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**SUCCESSION OF IMAGE AND DIGITAL MEMORY RIGHTS:
BETWEEN REALITY AND METAFICTION
IN “BE RIGHT BACK”**

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ABSTRACT: This paper analyzes one episode of the series *Black Mirror*, titled “Be Right Back”. The purpose is to consider the possibility of storing information of deceased people from social networks for further use, and the implications it could bring to succession law. Much has been discussed on digital inheritance and the destination of stored assets from virtual profiles and e-mail accounts after death. However, the possibility of using the data collected after the person’s death is questionable, especially with the fictional possibility of using them for the development of “interactive avatars”. Technology from the analyzed episode can be seen in real life in initial stages, with social network accounts that make people “immortal”. The methodology used here is inductive and exploratory, and establishes a dialogue with the metafiction of *Black Mirror* in order to exemplify and theorize a not-so-distant possibility. This paper is based on the “Law and Fiction” research area in order to formulate its propositions. At the end, it presents three lines of analysis: the manifestation of will, the right to being forgotten, and the rights of personality, in order to conclude the impossibility of the research object to be fully real in current legal order, which now seems unfit to deal with digital inheritance matters.

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1 INTRODUCTION

Let us imagine the following situations: a special someone died, and it is possible to buy a kind of clone of him or her; or rather: it is possible to talk to a friend or relative after his or her death. Such reality might not be so distant.

In fiction, in the series *Black Mirror*, there is an episode called “Be Right Back”, which represents these possibilities. The plot is about a woman who had lost her husband in a car crash. However, after some time, she discovers an online service that allow people to establish contact with the dead.

In order to do so, one must only upload all the digital data of the deceased person, such as the e-mail and social network accounts. With these data, the software creates a virtual avatar that interacts and imitates the response patterns of the person. After a while, the company releases the possibility of transferring the data to a robot who looks and moves just like the deceased.

At first it may sound like an impossible situation, but reality seems to have started imitating art (as vice-versa). Nowadays there is an application available to download on smartphones that simulates a conversation between the user and a man called Roman Mazurenko, who died in 2015 in a car accident. The conversation is made possible because of a chatbot with Artificial Intelligence (AI). The app is available for iOS (Apple, 2017), and was made by Luka Inc.

Also, if any user wants to remain “alive” after death, the social network ETER9 offers solutions. It develops virtual people who publish, comment and interact with artificial intelligence, even in the absence of the real user. So, the more the users use the social network in life, the more it learns about them (ETER9, undated).

Another app with similar functionality to ETER9 is Eterni.me, which preserves the thoughts, stories and memories of users, by connecting their social network accounts and by uploads made by themselves.

So, the people of the future will be able to interact with these memories and ideas, since the dead users will have become digital avatars. The longer the platform receives data, the more realistic and precise the avatar will be. As of now, the app has approximately 24 thousand users. The slogan of the website could not be more attractive: “Who wants to live forever?” (Eterni.me, undated).

In fact, the right to life is seen as a fundamental right for humankind. So unnatural death is considered as a crime and must be punished (Harari, 2016, p. 31). So, while there are no ways of physically living forever, the alternative of virtually doing so seems viable. However, much controversy might arise from that, especially considering the ethical implications of using technology to grant the most important of human desires: eternal life.

In this paper, not exhaustingly, the purpose is to analyze possible succession law consequences of becoming immortal via social networks, applications and other future possibilities, like robots. The legal analysis itself is made with emphasis to image rights and the right to digital memory, with platforms whose objective is to similarly or completely reproducing the personality and/or the looks of deceased people. It is done with inductive and exploratory methods, departing from the analysis of the cinematographic object, towards the legal analysis. By understanding Law in Literature, we further develop a dialogue between reality and metafiction.

To do so, this paper is divided in two lines: firstly, the study of the relations between law and metafiction, highlighting the legal-theoretical possibility of using this paradigm in order to actually build it, by the analysis of the episode “By Right Back”, of *Black Mirror*.

After that, the article delves into the limits of digital inheritance and the right to image and to digital memory in succession law. Here, two differences are drawn: when there is no manifestation of will by the person for his or her virtual eternalization, and, thus, the possibility of a

relative wanting it; and when there is such manifestation of interest, via direct actions or written in testament, of living an eternal life.

Thus, the criticism and analysis of this legal possibility are developed based on three main ideas: manifestation of will, right to being forgotten, and rights of personality. Via metafiction, this paper questions the present and future reality.

2 LAW AND METAFICTION: ANALYSIS OF THE EPISODE “BE RIGHT BACK” (2S1) AS A MEANS OF INTERPRETING AND MAKING THE LAW

Metafiction is the opposition to realism, a movement strongly characterized by its descriptive aspect. Realism makes the physical and social reality its foundations, and has its roots deeply associated with a feeling of disenchantment of the world (Pellegrini, 2007, p. 139-140). It is the maximum expression of verisimilitude, which leaves little for the reader or audience to actively think about reality (Bernardo, 2010, p. 14).

