dist.] 1979, no writ) (explaining the importance of individual trust in these relationships).

211. *Id.*

212. RESTATEMENT (SECOND) OF CONTRS. § 317(2)(a) (A.L.I. 1981) (stating that assignment is prohibited when performance depends on personal skill or trust).

213. *Id.*

214. TEX. PROP. CODE § 26.002; CAL. CIV. CODE § 3344.1 (West 2024); *White v. Samsung Elecs. Am., Inc.*, 971 F.2d 1395, 1397–99 (9th Cir. 1992).

215. *White*, 971 F.2d at 1397–99.

216. *In re McVay*, 169 B.R. 49, 51 (Bankr. W.D. Mo. 1994) (“If the transferee attorneys have agreed to forward any monies to the debtor, such monies would be property of the section 541(a) estate. But this decision also will be reserved for another day.”).

217. *Id.* at 49.

218. *Id.*

rights do not allow a person to inherit the rights to a specific individual's identity; they only allow a person to inherit the commercial value tied to the person.<sup>219</sup> Online identity is not something that can be exercised by another without becoming that person specifically.<sup>220</sup> To illustrate this point, Texas Property Code Section 26.002(a) states that an "individual has a property right in the use of the individual's name, voice, signature, photograph, or likeness after the death of the individual."<sup>221</sup> The statute grants rights only on the basis of a person's commercial value; it does not permit or grant the right to strip the deceased of their autonomy and assume their identity.<sup>222</sup> Similarly, California Civil Code Section 3344.1(h) mentions using a deceased person's "name, voice, signature, photograph, or likeness . . . in products, merchandise, or goods . . ."<sup>223</sup> Further supporting the idea that while publicity rights can grant the right to use a deceased person's likeness, they do not mean someone gets to step into, or become, that person, and allowing transferability of online identity would do just that.<sup>224</sup>

Moreover, according to Texas Property Code Section 26.002, as well as California Civil Code Section 3344.1(a)(1), rights of publicity are mostly about consent.<sup>225</sup> Publicity rights go so far as to explicitly punish those who use others' likenesses without permission, making them responsible for any losses the other party has sustained.<sup>226</sup> While it may be very simple for one to sign a contract that permits Cheerios to put someone's face on their packaging, the scope of consent does not extend to someone inheriting another's identity.<sup>227</sup> The deceased's last recorded intentions might be showing the person they were years ago and not the one they had become near their death, and not who they might be if they could react to the new situations nowadays.<sup>228</sup> This idea was supported by the court in *White v. Samsung Electronics America, Inc.*, when it was pointed out that a celebrity's right of publicity had been infringed when Samsung used a robot in a commercial that looked like the celebrity, even with no use of the name, just the likeness, without the celebrity's consent.<sup>229</sup> The gist of it is that the law serves to protect the associated economic interests rather than the actual identity.<sup>230</sup>

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219 *Id.*

220. *See Peniche v. Aeromexico, Inc.*, 580 S.W.2d 152, 156 (Tex. App.—Houston [1st Dist.]1979 no writ); RESTATEMENT (SECOND) OF CONTS. § 317(2)(a) (A.L.I. 1981).

221. TEX. PROP. CODE ANN. § 26.002(a).

222. *Id.*

223. CAL. CIV. CODE § 3344.1(h) (2024).

224. *Id.* § 3344.1(a)(1).TEX. PROP. CODE ANN. § 26.002(a);

225. *Id.*

226. *Id.*

227. *Id.*

228. *Id.*

229. *White v. Samsung Elecs. Am., Inc.*, 971 F.2d 1395, 1397–99 (9th Cir. 1992).

230. *Id.*

### 3. *The Law Protects Dignity and Autonomy: A Position in Line with the Protection of Online Identity*

Previous court decisions have clearly shown that human dignity and autonomy are the primary rights of human beings, and the courts, along with the Constitution, are their most loyal defenders.<sup>231</sup> The right to be oneself is not only a subject of policy discussion but also a field of law in which courts have been very consistent in their decisions.<sup>232</sup> For example, in *Obergefell v. Hodges*, the Supreme Court held that states that did not allow same sex marriages were in violation of the Fourteenth Amendment's Due Process Clause.<sup>233</sup> The Court explained that the Fourteenth Amendment protects fundamental liberties and guarantees people the right to define and express their own identities, and that any law that contradicts that right is open to a claim under the liberty component of the Fourteenth Amendment.<sup>234</sup> While this case had to do with same sex marriages, it still underscores the importance the law places on autonomy and the ability to define and make "personal choices central to individual dignity and autonomy."<sup>235</sup> If online identity were to become inheritable, it would contradict precisely what the courts have forbidden: control over one's personal choices, the right to decide and speak for one's beliefs, and, essentially, the decedent's autonomy.<sup>236</sup>

