



doi 10.5020/2317-2150.2025.16860

## The Digital Persona and Surveillance Capitalism: Contemporary Challenges to the Protection of Personality Rights in Cyberspace<sup>1</sup>

*A Persona Digital e o capitalismo de vigilância: Desafios Contemporâneos à Tutela dos Direitos da Personalidade no Ciberespaço*

*La Persona Digital y el Capitalismo de Vigilancia: desafíos contemporáneos a la tutela de los derechos de la personalidad en el ciberespacio*

Jaqueline da Silva Paulichi\* , Universidade Cesumar, Maringá, Paraná, Brasil

### Editorial

#### Histórico do Artigo

Recebido: 27/03/2025

Aceito: 21/06/2025

Eixo Temático 3: Direito, Tecnologia e Sociedade em Transformação

#### Editores-chefes

Katherine de Macêdo Maciel Mihaliuc   
Universidade de Fortaleza, Fortaleza, Ceará, Brasil  
katherine@unifor.br

Sidney Soares Filho

Universidade de Fortaleza, Fortaleza, Ceará, Brasil  
sidney@unifor.br

#### Editor Responsável

Sidney Soares Filho   
Universidade de Fortaleza, Fortaleza, Ceará, Brasil  
sidney@unifor.br

#### Autores

Jaqueline da Silva Paulichi  
j.paulichi@hotmail.com  
Contribuição:  
Development, Research of the article.

#### Como citar:

PAULICHI, Jaqueline da Silva. A Persona Digital e o Capitalismo de Vigilância: desafios contemporâneos à tutela dos direitos da personalidade no ciberespaço. *Pensar - Revista de Ciências Jurídicas*, Fortaleza, v. 30, e16860, 2025. DOI: <https://doi.org/10.5020/2317-2150.2025.16860>

#### Declaração de disponibilidade de dados

A *Pensar* - Revista de Ciências Jurídicas adota práticas de Ciência Aberta e disponibiliza, junto à presente publicação, a Declaração de Disponibilidade de Dados (Formulário *Pensar Data*) preenchida e assinada pelos autores, a qual contém informações sobre a natureza do artigo e a eventual existência de dados complementares. O documento pode ser consultado como arquivo suplementar neste site.

### Abstract

The construction of the digital persona on digital platforms has reshaped traditional notions of privacy, identity, and personality. This article analyzes how the contemporary subject projects intimate and behavioral aspects into cyberspace, constituting a digital identity that, although intangible, is susceptible to misappropriation and violations. Based on the Theory of Surveillance Capitalism, it explores the practices of data collection and manipulation carried out by Big Techs and their impacts on personality rights, especially the rights to privacy, image, honor, personal data, and the free development of personality. Using bibliographic research and a deductive approach, it is shown that personal data — including those voluntarily shared — become inputs for behavioral prediction and manipulation, requiring a new conception of privacy that also encompasses \*extimacy\* as a legally protected dimension. The analysis reveals that legislations such as the LGPD and the GDPR represent significant advances but remain insufficient to fully mitigate the effects of mass surveillance on human dignity. The article ultimately advocates for a normative and interpretative expansion of personality rights, recognizing the digital persona as an existential extension of the natural person, whose protection must be comprehensive, including post-mortem.

**Keywords:** digital persona; personality rights; surveillance capitalism; privacy; personal data; cyberspace; extimacy

### Resumo

A construção da persona digital nas plataformas digitais tem remodelado as noções tradicionais de privacidade, identidade e personalidade. O presente artigo analisa a forma como o sujeito contemporâneo projeta aspectos íntimos e comportamentais no ciberespaço, constituindo uma identidade digital que, embora intangível, é passível de apropriações indevidas e violações. A partir da Teoria do Capitalismo de Vigilância, são exploradas as práticas de coleta e manipulação de dados realizadas pelas Big Techs e seus impactos nos direitos da personalidade, especialmente o direito à privacidade, à imagem, à honra, aos dados pessoais e ao livre desenvolvimento da personalidade. Com base em pesquisa bibliográfica e abordagem dedutiva, evidencia-se que os dados pessoais — inclusive os compartilhados voluntariamente — tornam-se insumos para predição e manipulação comportamental, exigindo uma nova concepção de privacidade que contemple também a extimidade como dimensão protegida juridicamente. Os resultados da análise demonstram que legislações, como a LGPD e o GDPR, representam avanços significativos, mas ainda insuficientes para mitigar integralmente os efeitos da vigilância massiva sobre a dignidade humana. Defende-se, por fim, a ampliação normativa e interpretativa dos direitos da personalidade, reconhecendo a persona digital como extensão existencial da pessoa natural, cuja proteção deve ser integral, inclusive no pós-morte.