Aluísio Azevedo, Eça de Queiroz, and Machado de Assis are important names of realism in Brazilian literature. However, with Machado de Assis, one could see an exception. Did Capitu really betray Bentinho? At this point in the work, the questioning of reality is perceived from a false certainty described by the author, based on traces of metafiction.

So, metafiction allows the reader to take part in a “spectacular reflective process” (Maia, 2016, p. 55, translated). That is because, even though they are connected to reality, literature, movies and TV series are not restricted to the exposition of the “real world” (Ferreira Jr., 2016, p. 353). Literature, actually, “is nothing more than an art form that organizes the world and the feelings of humans, using linguistic structures to do so” (Silva; Peruzzo, 2019, p. 519).

What happens is the delegation of the making of the text – or other artistic expressions – to the reader or the audience (Maia, 2016, p. 55), based on their representation capacity, since there are several possibilities of understanding and transforming reality (Ávila Santamaría, 2018, p. 385). Likewise, it is an entertaining modality that makes self-reflection

possible, which reinforces the influence of imaginary creations to the making of reality (Martínez-Lucen; Sola, 2016, p. 17; Oliveira; Bragança Junior, 2018, p. 582).

It is clear that metafiction is fiction, and not simply a report of reality (Bernardo, 2010, p. 42). *Bandersnatch* (movie of interactive fiction, released in 2018, as part of the series *Black Mirror*) is the maximum expression of metafiction in *Black Mirror*, because the audience chooses the plot by themselves (apparently).

It should also be mentioned that the Law itself is considered as a narrative form by many, as it is made of stories that are “framed” in norms, so that the readers or the audience become a character, that is, that people can use it or not in certain occasions (Llanos, 2017, p. 350).

This way, it is noticeable how literature and other derived art forms (as the one used in this paper) can be used as means for getting to know the Law and to make it, since “the legal universe is not enough to understand the problem” (Guimarães Filho; Matos, 2019, p. 442, translated). That is, in Law, similarly to storytelling, “the causes become reasons and the representative and verifiable truth becomes ‘verisimilitude’” (Llanos, 2017, p. 352, translated).

So, the analysis begins with the idea of constitution and reflection of reality by the audience and with an interpretative version of Law studies, applied to episode 1, season 2 of *Black Mirror*, “Be Right Back”. The episode introduces a discussion about the memory left by digital footprints (Lemos, 2018, p. 53), and is thus analyzed from the point of view of succession law, especially regarding the protection of personality and the image of deceased people, as well as the use of such image and memory, and thus, the online data policies which continue reproducing aspects of dead people.

The episode represents the use of Artificial Intelligent so that people can have the privilege of “bringing back to life” their special ones. The main character, Martha, had lost her husband, Ash. She then starts to have conversations with him through an application that interacts with her by using data collection of him. Later on, Martha receives a phone call

by her husband, which was made possible because of the uploads she had done with videos he had recorded.

Soon she wants more than having conversations, so Martha decides to buy an exact physical replica of her husband, a kind of body made of synthetic flesh that was synchronized with the software. So, Ash's body responds to stimuli based on data from his social networks, search history, check-ins and other virtual interactions he used to do when he was alive.

However, the personality he shows is not actually truthful to who he really was. The "clone" is not able to fully respond as he would in all aspects, so living together with him slowly becomes impossible for Martha (Lemos, 2018, p. 52). For example, the software had no records of how he reacted to conflict. That is, Ash only reacted to stimuli based on what had somehow been registered on the internet when he was alive.

All these actions became possible due to thorough collection, mapping, organizing and registering of data concerning Ash's daily life and his online activities. This is actually a reality in nowadays real life: if you have a Google account, for instance, and accept all the terms and conditions to use it, basically all there is about the user's online habits is stored³. So, social networks seem to really have become an extension of human memory. An example of this are the short movies Facebook makes with the user's "happy memories" photos posted online.

Information collected by Google are IP address, voice information, videos watched by the user, researched entries, activities on third-party websites who also use Google services, people whom the user talks to, among other data⁴.

All this data is stored via cookies, pixel tags, server records, application data cache, among others⁵. That is why a Netflix advertising

³ GOOGLE. Privacy policy.

⁴ For further information, see: GOOGLE. Privacy policy.

⁵ For further information, see: GOOGLE. Privacy policy.

image will be seen on your Instagram after researching the entry *Black Mirror* on Google, for example⁶.

Further to that, it is impossible to “escape” these storage policies, since, in order to use Facebook, for example, the user has to accept the terms and conditions⁷. The more a user uses social networks, the more data are collected and stored.

