AN ETHICAL FRAMEWORK FOR DIGITAL AFTERLIFE INDUSTRIES

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ABSTRACT

The following article is an exploratory one, aiming at providing a point of departure for building an ethical framework for digital afterlife industries. We begin with a short description of what the digital afterlife industries are. We then move on to a taxonomy of such companies, distinguishing between: (a) digital inheritance management companies; (b) companies that manage messaging services; (c) online memorial services and (d) re-creation services. Our argument is that an ethical framework for digital afterlife industries should take into account two main variables: (i) respect for the departed and (ii) the mediation of the relation between the departed and the living. The paper ends with a critical evaluation of a potential anti-commodification objection to digital afterlife industries.

KEYWORDS: *digital afterlife, digital rights, digital wills, privacy, digital death*

1. INTRODUCTION

People leave behind them an enormous quantity of personal information online, information that lingers on various servers around the world even after the users' departure. Most probably, in a couple of years, the dead will outnumber the living on social media platforms and on the Internet in general. The data left behind by the departed is not a useless resource, but, on the contrary, a very useful one that can be further put to use by technology companies in order to extract profits. This is illustrated by the fact that more and more companies offer a host of services meant to help the living 'socialize' or 'stay in touch' with the dead online, services that are built upon the data of the departed.

The subject of digital afterlife has gained much attention recently. For example, one subject of interest for researchers and consumers is how the digital technologies change modern grieving practices and help people accommodate grief. And while this is an enormously important subject, the fact that our online presences are and will "be mediated by commercial platforms tends to be neglected. This is problematic, considering the recent growth in the industry. There is a plethora of start-ups now investing in death online, and tech giants are also beginning to join the trend" (Öhman and Floridi 2018, 318). All of these companies dealing with and managing the profiles of the departed have given rise to the industry of digital afterlife. What types of obligations do these companies have and towards whom? How must they treat the digital remains of the departed and what duties, obligations or values should they have in view when they commercialize our digital presences? These are some of the questions that we will address in this paper, but before sketching the answers we will introduce a short taxonomy of the services offered within the digital afterlife industry.

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2. TAXONOMY

According to Öhman and Floridi (2018), there are several types of companies which fit within the digital afterlife industry and which differ in the level of interactivity of the services provided:

(a) The most basic ones, information management services help users deal with problems regarding the management of their digital presences. These firms are not very complex from a technological point of view, given that they mostly offer 'digital wills', meant to ensure that assets are either passed to another living person or are destroyed upon the death of their owner. Recently, these companies have become obsolete, given that most tech giants offer, within their ecosystems, different options for the management of online personal data for the departed. These 'digital wills' services are not at all interactive and can be seen as the digital equivalents of inheritance practices.

(b) The second category of firms offer posthumous messaging services. The most common such service is to send out an e-mail to specified recipients on the behalf of the departed user. Some of these services are free, while others offer premium services. Already, the level of interactivity is slightly increased in comparison with 'digital wills' services, because these companies typically offer the opportunity to plan and send a last message to specific recipients after one's death.

(c) Online memorial services do not deal directly with the departed, but are aimed more precisely towards the bereaved. These companies typically offer the opportunity for the bereaved to create an online space where they could mourn collectively. However, companies such as Facebook offer for free such services, by presenting users the possibility to 'memorialize' the profiles of the deceased. This means that users can post videos, photos or other types of content on the profile of the departed.

(d) The last types of services and the most problematic are the re-creation services. These companies use the personal data of the deceased to reconstruct their identities. In other words, such companies create avatars or, more generally, bots that replicate the person's social behavior, most commonly through chat bot applications which generate new content based on past data. Such services are typically offered by fairly young start-up companies, while the big tech has yet to adopt such business models. This is the most interactive service within the digital afterlife industry and, in the same time, it is the most problematic given the high level of interactivity.

While there is nothing problematic or new for the companies in the first two categories – especially given that they are the digital equivalents of services that already exist offline –, the last two begin to raise new ethical problems regarding privacy, free speech, freedom of information and responsibility (Banta 2016). The most pressing issue is how should we regard the dead as stakeholders in the decisions we take regarding their personal data. Does the right to privacy persist even after one's death? Should companies own our data even after our death? And if the answer is affirmative, what are some of the risks of this centralization to historical discourse and who decides what can a recreated profile publicly express?