**Palavras-chave:** persona digital; direitos da personalidade; capitalismo de vigilância; privacidade; dados pessoais; ciberespaço; extimidade

### Resumen

La construcción de la persona digital en las plataformas digitales ha remodelado las nociones tradicionales de privacidad, identidad y personalidad. El presente artículo analiza cómo el sujeto contemporáneo proyecta aspectos íntimos y comportamentales en el ciberespacio, constituyendo una identidad digital que, aunque intangible, es susceptible de apropiaciones indevidas y vulneraciones. A partir de la Teoría del Capitalismo de Vigilancia, se exploran las prácticas de recolección y manipulación de datos realizadas por las Big Tech y sus impactos sobre los derechos de la personalidad, en especial el derecho a la privacidad, a la imagen, al honor, a los datos personales y al libre desarrollo de la personalidad. Con base en investigación bibliográfica y un enfoque deductivo, se demuestra que los datos personales —inclusive los compartidos voluntariamente— se convierten en insumos para la predicción y manipulación del comportamiento, exigiendo una nueva concepción de privacidad que contemple también la \*extimidad\* como dimensión jurídicamente protegida. Los resultados del análisis demuestran que legislaciones como la LGPD y el GDPR representan avances significativos, pero aún insuficientes para mitigar plenamente los efectos de la vigilancia masiva sobre la dignidad humana. Finalmente, se defiende la ampliación normativa e interpretativa de los derechos de la personalidad, reconociendo a la persona digital como una extensión existencial de la persona natural, cuya protección debe ser integral, incluso post mortem.

**Palabras clave:** persona digital; derechos de la personalidad; capitalismo de vigilancia; privacidad; datos

<sup>1</sup> Texto traduzido por Inteligência Artificial.

\* Doutora em Ciências Jurídicas (Unicesumar- 2023). Possui Mestrado em Ciências Jurídicas - Direitos da Personalidade - (Unicesumar -2015), e graduação em Direito pela Pontifícia Universidade Católica do Paraná (2009); possui especialização em Direito Civil e Processual Civil pela Unicesumar (2010); possui especialização em Direito Aplicado pela Escola da Magistratura do Paraná (2012); Possui Especialização em Direito Tributário e Direito Público pela Universidade para o Desenvolvimento do Estado e da Região do Pantanal, UNIDERP, (2012). Pós- Graduada em docência do Ensino Superior e Metodologias Ativas pela Unicesumar. (2020) Professora no Curso de Direito da Unicampo. Professora do Curso JP Cursos Jurídicos. Mediadora Extrajudicial.



## 1 Introduction

This study addresses the theme of the digital persona, an emerging phenomenon in contemporary and hyperconnected society. The digital persona is understood as an extension of individual identity in cyberspace, shaped by the digital traces left on social media, e-commerce websites, applications, and other digital platforms. This identity mosaic is not limited to consciously provided personal data but includes passively collected information, such as browsing records and digital interactions, forming a comprehensive representation of human subjectivity in the virtual environment.

The justification for this research lies in the growing relevance of the digital persona within the context of surveillance capitalism, a term coined by Shoshana Zuboff to describe the economic exploitation of personal data by major technology corporations (Big Techs). In this scenario, the digital persona not only shapes human subjectivity but also influences behaviors, consumer decisions, and social relationships. Furthermore, the accumulation and manipulation of this information raise questions regarding privacy and personality rights, challenging traditional legal norms that protect human dignity.

Given this context, the central issue of this research emerges: how does the concept of the digital persona impact personality rights in the context of surveillance capitalism? This leads to the following research question: how does the projection of personal identity in cyberspace (the digital persona), under the logic of surveillance capitalism, affect the free development of personality and the protection of privacy?

To answer this question, the study relies on the following theoretical framework: Shoshana Zuboff (surveillance capitalism), Zygmunt Bauman (consumer society and the liquidity of human relations), Giorgio Agamben (mask and social identity), Stefano Rodotà (electronic body and privacy), Paula Sibilia (the spectacle of the self), and Carlos Alberto Bittar (personality rights), among other researchers in the field.

The methodology used is the hypothetico-deductive method, of a theoretical nature, based on bibliographic research. The analysis is conducted through a critical review of specialized literature, aiming to understand the phenomenon of the digital persona in light of contemporary legal and social theories.

The text is structured into five parts. Initially, it discusses privacy in cyberspace, considering how the right to privacy has been transformed by the voluntary and involuntary exposure of personal data.

Secondly, it explores the notion of the digital persona, examining how digital identity is formed through online interactions. In a third stage, the research delves into the digital persona within the context of surveillance capitalism, discussing the implications of the economic exploitation of personal data for personality rights. Finally, it addresses the protection of the digital persona through current legislation.

Ultimately, the study seeks to contribute to the understanding of the legal and social implications of the digital persona, proposing reflections on the protection of human dignity in the era of surveillance capitalism.