In the episode “Be Right Back”, the software created to reproduce the behavior of the deceased husband used data from Twitter and other not-named social networks. Moreover, something that is not so far from reality is the possibility of creating a social network with the specific objective of becoming virtually “immortal”, since there are applications that interact as the user in his or her absence based on data collected through use, such as ETER⁹.

In addition, it is possible to distinguish three phases of image and digital memory storage process: 1. Minimum storage, made only with photos and places where the person checked in, which is simply a “virtual photo album”; 2. Average storage, in which behavioral patterns such as purchases, likes and dislikes are registered; 3; Maximum storage, in which are response patterns, voice, e-mails, expressions, personal image, experiences, choices, philosophies of life, interaction networks etc. That is, complete copies of people’s characteristics.

It is acknowledgeable that in present times phases 1 and 2 had been fully reached through streaming services like Netflix, or social networks like Twitter, Facebook, LinkedIn, Instagram. However, the maximum

⁶ For discussions about advertising on Instagram, see Bertoldi (2015).

⁷ For information, visit Facebook’s terms of service, item 2, on data policy and privacy options. Facebook, undated.

phase 3 as developed in “Be Right Back” is still not fully real, but there are several social networks aiming at it, like Eterni.me.

What do these forms of storage effectively have in common or not with the concept of digital inheritance and the limits of succession? It goes over the issue of digital inheritance and the manifestation of will: do the heirs have the right to digitally eternalize someone’s life or must there be a registered expression of will by the deceased?

Social network accounts can be seen as part of a person’s estate, however, there are no rules on accounts possibly created with the sole purpose of making oneself virtually “immortal”. There are also questions regarding the image rights of the deceased person, since virtual conversations, and the reproduction of virtual avatars or real reproductions (like robots) post mortem may represent aspects of one’s personality and image, which can be seen as violations depending on the use.

3 THE LIMITS OF DIGITAL INHERITANCE – IMAGE AND DIGITAL MEMORY RIGHTS IN SUCCESSION LAW

Succession is seen in present times as a broad concept of “substituting the beneficiary of a certain right” (Venosa, 2017, p. 1, translated). In the legal science, succession refers to a specific area of civil law which deals with the transference of assets, rights and duties due to death (Venosa, 2017, p. 1). That is, with death, the “ability to securitize legal relations” is halted, and there is a change of the subject who is responsible for maintaining the patrimony relations that had been set up by the deceased person, which are now under the responsibility of the successors (Farias; Rosenvald, 2016, p. 375).

Succession, however, is not to be confused with inheritance, which is the patrimony of the person. Inheritance, in turn, is the set of real and mandatory rights of a person, which should always be subject to economic evaluation (Venosa, 2017, p. 7).

However, with the advent of new technologies, transmissible goods have, in some cases, been stored exclusively in digital form. For example, books in e-book format, accounts on websites created with the objective of buying or selling goods, profiles created on various streaming platforms

(Netflix, for example), and other things, material or immaterial, endowed with economic value⁸.

Thus, the discussion about the destination of digital goods after the death of the owner is not new. Bills no. 4,099/12 and n. 4,847/12 from Brazil⁹ proposed, in general, the transmission to the heirs of all the existing content in digital accounts or files owned by the author of the inheritance, given the insufficient regulation in view of the complexity of Digital Law.

Furthermore, the problem has been studied from the following perspectives: access to profiles on social networks and e-mails, exclusion of profiles from social networks, accounts in virtual games, access to e-books and music or film files (Almeida, 2019, p. 16-25).

One could imagine that accessing all these types of accounts is easy after the user died, however, it is not. Most of the terms of use does not allow the access by third parties, nor the transmission of digital assets that might be stored by the platforms (Almeida, 2019, p. 26). Some authors, such as Blachly (2015, p. 11-12), on the other hand, believe the heir or beneficiary should have full access to the deceased's accounts in order to avoid cases of identity theft, among other cybercrimes.

So, with aims at protecting people's identities (and personalities), the heir or beneficiary is able to require access to the social networks and other accounts of the deceased. However, this type of requisition is not valid for non-beneficiary third parties (Almeida, 2019, p. 16-25).

⁸ On this matter, see Menezes & Rodrigues (2018).

⁹ Bill no. 4,099/12 (filed) guarantees to the heirs the transmission of all the contents of accounts and digital files. Law Bill no. 4.847/12 deals with digital inheritance, in the following terms:

Article 1,797-A. Digital inheritance is defined as the intangible content of the deceased, everything that can be stored or accumulated in virtual space, under the following conditions: I - passwords; II - social networks; III - Internet accounts; IV - any property and virtual and digital service owned by the deceased.