These questions are by no means trivial or redundant and the way we answer them will have an impact upon how we accommodate death within our lives and societies. The apps or services we use are never simple, neutral artefacts, but they are active mediators, as the post-phenomenological school in the philosophy of technology so pertinently argues. The central idea in post-phenomenology is that technologies, when they are used, help to shape the relations between human beings and the world (Verbeek 2016; Ihde 1990). Rather than approaching technologies as material objects opposed to human subjects, or as mere extensions of human beings, it sees them as mediators of human-world relations. Platforms are never neutral tools because they privilege certain types of use with particular ends (e.g., commercial viability, vendor lock-in, or enrolling new users). Such ends sometimes get priority over the well-being of the users and, in this case, the dignity of the dead. Given that technologies and online services are so deeply ingrained in our lives, affecting how we act and how we see or interpret the world, it would make sense for policymakers, designers and other entities to overcome the instrumentalist or functionalist views of technologies, which see

them as simple tools, devoid of value. More precisely, they should have in view how technologies will affect consumers' social practices and well-being. In the case of the digital afterlife industries, these companies should, before putting on the market online memorial services or re-creation services, address the following dimensions:

a. Respect for the departed

What status does personal data belonging to a deceased person have? The common intuition is that dead persons cannot have rights, given that they lost the capacity to have any interest whatsoever. But recently some scholars have observed the inconsistencies embedded within law systems regrading an individual's rights after death. For example, in the case of copyrights which are essentially a type of moral rights, they persist even after a person's death. The justification is that some aspect of a personality, such as dignity, integrity and autonomy survive even after the person's death (Harbinja 2017). Moreover, individuals have testamentary rights which entail that a person's property transcends death through a will. There is no reason why personal data should not have the same status as tangible property. If we respect the wishes of the dead when it comes to the management of tangible and intellectual property, we should also adopt the same regime when it comes to personal data which, in the end, is even more intimate to a person's personhood than private property. As Floridi (2011) argues, our personal identity is not given only by our body, but also by our personal information and, in a way, our data is constitutive of our identity, just as our bodily parts are. If we accept such a view, we must also accept that we continue existing as persons even after death: "From this point of view, death only deprives an individual of their consciousness and bodily functions, but leaves much of the person, seen as a body of information, intact." (Öhman 2018). The deceased do have an interest in controlling what becomes of their reputation after death. As such, there are strong moral reasons for companies to respect and follow the wishes of the departed regarding their personal information.

b. Mediation of the relationship between the departed and the living

Within this dimension two separate profound moral questions need to adressed: - how does the online presence of a dead one affect those living? Is there a possibility that these services actually contribute not to an accommodation of grieving practices but to the perpetuation of grief? And, most importantly, what are the social and political implications, for the living, of interacting with the re-created profiles of the departed? These are largely empirical questions whose answers must be taken into consideration by policymakers and technology companies when crafting norms and rules for digital afterlife services.

- what are the limits these companies must not cross when commercializing digital remains? Problems pertaining to hate speech and the possibility of recreating historical figures fit within this category. Clearly, there are some limits in what data they must take into consideration when creating our digital presence. What would the selection process look like? And who should be involved? It is inevitable that in making the decisions about what type of speech or expression can and will be recreated, these companies are going to make moral decisions. The fact that we are dealing with private companies is extremely important, because most of the times their decisions are non-transparent and they cannot be held accountable for their actions. And this is due to several reasons, but the first one is that the algorithms that second them in deciding these sorts of things are under the protection of 'trade secrets' and thus they are not public and cannot be inspected. Another reason is that most digital platforms are seen as neutral intermediators of information, thus they cannot be held accountable for the content uploaded or created by third parties (Gillespie 2018). In any case, it would be preferable that those decisions are made transparently and in a manner that is principled and subject to reasoned debate, especially because information intermediaries exist and grow only because of the unpaid work of their users. More precisely, information intermediaries provide the infrastructure that captures and monetizes *work* its users put in. Users of these sites are not just consumers, but first and foremost producers (pro-sumers); users can be thought of as co-creators of these services (Arrieta-Ibarra et al. 2018). And because of their active role in

contributing to the growth and value of these companies, they have a strong moral claim to treatment with respect which means, first and foremost, that users should have a role in determining the rules that circumscribe what can and cannot be done with their digital remains.

3. COMMODIFYING DIGITAL AFTERLIFE?

There are additional moral concerns that must be addressed by companies planning to enter digital afterlife industries or who are simply planning to innovate in this area: should companies enjoy the right to make a profit from our digital death? Should our digital afterlives be commodified?