## 2 Databases Consulted for the Preparation of This Study

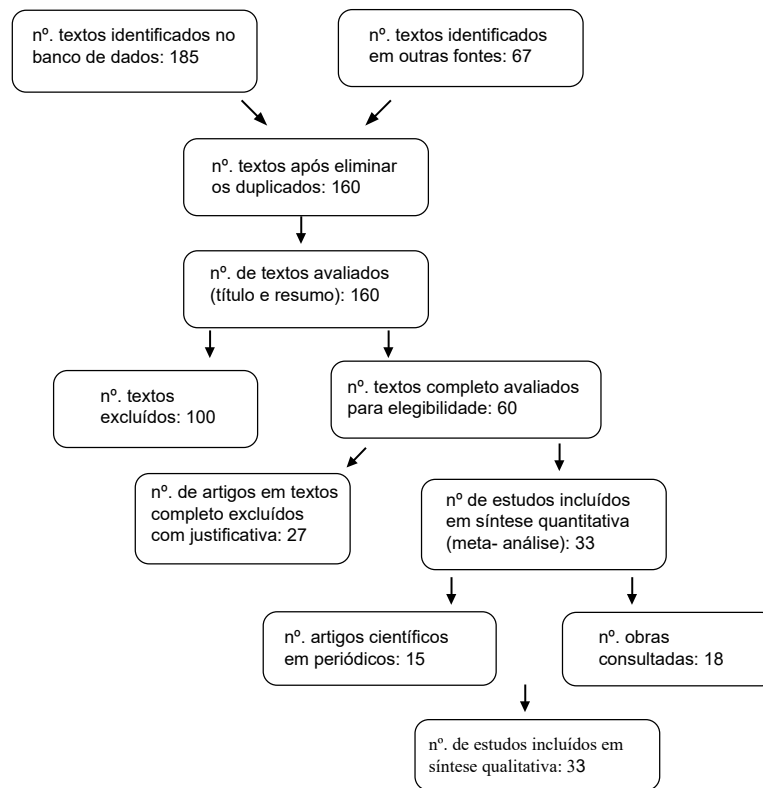
The databases consulted for the preparation of this article included freely accessible research platforms, notably: the CAPES Theses and Dissertations Database; the Brazilian Digital Library of Theses and Dissertations (BDTD); the Legal Library of the Superior Court of Justice (BDJur/STJ); the Digital Repository of the Federal Supreme Court (STF); and the Scientific Electronic Library Online (SciELO). In addition, two subscription-based databases were also used: EBSCOhost and the Revista dos Tribunais Online Library (RT Online).

The search strategy employed the following descriptors: “digital identity,” “digital legacy,” “virtual identity,” “existential digital assets,” “existential goods,” “extimacy,” “digital existential assets,” and “data protection.” After reviewing the title, keywords, and abstract of each retrieved study, results deemed irrelevant to the central theme of the research—namely, personality rights and the digital persona—were excluded.

The search period extended from 2020 to 2024, with an update conducted in 2025 to support the final version of the article. Publications related to data protection dated prior to 2018 were excluded from the review to maintain

current relevance. However, works related to personality rights were selected using broader temporal criteria, given the atemporal nature of this legal category.

Finally, a systematic literature review method was employed in the construction of the text, structured in accordance with the PRISMA flow diagram, presented below:



With this methodological foundation, the analysis proceeds to the next section on Privacy in Cyberspace.

### 3 Privacy in Cyberspace

The right to privacy has acquired new dimensions and formats, encompassing information shared on the internet. As such, privacy is a broad right with a social character, encompassing the protection of personal data (Schreiber, 2013). The Brazilian Civil Code of 2002 does not fully reflect the complexity of the right to privacy, since at the time of its drafting (in the 1970s), there was no concern with personal data collection on the internet.

Nonetheless, various cases reported in the media reveal that the concept of privacy is malleable, shaped by the specifics of each case—sometimes to expand protection, sometimes to limit it. Today's society is marked by a tendency toward self-exposure on social media, an incessant pursuit of virtual friends, likes, followers, subscribers, and views. The act of self-exposure is also perceived as a right to inform, a freedom of expression, and a means of communicating with others.

Zygmunt Bauman (2011, p. 108) addresses this phenomenon in his analysis of the “confessional society”:

[...] in which microphones are installed inside confessionals—the repositories of the most intimate secrets, meant to be disclosed only to God or His earthly plenipotentiaries; and where loudspeakers connected to these microphones are placed in public squares, spaces once designated for debating issues of common interest, concern, and urgency.

By referring to the confessional society, Bauman criticizes the exposure of intimacy online—once sacred and private, now offered freely and excessively, often to gain visibility, to be remembered, or to feel important. This is the phenomenon of the “spectacle of the self.” One example is the “reborn babies” trend, involving hyper-realistic dolls that replicate human babies and are sought after by adults, revealing deep psychological and social implications (Maracinni, 2025).

Paula Sibilía (2020, p. 302) reflects on this trend, stating: “In fact, it is not only possible but has become almost a daily obligation to create transmedia performances of oneself to show others who one is.”

In other words, people are increasingly compelled to display themselves, encouraged to create content in pursuit of relevance. However, in doing so, individuals often fail to perceive how much they are exposing and which information is being handed over to Big Tech companies.

Modern technologies offer individuals countless possibilities—but they also introduce risks. One example is the rise of online betting platforms, commonly referred to as “bets,” which have become widespread and led many Brazilians into debt. These platforms are the contemporary face of gambling addiction, carrying the same social risks as traditional games of chance, but with a digital interface. The sensitive and confidential data required by these sites increases users’ vulnerability.

With technological innovations, data privacy has become an integral part of the right to privacy. It now plays a fundamental role in safeguarding human dignity, particularly by pushing back against practices that limit individual autonomy and freedom. In this context, personal data no longer belong to the individual—they belong to the entities that collect them, namely Big Tech companies (Tepedino, 2022).