Art. 1,797-B. If the deceased, having the capacity to test, has not done so, the inheritance will be passed on to the legitimate heirs.

Art. 1,797-C. The heir is responsible for: I - defining the destination of the deceased's accounts; a) - transform them into a memorial, leaving access restricted to confirmed friends and keeping only the main content or; b) - delete all user data or; c) - remove the old user's account.

What is guarded today, therefore, is the right of succession that the heir or beneficiary has over the variety of informational assets, associated with the digital world, stored in accounts whose ownership belonged to deceased (Edwards; Harbinja, 2013, p. 105).

The problem currently faced refers to the destination of these assets and their succession implications, since succession designates the ownership transference of certain assets (Gonçalves, 2018, p. 19) and, as seen, most of the terms of use prevent the transmission of digital goods¹⁰. That is, the succession rules apply to property rights over digital goods, in addition to the right of obligations, of things, and of family.

In general lines, succession mortis causa is based on valuing human dignity, both individually and collectively (Tartuce, 2017, p. 1537). With this foundational idea in mind, preserving the person's personality and privacy¹¹ on social network accounts is a way of valuing dignity.

On the other hand, for the DeadSocial application, succession is no longer a problem, or even needs to exist regarding digital assets. The user can build a digital legacy of all his or her social media before dying and leave messages for future generations, remaining as an account holder after death (DeadSocial, undated).

With the advent of such new technology bringing to reality what used to be unimaginable, one might think, oppositely to many authors¹²,

¹⁰ It should be noted that, in the case of Facebook, there is the possibility of transforming the account of the deceased or clinically disabled user into a memorial or requesting its removal. However, to protect the privacy of people on the social network, Facebook does not provide anyone with login information. (FaceBook, undated)

¹¹ Although it is understood that the main legal effect of death is the cessation of personality and, consequently, of personality rights, this article seeks to preserve aspects of personality, considering the idea of dignity and privacy.

¹² In this sense, "the protection of the assets of the post-mortem personality suffers limitations resulting from the very nature of the deceased, that is, in the protection by the law, those rights and assets that regard a living and active holder are excluded after death; thus, the rights to life, physical integrity, freedom of movement, free development of personality, among others, are not protected. There are also limits in view of the exhaustion of one's own right in time or physically, and in this sense the right to protection of the memory of the deceased naturally loses weight with the passage of time [...]". (Beltrão, 2015). In the same sense, "With the death of the person, the right to image reaches its end". (Cupis, 2004, p. 153-154). Also, in common law countries, actions whose content is personal die with the person. United States and United Kingdom, for example, do not protect personality rights after death, except in cases where the right to personality has some patrimony impact.

that the right to controlling one's own personality¹³ and privacy remains protected even after one's death. That is, death does not prevent property of moral and physical personality from remaining existent in legal terms (Corazza, 2015, p. 15). This is seen when the person, while still alive, manifests his or her will by creating an account on an app that allows them to remain alive in virtual social spheres¹⁴.

As for personality rights, they are essential for the human person, and protect human dignity itself (Gomes, 1995, p. 153; Tepedino, 2003, p. 37). Besides that, these rights are in the law in order to “acknowledge advanced legal protection of the person” (Amaral, 2003, p. 250-251).

Furthermore, they are rights with absolute reach, opposable erga omnes, and unavailable. Unavailability, in turn, encompasses non-transferability, unavailability, and unaffordability. It is, therefore, a right that is linked to the person, and cannot be modified even by the will of its beneficiary (Corazza, 2015, p. 11).

Thus, personality rights, especially of image and of memory, must remain valid after death¹⁵, regarding accounts created to make one “immortal”, or facing the storage and usage of post mortem data (with or without the user's consent), in effectively advanced manner.

As a consequence, it is clear that digital assets may no longer be part of the deceased person's estate, given that account management can be carried out through an application, created specifically so that the user can build his or her legacy previously to death.

¹³ It should be noted that some aspects of the protection of the personality right are already supported by Brazilian legislation, in particular, along with the single paragraphs of articles 12 and 20 of the Brazilian Civil Code.

¹⁴ It should be noted that “the dead continue to act beyond death. Corpses dissolve, but the works they created, the institutions they animated, the ideas they launched to the world, the relationships they evoked continue to act and ferment. When a body returns to nothing, consciousness follows a social destiny among the living” (Silva, 2000, p. 21).

¹⁵ In this sense, privacy, inserted in the context of digital goods after death, must be safeguarded and can be defined as the possibility of a person being able to control their dignity, integrity, secrets and memories even after their death, as with the applications already mentioned, for example, ETER9, SocialDead, among others (Edwards, Harbinja, 2013).

So, one may ask: is the legal order ready to deal with this type of interaction on the internet? The problem further develops because it is not restricted to the simple right of the heir to access or shut down the accounts of the deceased, but it includes the destination of the data given and stored before the user's death.