Similarly, in *Floyd v. City of New York*, the court was dealing with a policy that allowed police to stop and unlawfully search people, even for a brief period.<sup>237</sup> The court explained that physical liberty—the right to control one's own body and movement—is "at the core of our nation's commitment to respecting the autonomy and dignity of each person . . ."<sup>238</sup> An online identity is the movement of one's body and choices, only in the digital realm.<sup>239</sup> Online identity is made up of a person's choices and is shaped by their movements and minds; allowing someone else to control it goes against dignity and autonomy in a way the courts have deemed impermissible.<sup>240</sup> The court further explained that "[n]o right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person . . ."<sup>241</sup> However, this sacred

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231. *Id.*

232. *Id.*

233. *Obergefell v. Hodges*, 576 U.S. 644, 647 (2015).

234. *Id.* at 645.

235. *Id.*

236. *Id.*

237. *Floyd v. City of New York*, 283 F.R.D. 153 (S.D.N.Y. 2012).

238. *Id.* at 158.

239. Fowler, Helveston & Robinson, *supra* note 7, at 424.

240. *Id.*; *Floyd*, 283 F.R.D. at 153; *Obergefell*, 576 U.S. at 645.

241. *Floyd*, 283 F.R.D. at 160.

right—the ability to control one’s own person—ceases if identity becomes controllable.<sup>242</sup>

The courts have also deemed that liberty cannot exist without autonomy.<sup>243</sup> In *Lawrence v. Texas*, the Supreme Court struck down a law that criminalized same-sex intimacy in private homes.<sup>244</sup> There, the Court explained that “[l]iberty presumes an autonomy of self that includes freedom of thought, belief, expression, and certain intimate conduct.”<sup>245</sup> Further elaborating that liberty is at the heart of defining oneself.<sup>246</sup>

In addition, the Code of Federal Regulations Section 255.1 is aimed at maintaining an individual’s identity when it is used for persuasion, thereby showing that online identity cannot be handed over to someone else since a person’s honest opinions, findings, beliefs, or experiences are the main constituents of their identity.<sup>247</sup> According to the Code of Federal Regulation Section 255.1, endorsements should be a reflection of the real person’s ideas, and in the case that they are not, the public is deceived, and it is a punishable offense.<sup>248</sup> Showcasing that identity cannot be handed over, as those beliefs and experiences are uniquely shaped and central to each individual; thus, another cannot use it.<sup>249</sup>

Dignity is not only material during life; it also transcends life, meaning it still needs to be protected after death, especially since the decedent can no longer protect their own name.<sup>250</sup> This Comment argues what the law has long established: that liberty is central to autonomy, and autonomy demands the ability to control oneself.<sup>251</sup>

### *C. Economic and Contractual Interest Do Not Justify the Transferability of Online Identity*

The law does not permit people to do whatever they want just because they want to; contract law has limits.<sup>252</sup> The law does not permit people to contract away their identities, and furthermore, there is no reason to allow the contractability of online identity, as heirs’ interests in social media accounts

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242. *Id.*

243. *Lawrence v. Texas*, 539 U.S. 558, 562–79 (2003).

244. *Id.*

245. *Id.* at 562.

246. *Id.*

247. 16 C.F.R. § 255.1 (2024).

248. *Id.*

249. Fowler, Helveston & Robinson, *supra* note 7, at 432.

250. *See generally* Waeschle v. Dragovic, 576 F.3d 539 (6th Cir. 2009) (explaining property interests in the body are difficult to protect after death).

251. *Floyd v. City of New York*, 283 F.R.D. 153 (S.D.N.Y. 2012); *Obergefell v. Hodges*, 576 U.S. 644, 645 (2015).