The pursuit of engagement drives many users to participate in online activities solely for visibility. Deeply personal aspects of individuals are now shared with the public. As such, intimacy has become a visible trait, encouraged by social media and digital technologies (Bolesina, 2017).

A new form of protection for personality rights is emerging—one that recognizes how individuals project their traits into the virtual world, extending beyond the traditional concept of intimacy. The internet and social networks amplify this self-exposure. Bolesina (2017) notes the growing presence of live streams and avatars that voluntarily expose the private lives of users.

This exposure also facilitates the abusive collection of personal data—from basic identifiers like name, age, and location to private conversations with friends and family. Emerson Wendt (2015, p. 308) addresses this phenomenon through the concept of extimacy: “Extimacy is fundamentally a self-violation—or self-revelation—of the rights to intimacy and privacy. It goes beyond mere self-disclosure of intimacy to also encompass the voluntary exposure of private life.”

All information made public by data subjects becomes a means of identifying them online and may infringe on their right to secrecy.

Extimacy therefore emerges as a new facet of privacy rights. It encompasses the protection of that which an individual has voluntarily shared online. Extimacy can be seen as the mode through which a person expresses relevance in the digital society, regardless of the motive. Still, even voluntary self-exposure warrants legal protection, since individuals must retain control over what is made public and what remains private.

Despite data anonymization practices, Big Techs are capable of identifying the person behind digital inputs. These pieces of information form a digital persona—a construct that includes deeply personal characteristics projected into cyberspace. The digital persona is also referred to by other terms, such as Stefano Rodotà’s “electronic body” (2021), “e-personality” (Divino, 2020), or simply digital identity (Ruario; Sarlet, 2021), among others.

The term “persona” is rooted in ancient Greek theater, derived from the word *prósopon*, which refers to the masks used in tragedies. It was through wearing the mask that one became a “person” (Gonçalves, 2008, p. 20). Thus, “persona” came to designate an individual who plays a role in society and in the Greek polis (Gonçalves, 2008, p. 21). In Roman times, the term was employed by Cicero and Seneca, linked to the notion of representation (*personam gerere*—“to perform a role”).

Giorgio Agamben (2014, p. 65) notes that “It is through the mask that the individual acquires a social role and identity. Personality defines the individual’s place in social life and rituals and has come to signify legal capacity and political dignity.” In this sense, the struggle for recognition becomes a struggle for the social mask—the “persona” that society attributes to each individual.

A human being’s individuality is thus a living mask, representing only part of their essence. In other words, each person, with their unique traits, expresses their true identity in the social and digital world.

The digital persona, in turn, is distinguishable by its unique features—ones that extend beyond a person’s name or personal data to include intimate preferences, fears, and emotional responses. Given that people now treat social media as a sort of virtual diary, it is reasonable to say that the information stored there often holds far more value than traditional physical documents.

Therefore, the digital persona is entitled to the same legal protection as the natural person, particularly regarding personality rights. The data stored on social networks are sufficient to identify individuals and constitute a digital extension of their personality. This information may be misappropriated or used by third parties for unlawful or abusive purposes. The protection of the digital persona has become necessary in view of the enormous accumulation of personal data dispersed across digital platforms and the increasing efforts of companies to “digitally resurrect” individuals after death as a way to help loved ones cope with grief. Heloísa Helena Barboza and Vitor Almeida (2021, p. 18) reflect on this, stating: “The protection and preservation at stake acquire a new dimension when we consider the possibility of a ‘virtual life’ continuing after biological death, facilitated by the internet. This

is not a new ‘face’ of death, but a new perspective on the persistence of ‘life.’”

This protection is necessary not only to preserve the interests of the deceased but also the rights of those who were connected to them.

#### 4 Theoretical Foundations of the Digital Persona

The digital persona is an extension of the human person, given the multitude of data available in information systems, social media, entertainment and shopping platforms, as well as biometric identifiers such as facial recognition, voice, fingerprints, and others. There is a process of singularization of the subject, distinguishing them from the collective. Ruaro and Sarlet (2021) explain that the identity mosaic is composed not only of voluntarily provided data but also of digital traces left by the user, such as website registrations, cookies, and metadata.

The transformation of the human body by new technologies is addressed by Stefano Rodotà (2004, p. 90), who states: “The human body is in continuous transformation. First, it lost its unity, breaking down into parts, into products: organs, tissues, cells, and gametes can be separated from the original body, circulated, and used in other bodies.”

Subsequently, the body “experienced a crisis of its materiality,” when the concept of a “physical body” was opposed to that of the “electronic body.” This electronic body is in constant transformation due to artificial intelligence and algorithmic programming, which employ powerful methods of persuading users to consume products and services, thereby manipulating the user’s projected personality in digital environments. Ricardo de Jesus Machado (2016, p. 108) reflects on society’s immersion in cyberculture, asserting that: “Society is embedded in the technocultural context of microinformatics, where even functionally or digitally illiterate individuals are part of the vast digital network that connects people and data, transforming data into individual and collective identities.”