So, this article has the purpose of analyzing the paradigm presented on the episode "Be Right Back", and measuring the legal consequences of the possibility of a user being brought back to life, either through an avatar or a robot.

From this possibility, it is necessary to consider two different situations: when there is no manifestation of will by the person granting his or her virtual eternalization and the possibility of a relative wanting so; and when there is manifestation of will during life, through direct actions or written ways, of living an eternal digital life.

In the series' episode, at no moment did Ash agree on having his data used after death. Even so, it was possible for his wife to create a virtual avatar of his, based on all the data collected throughout all his internet interactions past. Martha even uploads videos so that the application is able to reproduce his voice.

Based on that, beyond the access by heirs or beneficiaries to networks and other data belonging to the deceased user¹⁶, it is also important to analyze how the user's data should be dealt with (besides the possibility of setting up a memorial account or deleting it altogether), regarding the person's image, memory and privacy.

Furthermore, a different paradigm from this one is when the user, still in life, expresses an interest in being "eternalized", for example, by accessing and uploading information on platforms such as Eterni.me

In this sense, the person carries out actions in life that lead to the understanding that, after their death, the data can be accessed by certain

¹⁶ On this matter, it should be stated that some applications already allow the user to create a specific account that makes the transfer of passwords to a named heir in the application itself through the password management service. This is the case, for example, with the application called Legacy Locker. This service, however, is provided only in the US.

family members or others. Or, there is the possibility for the person to determine in a will how the data and digital information can be used after their death, including the aforementioned aspect of a possible digital survival.

It is important to bear in mind the very function of a testament, which expresses the last will of the person, and only has effect after death (Ascensão, 2014). So, there is the possibility of someone leaving expressively written instructions on wanting or not to be eternalized digitally after death, which would be different from the tv episode. In this case, there would be legal certainty regarding the possibility of the relatives using the accounts, data, photos, information in order to make a physical avatar.

It should be noted that, in a connected society, privacy right consists of the possibility of following and / or controlling the information itself where it is located with no interference (Rodotá, 2014, p. 33). In this sense, in addition to the regulation regarding access to private accounts on social networks and other services offered on the internet, after death, the topic should therefore be treated differently.

If the person clearly expresses the desire for their virtual data, from all social networks, search patterns, purchases etc. to be used for the creation and permanence of a virtual or physical avatar, similar to the person's image, there is no denying of its legal possibility, since the deceased's will must be respected.

To sum up, it is via consent that individuals express their will or intention. Every individual has the freedom to lead their own lives, beyond the contractual right and extended to the protection of personal data, insofar as it is the right of every citizen to rule over their own personal data on the internet (Bioni, 2015, p. 43). With consent, personality rights can be granted to someone else to decide, as long as ethical rules are

followed, in order to avoid, for example, the use of the person's image for degrading purposes¹⁷.

However, when there is no full manifestation of will for data usage, it is not possible to allow, for example, the transference of personal data to Eterni.me after a person is dead. Currently, doing something like that may seem somewhat of a harmless threat, but the unknown future and the plot of *Black Mirror* make us wonder about possibilities of violations and disrespect for personality rights.

It should be said that this rationale is also related to the simple access to e-mails and digital profiles. It is questioned whether, even in those cases which are certainly already experienced in present days, there should be the need for express declaration for granting full access to heirs and / or close people.

Manifestation of will acts as the borderline for the matter of succession related to something that is so intimate and may, in the future, reproduce the person as a whole in their individuality. There are three lines of thought regarding the present and future paradigm: 1. What importance and limit the Law should give to the manifestation of will; 2. What reach the right to being forgotten must have; 3. What reach the rights of personality must have.

Regarding manifestation of will, or consent, as said before, it is defensible that the statements of the deceased should be respected, so it would only be possible to reproduce their image and memory from the virtual world to the physical world with specific consent: either in written will, or by the creation of accounts on platforms that have this sole objective, like Eterni.me. If not, it should be necessary to consider the very finitude of humankind, with mourning and the need to restart, with a circle of life that ends, as a natural aspect of human existence¹⁸.

¹⁷ For example, for use in “hyper-realistic sex dolls”. On the subject, see Abundancia (2015).

¹⁸ On this matter, see Pereira & Pires (2018).

The right to be forgotten, in turn, gained importance precisely in a case of airing news after almost 50 years after the person's death¹⁹, with no historical relevance, and the repetition of the event's narrative brought great sorrow to the family. The main debate on this topic is the conflict between individual and collective memory, and thus, a clash between the right to be forgotten and freedom of expression. Now, it appears that in the case of e-mails, access to social networks and digital media, it is a completely intimate decision for each person.