Traditionally, anti-commodification theorists have focused mostly on issues pertaining to 'the living', contending that friendships, votes or markets for betting on terror are unethical and that they should not be allowed to exist (Satz 2010; Brennan and Jaworski 2016, 5-7). Most famously, they have argued that prostitution (Anderson 1990; Satz 2010) or markets for organs (Sandel 2005) should not make the object of market transactions in the same sense in which vegetables and electronics do because of what we might label, following Brennan and Jaworski, a Kantian semiotics. If, "as Kant said about human beings, they have a dignity and not a price" (Satz 2010, 80) then it naturally follows, as anti-commodification theorists have argued, that human beings (either as a whole or certain body parts) should not be for sale.

A potential anti-commodification case against digital afterlife industries could obviously be hampered by the ontological (and, as a consequence, the moral) status of the main object of such companies, namely people who have died but who are still 'present' in the digital realm. As we have shown in the previous section, there is a sense in which some aspects of our personality survive even after our death. Consequently, if the object of such companies is represented by our personal data, if we do care about our dignity even after our death, a potential anti-commodification argument in this case could still appear within the larger debate regarding what should be for sale on the market.

One way of answering such a potential anti-commodification critique of digital afterlife industries would be to compare them with their offline counterparts: morticians. There is a sense in which the services of both online and offline morticians can be said to have a similar function, namely that of dealing with the remains of a deceased human being. While the business practices of traditional morticians have not elicited serious academic preoccupation, some ethical issues can be raised regarding their activity. For example, we might argue that their pricing strategies might be problematic in relation to poor families that already undergo a traumatic experience in their lives. However, this potential moral objection does not address something that is inherently wrong with the services that such entrepreneurs provide on the market, but an incidental problem regarding structural societal issues like poverty and the ways in which they affect our relative power as consumers.

Anti-commodification theorists have something different in mind, considering that some things, like organs, should not be for sale due to some intrinsic properties that those objects have. Whether or not a potential market for transplant organs would (potentially) cater mostly to the needs of those better off or, surprisingly, even if such a market would exponentially increase the amount of necessary organs for transplants for rich and poor alike is, for philosophers like Sandel, Anderson or Satz, besides the point (Uszkai 2018).

Brennan and Jaworski (2016, 10-17) distinguish between three types of potential limits for market transactions. On the one hand, we can talk about limits for market transactions based on the Principle of Wrongful Possession (PWP): there are some things that we should not have and, as a consequence, those things should not be for sale; child pornography and nuclear weapons fit perfectly in this category. On the other hand, there are also incidental limits for market transactions. For example, selling a t-shirt is not inherently problematic. However, if the t-shirt in question was received from your significant other on your birthday and you made a promise not sell it no matter

the amount of money you would receive for it, then engaging in a market transaction would be wrong based on that previous circumstance. This is not what anti-commodification theorists have in mind though. According to Brennan and Jaworski, they believe in the existence of some inherent limits: "[t]here are some things that people are normally allowed to own or possess in some way, but which should not be for sale" (2016, 15). While they accept the first two limits (based on the PWP and the incidental ones), Brennan and Jaworski argue that there are no such things as inherent limits: "[i]f you may do it for free, then you may do it for money." (2016, 10). Market transaction and the addition of money in a previously free exchange does not miraculously transform a previous ethical transaction into an unethical one.

Going back to our case, we could easily imagine a world in which we would have NGOs, not companies, who would be in charge of dealing with digital remains and who could provide this service for free. The ethical problems stemming from this line of work would not suddenly arise were we to have private companies doing it, but it would be the same ones that we earlier explored, namely how would they insure respect for the departed and how would they be able to mediate the relation between the departed and the living.

3. CONCLUSIONS

The purpose of this paper has been that of providing a minimal ethical framework for companies who deal with the digital remains of our online selves. In doing so, we have first presented what digital afterlife industries are and their taxonomy, distinguishing between companies that provide either basic services, messaging services or online memorial services. We have found a forth category to be the most problematic from an ethical standpoint, namely the companies that would use personal data in order to reconstruct the identities of the deceased. We have argued that the ethical framework should be built starting from two main elements. Firstly, digital afterlife companies should ensure that their services pay respect to the departed by following their wishes regarding their personal information. Secondly, we contended that companies should be careful in how they mediate the relation between the departed and the living, taking into account both how their actions might impact the living and in how they would commercialize the digital remains. Our paper ended with a critical assessment of a potential anti-commodification argument against digital afterlife industries.

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