In this sense, due to the manifestation of personality in the digital sphere and ongoing social transformations, even the right to image has acquired a broader scope, encompassing digital self-expression. Siqueira and Vieira (2023) highlight that personality traits now fall under the scope of image rights, especially given scientific and technological advancements that have expanded the types of attributes the law seeks to protect.

Thus, the right to image is no longer confined to image-as-portrait, but includes what Bittar (2015) terms “image-as-attribute.” The legal protection of personality in the digital domain has expanded, as the traits of personality converge in cyberspace. In this context, personality is no longer analyzed solely through isolated perspectives—such as image or voice—but as a set of intersecting rights that ultimately converge in the core principle of human dignity, which functions as the general clause of personality rights.

The hyperconnection fostered by social media and other online interaction tools allows individuals to express themselves in diverse ways: through text, voice recordings, photos (simple or edited), emoticons, and the sharing of images, news, music, and videos—each representing digital manifestations of the self.

Stefano Rodotà (2004, p. 92) observes: “In cyberspace, the constraints of the physical body have finally been overcome, making way for the ‘terminal body’ of a person transformed into an interactive being—alternately a sender and a receiver.”

This human representation in cyberspace can be shaped and adapted according to the user’s preferences. The technological possibilities have led to a reconceptualization of the body—not as an unchangeable vessel, but as a personal construct, subject to multiple metamorphoses in accordance with individual desires (Rodotà, 2004, p. 92).

This shift is also associated with increased surveillance, as biometric data (e.g., fingerprints, facial features, and gait) are increasingly collected under the guise of security enhancement. For instance, Rodotà notes how the U.S. began requiring foreign visitors to submit fingerprints at entry, representing a broader redefinition of the legal-political status of citizens in so-called democratic states (2004, p. 93).

Eventually, the body has become a source of data—and soon, the mind will follow, via the encroaching reach of daily surveillance technologies. Rodotà writes that “fingerprints are only one of the biometric identifiers adopted for identification and authentication purposes” (2004, p. 93).

Rodrigo Róger Saldanha (2022) addresses the complexity of the digital persona and raises the question of whether it constitutes a new legal expression of personality rights, one that reflects the intertwining of digital informational identity and personal dignity. Data, in this sense, become a representation of the subject, and when cross-referenced with other data, are capable of clearly identifying an individual.

Agamben (2014) further reflects on the mask as a foundation for societal recognition. In ancient Greek theater, the mask signified personality. Today, recognition no longer depends on interpersonal validation or moral reputation—rather, it is increasingly based on immutable identifiers such as fingerprints. This is the condition of the “bare life”—a biological data point.

In the informational society, an individual’s mode of digital recognition—their digital footprint—has become inseparable from their identity. Physical, biological, and psychological attributes now reside in the digital realm, making recognition inescapable, albeit malleable.

The human body has become a password—a source of multifaceted data, granting Big Tech companies endless access to data mining opportunities. Rodotà (2004, p. 93) emphasizes that: “The body itself is becoming a password. The physical replaces abstract keywords: fingerprints, hand geometry, iris, retina, facial features, voice, typing behavior, walking pattern, DNA...”

These data are frequently consulted—not only for user authentication but also for continuous behavioral profiling (Rodotà, 2004, p. 93).

Big Tech companies operate on the basis of this collected behavioral data, a process Shoshana Zuboff (2021, p. 22) defines as surveillance capitalism. According to her, this model treats the entire human experience on digital platforms as raw material to feed predictive models for commercial purposes.

Some of these data are used for product and service development, as detailed in data policies like that of Meta. The rest is treated as behavioral surplus, processed by machine intelligence to manufacture prediction products capable of anticipating human behavior now, soon, and later (Zuboff, 2021, p. 22). This surplus becomes a new form of value extraction, aimed at predicting and determining behavior (Fornasier; Knebel, 2021, p. 1008).

Thus, user data are ubiquitous. Rodotà (2003, p. 10) writes: “The information concerning us—our identity in the eyes of those who use it electronically—is scattered across an increasing number of databases worldwide.”

This demonstrates that surveillance capitalism knows no bounds: “The relentless pursuit of behavioral data on anyone generates a continuous production of individual, familial, territorial, and group profiles. Surveillance knows no borders” (Rodotà, 2021).

As a result, surveillance is inescapable and exercised in multiple forms, shaping how individuals are recognized in the digital space—even against their will. Recognition no longer depends solely on consent, but on data collection that, when combined, forms a detailed and manipulable digital persona.

## 5 Risks in Surveillance Capitalism

In order for Big Tech companies to collect data, a platform is required—a concept Nick Srnicek (2017, p. 43) defines as a: “digital infrastructure that acts as an intermediary between different parties in a given market or segment.”

The world’s largest companies currently operate in the information technology sector, having surpassed one trillion dollars in market value on the New York Stock Exchange. These include Apple, Microsoft, Alphabet, and Amazon (Srnicek, 2017).

In the age of platform capitalism, the product of labor has become immaterial, meaning that the content of information produced by media platforms holds more value than the physical commodities themselves. As Srnicek (2017, p. 27) explains: “Material goods now contain an increasing amount of embedded knowledge.”