It is noted that whether one exposes or is exposed is a matter for online society "according to the contexts of interpretation and, according to the criteria for judging our behavior by a variety of actors behind the screen of our houses of glass" (Castells, 2003, p. 149, translated). Under this view of overexposure, ensuring the minimum of virtual intimacy and image privacy might be legally required. Access to the internal framework of social networks, e-mails, data, and information does not conflict with freedom of expression, analyzing itself theoretically, and thus, it is possible to affirm that the right to forget one's own existence is something that is demandable.

Finally, with respect to personality rights in a broad way²⁰ as seen before, the relationship after death does not completely annihilate the linking of such rights to the interests of the deceased person. It is noted that the protection conferred to personality rights results from the recognition of inherent dignity to all human beings (Schreiber, 2014, p. 8).

As seen, the Brazilian Civil Code of 2002 was responsible for disciplining the rights of the personality, under the influence of the dignity of the human person. As Anderson Schreiber points out, "the law was limited to dealing with five personality rights: right to the body, right to the name, right to honor, right to the image and right to privacy"

¹⁹ It gained importance in Brazil from an appeal filed by the family of Aída Jacob Curi, contrary to the broadcast of the case, more than 50 (fifty) years after her death. Aída Curi was murdered on July 14, 1958 and her sad story ended up being the subject of a television entertainment program, it seems, without any historical relevance (Bayer, 2015).

²⁰ Some authors understand that the right to be forgotten is included in the list of personality rights, for methodological reasons it was decided to treat this work separately. On the subject, see Diniz (2017, p. 13).

(Schreiber, 2014, p. 15). It is noteworthy that in all these aspects, there are possible violations in case an avatar replicates a person's memories, experiences and image after death.

There is one more aspect in the TV series that points out problems of such a technology: the application itself tells Martha that it is very expensive and there is clearly a commercial exploration and use of the deceased's image, restricted to a small amount of the population. When studying the consequences of the rights of personality, it is necessary to measure their reach.

Rights of personality are non-transferable and unavailable according to express legal provision (art. 11 of the Civil Code of 2002), so, at least for the time being in the Brazilian system, there is no way to carry out this transmission, whether through inter-living actions or *causa mortis*.

Obviously, technology has been challenging the legislation. Furthermore, under these three pillars, a legal framework is built in order to protect or not protect people from their complete post-mortem virtualization.

4 FINAL THOUGHTS

How far is art from reality? Its utility is represented in this paper, since metafiction can be used to reach theoretical and future paradigms in order to constitute and discuss new legal problems, which have not yet really happened in present times. However, the discussion of this distant-future paradigm, after-death virtualization, has important considerations for the present reality: digital inheritance.

This paper's main purpose was to demonstrate the succession aspects from the attempt to become immortal through applications, social networks and future technologies as a robot / avatar. To this end, the study was divided into two spheres: firstly, the study of the relation between law and metafiction through the study of the *Black Mirror* episode, "Be Right Back".

After that, the paper delved into the limits of digital inheritance and the image rights, as well as the rights of digital memory, in succession law. For that, two theoretical situations were developed: when the

manifestation of will by the deceased regarding their digital eternalization is absent and a relative desires it; and when the manifestation of will is given in life via direct actions or testaments, and the person wanted a digital eternal life for themselves.

The importance of the paper was based on these hypotheses, and the consideration of the manifestation of the will which was analyzed considering the right to being forgotten and the personality rights. It was then shown that the Brazilian legal system does not allow such situations today, mainly based on the right to being forgotten, as part of the private and intimate sphere of people, and on the rights of personality, which are not transmissible after death.

Considering all that, it would not be possible to use digital data, social networks and other sources to form an avatar with the same image and memory of a deceased. The element that provides some kind of dialogue in this situation is the manifestation of the will, which works as an element of confirmation and guideline about whether or not this technology could be used.

It was thus shown that even simpler situations that are already part of everyday life, such as access to social networks after death, must be framed by these three limiting aspects. In this sense, despite the focus of the paper being a metafictional paradigm, the reflections put forward are fully applicable and of urgent discussion in the situations regarding the subject of digital inheritance.

To finish, let us analyze the reflection of Renato Opice Blum (2017): whether we are (legally) prepared to deal with the novelties of technology and whether “the traces of data left by people in systems, on the Internet or, simply in everyday objects, may at some point be used against their owners”. It was found in the present work that there is no effective legislation today for the problems of digital inheritance, not even one that can solve the problems of a complete digital virtualization.