252. *Peniche v. Aeromexico*, 580 S.W.2d 152, 156 (Tex. Civ. App.—Houston [1st Dist.] 1979, no writ).

are already protected by the law, even without making online identity transferable.<sup>253</sup>

*1. Heirs' Economic Interest Can Still Be Protected Without Transferring the Online Identity Itself*

While some families rely on the deceased's social media for income, that argument is flawed and cannot justify the inheritance of someone's identity.<sup>254</sup> The law already contains provisions that allow heirs to inherit property, while simultaneously protecting identity, illustrating that the law need not sacrifice one to appease the other; the two can coexist in harmony.<sup>255</sup> For example, California Probate Code Section 6132 permits the transfer of physical property to the inheritors, and California Probate Code Section 6400 facilitates the transfer of assets and money.<sup>256</sup> Neither of these laws conflicts with California Civil Code Section 3344.1, which safeguards the image of a dead person.<sup>257</sup> This is an example of protecting personal identity without stopping the transfer of assets or property.<sup>258</sup> In the same way, Texas Estates Code Section 113.205 provides for the transfer of money and property without the delegation of identity, a further explanation that these two notions can be combined.<sup>259</sup>

Furthermore, the harsh reality is that when the income generated by a social media account is gone, it is gone.<sup>260</sup> When estates run out of money generated by in-person jobs, the heirs are not granted the right to step into the identity or the job of the deceased to continue the revenue stream.<sup>261</sup> Likewise, heirs should not be permitted to step into the deceased's identity simply because the identity exists in the online realm.<sup>262</sup>

Moreover, the act of allowing the survivors to take the place of the deceased and speak as them is misleading the public and, as such, is already considered impermissible.<sup>263</sup> The Code of Federal Regulations Section 255.1 requires that any endorsements must reflect "opinions, findings, beliefs, or experience of the endorser."<sup>264</sup> Considering that it is impossible to know how a deceased person would respond to issues as they appear, it is also impossible to ensure that what someone is saying through the deceased's

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253. FERGUSON L. GRP., *supra* note 22.

254. *Id.*; CAL. PROB. CODE § 6132 (2024).

255. CAL. PROB. CODE §§ 6132, 6400 (2024); CAL. CIV. CODE § 3344.1 (2024); TEX. EST. CODE § 113.205.

256. CAL. PROB. CODE §§ 6132, 6400 (2024); CAL. CIV. CODE § 3344.1 (2024).

257. *Id.*

258. *Id.*

259. TEX. EST. CODE ANN. § 113.205.

260. FERGUSON L. GRP., *supra* note 22.

261. *Id.*

262. *Id.*

263. 16 C.F.R. § 255.1(a) (2024).

264. *Id.*

mouth is consistent with how they would have actually replied.<sup>265</sup> At the risk of not aligning with what the deceased would have wanted, the law could ruin a user's reputation and deceive the public into thinking that is what the user wanted.<sup>266</sup>

In short, economic interests do not justify impersonation of the deceased's online persona.<sup>267</sup> Heirs can and should inherit the profits from advertisements or paid sponsorships, but should not be allowed to inherit the deceased's identity and turn it into a commercialized commodity.<sup>268</sup> Treating identity as a transferable source of labor would undermine personal autonomy, blur the line between authentic communication and impersonation, and reduce the self to a commercial product that outlives the person.<sup>269</sup> Financial protection is a goal the law can and already does achieve through inheritance rules, but preserving dignity and truth in communication demands that the online identity remain non-transferable.<sup>270</sup>

Overall, the law has already shown that identity protection can coexist with the inheritance of assets and that the dangers of deception are effectively guarded against.<sup>271</sup> Meaning, the harsh reality is what the law has always done: when the revenue stream runs dry, it is simply dry.<sup>272</sup>

## *2. Contractual Freedom Has Limits When Personal Dignity and Identity Are at Stake*

Some may also contend that individuals should decide these matters in wills or user agreements, and that existing statutes, like Texas Estates Code Section 2001.05, already resolve the issue by allowing individuals to determine what happens to their digital assets.<sup>273</sup> However, contract law has never permitted one person to transfer their identity to another; the personal-services doctrine makes this explicit.<sup>274</sup>

Courts have long held that when performance depends upon a specific person's unique qualities, judgment, reputation, or relationships, that

265. *Id.*

266. *Id.*

267. CAL. PROB. CODE §§ 6132, 6400 (2024); CAL. CIV. CODE § 3344.1 (2024); TEX. EST. CODE § 113.205.

268. CAL. PROB. CODE §§ 6132, 6400 (2024); CAL. CIV. CODE § 3344.1 (2024); TEX. EST. CODE § 113.205.

269. *White v. Samsung Elecs. Am., Inc.*, 971 F.2d 1395, 1397–99 (9th Cir. 1992); *Obergefell v. Hodges*, 576 U.S. 644, 645 (2015); *Floyd v. City of New York*, 283 F.R.D. 153, 156 (S.D.N.Y. 2012).