José van Dijck (2014) argues that the practice of collecting and analyzing data is rooted in questionable ontological and epistemological assumptions. Although there are legitimate examples of Big Data use in research, the ideology of “dataism” reflects a widespread belief in the capacity of data to objectively quantify and track all forms of human behavior and social interaction through digital technologies. Additionally, dataism demands a high

level of trust in the (institutional) agents who collect, interpret, and share selected data from social media, internet platforms, and communication technologies.

Shoshana Zuboff develops her theory of surveillance capitalism based on three dimensions:

1. The foundations of this system of production,
2. The expansion of the digital world into the real world, and
3. Its instrumentalization (Fornasier; Knebel, 2021, p. 1008).

According to the theory, capitalism gains a new mechanism of accumulation by transforming human behavior into data—data which are then classified and analyzed in predictive systems. Fornasier and Knebel (2021, p. 1011) write: “Surveillance capitalism fills a void in capitalist accumulation by creating an unprecedented market in which surveillance is a fundamental profit-generating mechanism.”

The model is based on three historical references:

- İ The Behaviorist Theory of B.F. Skinner,
- İ The dystopian novel 1984 by George Orwell, and
- İ The evolution of Google and Yahoo’s search systems, all of which are cited in Zuboff’s (2021) work.

Skinner’s behaviorism analyzes human psychology through observable stimulus-response patterns, arguing that behavior is shaped by experience (Skinner, 2003). Drawing from this, digital technologies, including social networks and apps, are developed to capture user attention and stimulate continuous engagement.

This leads to the concept of the attention economy, proposed by Davenport and Beck (2001), where digital technologies are designed to maximize user focus and media consumption.

Zuboff (2021) identifies Google as the pioneer of surveillance capitalism, stating that the phenomenon began in 2004, when a Gmail user discovered that Google was scanning her emails to display targeted advertisements. Recognizing the potential of such data, Google began analyzing user behavior and monetizing it by offering targeted ads to businesses. This practice marked the emergence of behavioral surplus as a commercial resource.

Zuboff notes that the capacity to predict consumer behavior is becoming more refined and now extends beyond online ads to multiple sectors, including insurance, retail, finance, and a growing range of industries interested in predictive data markets. These new markets aim to anticipate and shape individual decisions and behaviors (Zuboff, 2021, p. 26).

Google operates as a mediator between humans and computers by monitoring user interactions with its search engine. Over time, as more services were computerized, they produced unprecedented data resources (Zuboff, 2021, p. 106). Surveillance capitalists track everything that users input online—searches, emails, texts, images, songs, messages, locations, communication patterns, attitudes, interests, social networks, purchases, and more (Zuboff, 2021, p. 198).

This model, governed by new economic imperatives, disregards personality rights, fundamental rights, human rights, and social norms. Surveillance capitalism holds the power to shape the flow of information to the public, encourage consumption, identify personal needs, and satisfy them for a price—even if doing so violates social norms, morality, or law.

Importantly, as Zuboff (2021, p. 32) clarifies, surveillance capitalism is not a technology in itself: “It is a logic that permeates and directs technology into action. Surveillance capitalism is a market form that is unimaginable outside the digital medium, but it is not the same as ‘digital.’”

Not all companies that analyze user data are surveillance capitalists. A business that uses customer data solely to improve services and personalize the user experience is simply capitalist. However, to qualify as a surveillance capitalist, a company must operate within a framework of subordination and hierarchy, treating the individual as an object from which data are extracted (Zuboff, 2021).

Big Tech companies are fully aware that behavioral data can predict user needs. Therefore, these data are used to influence, persuade, align, and direct human behavior toward profit-generating outcomes. Such data collection and behavior manipulation violate the right to privacy and to the free development of personality, including its various dimensions.

Both personal data and sensitive data can give rise to discrimination or control, ultimately resulting in restrictions on individual liberty. Sensitive data, due to their nature, are particularly prone to misuse (Doneda, 2010, p. 191). For this reason, artificial intelligence systems must adhere to an ethical code of conduct that ensures they do not violate personality rights or fundamental rights when creating and processing digital personas.

Although there is no specific legislation regulating the full scope of data usage by Big Techs—especially concerning digital inheritance and the data of deceased individuals—the digital persona exhibits profoundly personal characteristics. Its inherent existential attributes demand legal protection grounded in personality rights. Accordingly, AI systems must operate within ethical and normative boundaries, ensuring respect for human dignity.

The digital persona is a projection of personal traits in cyberspace, offering fragments of the self to the networked society—fragments over which Big Tech companies retain significant power. The creation of this persona involves human rights, fundamental rights, and personality rights, such as the right to honor, privacy, name, identity, voice, image, and personal data.

In this context, the free development of personality becomes increasingly fragile. The digital persona also reflects a person's subjective values, since digital platforms store not only external characteristics but also thoughts, feelings, and opinions—facets of human psychology.

Although the current Brazilian Civil Code addresses personality rights, such as physical integrity, identity, name, image, honor, and privacy, it may not adequately capture all dimensions involved in the construction of

The current Brazilian Civil Code contains a chapter dedicated to personality rights, addressing those with the most significant effects on civil relationships, such as the right to physical integrity, personal identity, name, image, honor, and private life. However, the personality rights invoked in the construction of the digital persona may not be explicitly recognized in the text of the law, including rights such as secrecy, confidentiality, protection of freedom of expression in cyberspace, and, most importantly, the right to personal data.