REFERÊNCIAS

- ABUNDANCIA, Rita. O incrível negócio das bonecas sexuais hiper-realistas. s.d. Available at: https://brasil.elpais.com/brasil/2015/09/17/tecnologia/1442442792_703169.html. Access: 10 Jan. 2019.
- ALMEIDA, Juliana Evangelista de. *Testamento digital: como se dá a sucessão dos bens digitais*. Porto Alegre, RS: Editora Fi, 2019. 210p.
- AMARAL, Francisco. *Direito civil: introdução*. 5. ed. Rio de Janeiro: Renovar, 2003. 659p.
- APPLE. *App Store*. Roman Mazurenko. 2017. Available at: <https://apps.apple.com/br/app/roman-mazurenko/id958946383>. Access: 3 Mar. 2019.
- ASCENSÃO, José de Oliveira. As disposições antecipadas de vontade – chamado “testamento vital”. *Revista da Faculdade de Direito UFMG*, Belo Horizonte, n. 64, p. 493- 17, jan./jun. 2014.
- AVILA SANTAMARÍA, Ramiro. Utopía, literatura y Derecho *Anamorphosis – Revista Internacional de Direito e Literatura*, Porto Alegre, RDL, v. 4, n. 2, p. 379-406, jul.-dez. 2018. Doi: <http://dx.doi.org/10.21119/anamps.42.379-406>.
- BAYER, Diego. Na série “Julgamentos históricos”: Aída Curi, o Júri que marcou uma época. Available at: <http://www.justificando.com/2015/03/13/na-serie-julgamentos-historicos-aida-curi-o-juri-que-marcou-uma-epoca/>. Access: 12 Feb. 2019.
- BELTRÃO, Silvio Romero. Tutela jurídica da personalidade humana após a morte: conflitos em face da legitimidade ativa. *Revista de Processo*, v. 247, set. 2015.
- BERNARDO, Gustavo. *O livro da metaficção*. Rio de Janeiro: Tinta Negra Bazar Editorial, 2010. 280p.
- BERTOLDI, Camila Santos. *Consumidor seguidor: um estudo sobre a publicidade no Site da rede social Instagram*. Monografia (Graduação) – Universidade Federal do Rio Grande do Sul – Porto Alegre, 2015, 49f.
- BIONI, Bruno Ricardo. *Xeque-mate: o tripé de proteção aos dados pessoais no jogo de xadrez das iniciativas legislativas no Brasil*. São Paulo: GPoPAI/USP, 2015. 35p.
- BLACHLY, Victoria. Uniform Fiduciary Access to Digital Assets Act: what UFADAA know. *Probate & Property Magazine*, v. 29, n. 4, p. 9-20, jul/ago. 2015.

BLUM, Renato Opice. Estamos preparados para lidar com as novidades da tecnologia? Available at: <https://www.conjur.com.br/2017-set-01/opice-blum-estamos-preparados-lidar-novas-tecnologias>. Access: 16 Sept. 2017.

CASTELLS, Manuel. *A galáxia da internet: reflexões sobre a internet, negócios e a sociedade*. Trad. Maria Luiza X. de A. Borges. Rio de Janeiro: Zahar, 2003. 244p.

CORAZZA, Thais Aline Mazetto. *Novas tendências punitivas e o direito à intimidade: castração química, monitoramento eletrônico e bancos de perfis genéticos criminais*. Birigui/SP: Boreal Editora, 2015. 160p.

CUPIS, Adriano de. *Os direitos da personalidade*. Campinas: Romana Jurídica, 2004. 504p.

DEADSOCIAL. Digital Legacy Management. Available at: <http://deadsocial.org/about>. Access: 4 Mar. 2019.

DINIZ, Maria Helena. Uma visão constitucional e civil do novo paradigma da privacidade: o direito a ser esquecido. *Revista Brasileira de Direito*, Passo Fundo, v. 13, n. 2, p. 7-25, ago. 2017.

EDWARDS, Lilian; HARBINJA, Edina. Protecting Post-mortem Privacy: reconsidering the privacy interests of the deceased in a digital world. *Cardozo Arts & Entertainment Law Journal*, v. 32, n. 83, 2013.

ETER9. Living Cyberspace. Available at: <https://www.eter9.com/auth/login>. Access: 3 Mar. 2019.

ETERNI.ME. Who wants to live forever? Available at: <http://eterni.me/>. Access: 3 Mar. 2019.

FARIAS, Cristiano Chaves de; ROSENVALD, Nelson. *Curso de direito civil: parte geral e LINDB*. 14. ed. rev. ampl. e atual. Slavador: JusPodivm, 2016. 855p.

FERREIRA JR., Ednaldo Silva. Semelhanças entre a ficção jurídica e a ficção literária: os processos judiciais enquanto narrativas ancoradas na realidade. *Anamorphosis – Revista Internacional de Direito e Literatura*, Porto Alegre, RDL, v. 2, n. 2, p. 349-370, jul.-dez. 2016. Doi: <http://dx.doi.org/10.21119/anamps.22.349-370>

GOMES, Orlando. *Introdução ao direito civil*. 11. ed. Rio de Janeiro: Forense, 1995. 562p.