270. CAL. PROB. CODE §§ 6132, 6400 (2024); CAL. CIV. CODE § 3344.1 (2024); TEX. EST. CODE § 113.205.

271. Author's original thought.

272. CAL. PROB. CODE §§ 6132, 6400 (2024); CAL. CIV. CODE § 3344.1 (2024); TEX. EST. CODE § 113.205.

273. Author's original thought.

274. *See* RESTATEMENT (SECOND) OF CONTS. § 317(2)(a) (A.L.I. 1981).

obligation cannot be delegated or assigned to someone else.<sup>275</sup> For example, in *In re Planet Hollywood International, Inc.*, the court held that celebrity endorsement agreements were nonassignable because their value stemmed from the celebrities' "character, reputation, taste, unique skill or unique talent[.]" not from generic labor that anyone could replicate.<sup>276</sup> The court argued that if the single performer is the main point, no substitute can adequately replace the performer without fundamentally altering the original contract, and therefore, such a substitution is not allowed.<sup>277</sup> In the same way as a famous person's identity, an online identity is made for a particular person, and a substitute cannot fulfill the same role.<sup>278</sup> Likewise, in *In re Compass Van & Storage Corp.*, the court held that assigning a substitute to carry out an act without the other party's consent violates public policy because a person cannot be compelled to enter into a relationship with an unwanted substitute.<sup>279</sup> This principle is even more compelling when users maintain large followings, whose followers are unable to consent to the posthumous substitute.<sup>280</sup> Moreover, in *Carlock v. LaSalle Extension University*, the Seventh Circuit held that personal services are those that "may be as well performed by others as by the individual with whom the contract was made . . . ." <sup>281</sup> This further emphasizes that when a contract requires a unique relationship or person, such as an influencer on social media, it cannot be replicated.<sup>282</sup> These rulings reflect the principles in Restatement (Second) of Contracts Sections 367(1) and 367(2), which prohibit specific performance of personal-services duties and bar assignment of obligations in which performance depends upon an individual's unique qualities.<sup>283</sup>

Together, these cases show a unified doctrine: when the value of the personal service flows from the person performing it, the law prohibits any substitution.<sup>284</sup> A digital persona functions exactly this way.<sup>285</sup> Followers subscribe to a person's voice, lived experience, humor, moral identity, and relational presence, not just to the content as a product.<sup>286</sup>

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275. *Id.*

276. *In re Planet Hollywood Int'l, Inc.*, No. 99-3612 (JJF), 2000 WL 36118317, at \*3 (D. Del. Nov. 3, 2000).

277. *Id.*

278. *See id.* at \*5.

279. *In re Compass Van & Storage Corp.*, 65 B.R. 1007, 1009–10 (Bankr. E.D.N.Y. 1986).

280. *See id.*

281. *Carlock v. LaSalle Extension Univ.*, 185 F.2d 594, 597 (7th Cir. 1950).

282. *Id.*

283. RESTATEMENT (SECOND) OF CONTS. § 367(1) (A.L.I. 1981).

284. *Id.*

285. *See generally* Thielke, *supra* note 14 (differentiating between online and digital identity).

286. *Id.*

Furthermore, the law already limits testamentary freedom when will provisions violate public policy.<sup>287</sup> Continuing to operate a deceased user's account as though they were alive would replace that individual's autonomy with someone else's speech and judgment.<sup>288</sup> Thus, even if a decedent attempted to assign their persona by contract, including in a will or the terms of service of a platform, the law should refuse to enforce it.<sup>289</sup> A person cannot alienate, delegate, or transfer their identity any more than they can contract away their own dignity.<sup>290</sup> Identity is not property, and contractual freedom ends where personhood begins.<sup>291</sup>

#### IV. CONCLUSION

The law has always recognized that property can be transferred, but personhood cannot.<sup>292</sup> That principle is jeopardized by a rapidly changing digital world in which identity is expressed, recognized, and monetized online.<sup>293</sup> Currently, the RUFADAA, state fiduciary-access statutes, and inconsistent platform policies treat all aspects of an online presence as assets to be accessed and managed, but lack guidance on how to handle an online identity.<sup>294</sup> This framework collapses the distinction between what a person owns and who a person is.<sup>295</sup>