In this sense, Sessarego (1992, p. 36) asserts that: “Normative fragmentation must not lose sight of the existential structure of the person, which demands unified and comprehensive protection. It cannot be substantially divided into a multiplicity of disconnected aspects, each treated as an independently protected legal interest.”

Thus, the personality rights set forth in the Civil Code represent a normative fragmentation, outlining the rights that compose the existential structure of the subject. Consequently, the digital persona embodies various fragments of the individual, each of which may require legal protection—sometimes under privacy, intimacy, and confidentiality; other times under personal data protection or the right to honor.

Carlos Alberto Bittar (2015, p. 115) provides an important classification of personality rights, dividing them into physical, psychic, and moral rights. The third category, moral rights, refers to: “qualities of the individual valued by society, reflected in the person's projection or manifestation in the social context. These concern attributes of the person as understood and judged by the community” (Bittar, 2015, p. 115),

and include the rights to identity, honor, respect, and intellectual creations. These moral rights are particularly vulnerable in cyberspace, where public perception and the social valuation of personal traits are constantly debated and shaped.

Regarding personality rights, freedom—as defined by Bittar (2015, p. 167):

involves various manifestations depending on the human activities being exercised — whether personal, contractual, or spiritual in nature. It is the legal right to do or refrain from doing anything in accordance with the legal order [...] it is the prerogative that enables individuals to develop, without obstacles, their activities in the social realm of relationships.

The digital persona is freely manifested on digital platforms—through written posts, conversations with third parties, and other forms of expression in cyberspace. Accordingly, freedom of thought, freedom of expression, and freedom of manifestation are rights that must be safeguarded in the digital environment. The free development of human personality seeks to preserve identity and the construction of human subjectivity, which encompasses all essential individual traits. Building one's own personality is part of the right to uniqueness.

Miranda (2013, p. 11179) discusses the role of the State in guaranteeing this right, emphasizing that the free development of personality: “does not imply merely a negative freedom, based on non-interference by the State in personal development; rather, it also demands a positive duty, whereby the State must implement legal frameworks that allow individuals to develop their personality.”

In other words, the State has both the positive obligation to ensure the free development of personality—such as by establishing solid legal norms that prevent Big Tech companies from interfering with personal autonomy—and the negative obligation to refrain from actions that hinder this development.

Thus, this right carries a dual nature: both positive and negative. This duality reflects the principle of human dignity, enshrined in Article 1, item III of the Brazilian Federal Constitution (1988), which also serves as the general clause of personality rights, or their core essence.

Moreover, human dignity is the normative foundation that justifies the evolution of the legal system in response to social and technological changes (Ribeiro, 2015). This understanding stems from the need to protect personality in the face of emerging digital technologies. Therefore, personality must be safeguarded, so that it does not become just another product to be commercialized by Big Tech corporations.

## 6 Normative Response

The digital persona, under the logic of surveillance capitalism, is shaped and refined according to social pressures and expectations aimed at achieving certain outcomes. This means that all data collected online from each user of digital platforms is at the mercy of the interests of Big Tech corporations. This situation affects not only user behavior but also the regulatory frameworks designed to protect personal data.

The consolidation of the digital persona as an authentic dimension of human identity in cyberspace has demanded profound reforms in legal systems. As individuals increasingly exist, interact, and leave informational traces in digital environments mediated by algorithms and technological platforms, it becomes necessary to develop normative mechanisms that ensure the protection of human dignity in this new existential sphere.

The first major milestone in this process is Regulation (EU) 2016/679 of the European Parliament and of the Council, known as the General Data Protection Regulation (GDPR). In effect since 2018, this regulation marks a paradigmatic shift by establishing unequivocally that the protection of personal data constitutes a fundamental right, as expressly provided in Article 8 of the Charter of Fundamental Rights of the European Union. The GDPR recognizes that the growing collection, processing, and circulation of data directly impact individual freedom, privacy, and the free development of personality.

The European regulation guarantees data subjects a set of subjective rights, including the right of access, rectification, objection, portability, and the so-called right to be forgotten. Furthermore, it empowers individuals to control their personal information, including in the face of automated decision-making and algorithmic profiling, which constitutes an initial step toward protecting the digital persona. Accordingly, it becomes clear that the issue is not merely the protection of sensitive data, but the defense of a digital identity—constructed through interactions and behavioral patterns in the virtual space—that this study refers to as the digital persona.

In Brazil, the enactment of Law No. 13.709/2018, known as the General Data Protection Law (LGPD), represents a similar legislative update. The LGPD establishes, in its very first article, that the processing of personal data aims to ensure fundamental rights to freedom, privacy, and the free development of personality. This provision is especially significant, as it demonstrates that the Brazilian legislator recognizes the digital personality as a development of the constitutionally protected legal personality.