GONÇALVES, Carlos Roberto. *Direito civil*, volume 7: direito das sucessões. 11. ed. São Paulo: Saraiva, 2017. 584p.

GONÇALVES, Carlos Roberto. *Direito civil*, volume 7: direito das sucessões. 12. ed. São Paulo: Saraiva, 2018. 582p.

GOOGLE. *Política de Privacidade*. Available at: <https://policies.google.com/privacy?hl=pt-BR>. Access: 3 Mar. 2019.

GUIMARÃES FILHO, Gilberto; MATOS, Saulo Monteiro Martinho de. O papel da narratividade na teoria do direito de Ronald Dworkin: há uma teoria narrativa em “Como o direito se assemelha à literatura”? *Anamorphosis – Revista Internacional de Direito e Literatura*, v. 5, n. 2, p. 441-463, jul.-dez. 2019. Doi: <http://dx.doi.org/10.21119/anamps.52.441-463>.

HARARI, Yuval Noah. *Homo Deus: uma breve história do amanhã*. Trad. Paulo Geiger. 1. ed. São Paulo: Companhia das Letras, 2016. 448p.

LE MOS, André. *Isso (não) é muito black Mirror: passado, presente e futuro das tecnologias de comunicação e informação*. Salvador: EDUFBA, 2018. 164p.

LLANOS, Leonor Suárez. Literatura do Direito: entre a ciência jurídica e a crítica literária. *Anamorphosis – Revista Internacional de Direito e Literatura*, v. 3, n. 2, p. 349-386, jul./dez. 2017.

MAIA, Fernanda Lima. Da realidade à metaficção: a reflexão espetacular no livro ilustrado. *Encontros de Vista*. Recife, v. 16, n. 1, p. 52-61, jan./jun. 2016.

MARTÍNEZ-LUCENA, Jorge; SOLA, Javier Cigüela. Screen Technologies and the imaginary of punishment: A reading of Black Mirror’s “White Bear”. *Empedocles: European Journal for the Philosophy of Communication*, v. 7, n. 1, p. 3-22, 2016.

MENEZES, Cristiane Penning Pauli de; RODRIGUES, Fernanda. Novos Paradigmas do Direito Sucessório no Brasil: construtos contemporâneos sobre a herança digital. *Revista Jurídica da FADISMA*, v. 13, n. 1, 2018.

OLIVEIRA, Joaquim Humberto Coelho de; BRAGANÇA JUNIOR, Sergio Henrique Fernandes. Direito e a Metaficção Black Mirror: Justiça e vingança de mãos dadas com o Urso Branco (White Bear). *Anais do VI CIDIL – As ilusões da verdade e as narrativas processuais*, v. 1, p. 579-595, ago. 2018.

PELLEGRINI, Tânia. Realismo: postura e método. *Revista Letras de Hoje*. Porto Alegre, v. 42, n. 4, p. 137-155, dez./2007.

PEREIRA, Silvana Maria; PIRES, Eliana Ferrante. As experiências de perdas e luto na contemporaneidade: um estudo bibliográfico. *Revista Educação – UNG*, v. 13, n. 1, p. 200-217, 2018.

RODOTÁ, Stefano. *Il mondo nella rete: quali i diritti, quali i vincoli*. Roma: Laterza, 2014. 136p.

SCHREIBER, Anderson. *Direitos da personalidade*. 3. ed. rev. e atual. Rio de Janeiro: Atlas, 2014. 279p.

SILVA, Carolina Reis Theodoro da; PERUZZO, Pedro Pulzatto. A literatura como direito humano. *Anamorphosis – Revista Internacional de Direito e Literatura*, v. 5, n. 2, p. 515-538, jul.-dez. 2019. Doi: <http://dx.doi.org/10.21119/anamps.52.551-538>.

SILVA, Ilaydiany Oliveira. A memória social registrada no Facebook. *Revista Conhecimento em Ação*, Rio de Janeiro, v. 1, n. 1, p. 115-125, jan./jun. 2016.

SILVA, Justino Adriano Farias da. *Tratado do direito funerário*; v. 1. São Paulo: Método, 2000. 1856p.

TARTUCE, Flávio. *Manual de direito civil: volume único*. 7. ed. rev., atual. e ampl. Rio de Janeiro: Forense; São Paulo: Método, 2017. 1795p.

TEPEDINO, Gustavo. Cidadania e os Direitos da Personalidade. *Revista Jurídica Notadez*, Porto Alegre, ano 51, n. 305, p. 24-39, mar. 2003.

VENOSA, Sílvio de Salvo. *Direito civil: sucessões*. 18. ed. São Paulo: Atlas, 2017. 487p.

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