As AI enables increasingly realistic imitation of a person's voice, mannerisms, and relational communication style, the risk is no longer hypothetical.<sup>296</sup> Without clear legal guidance that differentiates between a digital asset and an online identity, states like Louisiana and platforms like TikTok are not the only ones that will collapse identity into property.<sup>297</sup> Substitutes might soon be able to posthumously impersonate the deceased using AI-generated content in order to speak for a person who can no longer consent.<sup>298</sup>

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287. *In re Estate of Feinberg*, 919 N.E.2d 888 (Ill. 2009) (“In deciding whether an agreement violates public policy, courts determine whether the agreement is so capable of producing harm that its enforcement would be contrary to public interest.”).

288. Author's original thought.

289. *See generally* RESTATEMENT (SECOND) OF CONTS. § 317(2)(a) (A.L.I.1981) (specifying that a contractual right cannot be assigned if “the substitution of a right of the assignee for the right of the assignor would materially change the duty of the obligor, or materially increase the burden or risk imposed on him by his contract, or materially impair his chance of obtaining return performance, or materially reduce its value to him . . .”).

290. Author's original thought.

291. *Id.*

292. *See supra* Part II.

293. THE ECONOMIST, *supra* note 34 (discussing the changes to marketing that have resulted in companies spending more money on influencer advertisements to their followers).

294. TEX. EST. CODE § 2001.002(8).

295. *Id.*

296. Atta et al., *supra* note 16, at 1.

297. *See* LA. CODE CIV. PROC. ANN. art. 3191 (2024); *see also* QLAW, *supra* note 114.

298. 16 C.F.R. § 255.1 (2024).

Turning identity into a role performed by someone else transforms the self into a transferable commodity, contrary to the personal-services doctrine, which prohibits substituting performance when individuality is essential.<sup>299</sup> Treating a person as an inheritable asset risks violating the autonomy and dignity principles that the Supreme Court has long recognized as essential to self-definition.<sup>300</sup>

Property law changes the ownership of things, not the identity.<sup>301</sup> Publicity rights laws regulate only the use of commercial aspects, such as a name or image, not the continuous expression and relationships that constitute a digital self.<sup>302</sup> The personal services principle is in agreement with the idea that a character cannot be detached from the person who gives it sense; similarly, as followers rely on an influencer's opinion, not a substitute speaking on their behalf.<sup>303</sup> Constitutional law protects every person's right to define themselves, but that right ends when the person is no longer alive to make those choices.<sup>304</sup>

By amending the RUFADAA to create a separate category for digital identity—one that cannot be transferred, copied, or continued after death—states would receive clear guidance that prevents confusion or harm.<sup>305</sup>

The boundary must be drawn now, before generative AI and commercial incentives normalize posthumous impersonation.<sup>306</sup> Protecting digital identity as non-transferable keeps dignity intact and restates that even in the digital age, people are not property.<sup>307</sup> Absent statutory protection, the digital world risks becoming one in which identity outlives dignity—where the dead may be endlessly replicated, repurposed, and rewritten by private actors, and personal identity persists only as a manipulable asset rather than a protected human interest.<sup>308</sup>

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299. RESTATEMENT (SECOND) OF CONTS. § 367(1) (A.L.I. 1981).

300. See *Lawrence v. Texas*, 539 U.S. 558, 562 (2003) (“Freedom extends beyond spatial bounds. Liberty presumes an autonomy of self that includes freedom of thought, belief, expression, and certain intimate conduct.”).

301. See generally, TEX. EST. CODE § 113.205 (regarding trust account payment to trustee).

302. CAL. CIV. CODE § 3344.1 (West 2024).

303. See *In re Planet Hollywood Int'l, Inc.*, 2000 WL 36118317, at \*4 (Bankr. D. Del. Nov. 3, 2000) (“In general, a ‘personal service’ contract is a contract in which the parties rely on such qualities as ‘character, reputation, taste, skill or discretion of the party that is to render performance.’”).

304. See generally *Lawrence*, 539 U.S. at 574 (stating that “[e]quality of treatment and the due process right to remand respect for conduct protected by the substantive guarantee of liberty are linked in important respects[.]”).

305. Author's original thought.

306. Atta et al., *supra* note 16, at 1.

307. See generally *Obergefell v. Hodges*, 576 U.S. 644 (2015) (discussing how historically, “many persons did not deem homosexuals to have dignity in their own identity”).

308. Author's original thought.