The LGPD introduces core concepts such as informed consent, informational self-determination, and legitimate interest, linking them to the principle of prevention and the need to adopt good data governance practices. The law also creates the National Data Protection Authority (ANPD), responsible for overseeing and regulating the application of the law, thereby providing an institutional response to the complexity of the digital ecosystem.

Both regulations—GDPR and LGPD—address not only the protection of sensitive data, but also the informational integrity of individuals in a scenario marked by profiling, tracking, prediction, and behavioral control practices. Ultimately, the protection of the digital personality requires not only control over personal data, but also the recognition of the digital persona as an existential projection worthy of legal protection.

The digital persona finds legal support in contemporary normative frameworks, which now incorporate into their axiological core the right to informational self-determination as an extension of human dignity. The advancement of technology imposes on the legal system the duty to evolve from a merely patrimonial protection of data to a personalist and existential protection, one that can safeguard individuals in their virtual dimension, ensuring they are not reduced to mere objects of algorithmic and economic exploitation.

However, in order to effectively protect the personality rights of individuals in the digital environment, it is necessary to establish efficient dispute resolution mechanisms, thus ensuring greater protection for the digital persona.

## 7 Conclusion

The digital persona represents the manifestation of individual characteristics in cyberspace, highlighting the need for a specific legal framework that recognizes the application of personality rights to its constitution. This projection goes beyond the mere externalization of data; it constitutes an identity extension of the subject, shaped through the capture of digital traces by algorithms and artificial intelligence systems. In this context, the protection of human personality must go beyond the natural person, extending to its informational representation in the digital environment.

Although there is still no specific legislation that comprehensively regulates the use of data by large technology corporations—especially regarding digital inheritance and the data of deceased individuals—it is undeniable that the digital persona takes on a highly personal nature. The complexity of its configuration, strongly tied to existential attributes, requires that its legal protection be firmly grounded in personality rights. To this end, it is essential that algorithmic systems operate in accordance with ethical and normative guidelines aimed at preserving human dignity.

In this context, both the General Data Protection Regulation (GDPR) of the European Union and Brazil's General Data Protection Law (LGPD) emerge as fundamental instruments for the protection of digital identity. Both laws recognize that the processing of personal data directly affects individuals' freedom, privacy, and free development of personality. By guaranteeing rights such as informational self-determination, free and informed consent, data portability, transparency, and the right to erasure, these laws empower data subjects to play a central role in controlling their digital presence. As such, they are consolidated as normative instruments that, even in the absence of specific rules regarding the digital persona, offer robust legal support for its protection.

The digital persona, as an extension of individual identity, exposes fragments of subjectivity to the networked society, under the constant mediation and control of corporations driven by economic interests. Its constitution involves not only patrimonial and informational concerns but also values intrinsically linked to fundamental rights, such as the rights to honor, privacy, name, identity, image, voice, and personal data. In the landscape of surveillance capitalism, these rights are increasingly vulnerable, requiring critical attention from legal systems and civil society.

Assuming that every action performed in digital environments can be collected, processed, and used as analytical input by technology companies, it becomes essential to reflect on the complexity of this reality. Its effects exceed the traditional limits of legal systems, impacting existential interests, contractual relations, personality rights, and even succession law, as in the case of so-called “digital inheritance.”

## References

- AGAMBEN, G. **Nudez**. Belo Horizonte: Autêntica, 2014.
- BARBOZA, H. H.; ALMEIDA, Vitor. Tecnologia, morte e Direito: em busca de uma compreensão sistemática da “Herança Digital”. In: TEIXEIRA, A. C. B.; LEAL, L. T. (coord.). **Herança digital: controvérsias e alternativas**. Indaiatuba: Foco, 2021. p. 3-22.
- BAUMAN, Z. **Danos colaterais: desigualdades sociais numa era global**. Rio de Janeiro: Zahar, 2013.
- BITTAR, C. A. **Os direitos da personalidade**. São Paulo: Saraiva, 2014.
- BOLESINA, I. **O direito à extimidade: as inter-relações entre identidade, ciberespaço e privacidade**. Florianópolis: Empório do Direito, 2018.
- BRASIL. [Constituição (1998)]. **Constituição da República Federativa do Brasil de 1988**. Brasília, DF: Presidência da República, [2023]. Disponível em: [http://www.planalto.gov.br/ccivil\\_03/constituicao/constituicao.htm](http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm). Acesso em: 02 set. 2024.
- BRASIL. **Lei nº 13.709, de 14 de agosto de 2018**. Lei Geral de Proteção de Dados Pessoais (LGPD). Brasília, DF: Presidência da República, [2019]. Disponível em: [https://www.planalto.gov.br/ccivil\\_03/\\_ato2015-2018/2018/lei/13709.htm](https://www.planalto.gov.br/ccivil_03/_ato2015-2018/2018/lei/13709.htm). Acesso em: 02 set. 2024.
- CASSINO, J. F.; SOUZA, J.; SILVEIRA, S. A. **Colonialismo de dados: como opera a trincheira algorítmica na guerra neoliberal**. São Paulo: Autonomia Literária, 2021.

- COULDRY, N.; MEJIAS, U. A. Data colonialism: rethinking big data's relation to the contemporary subject. **Television & New Media**, [s. l.], v. 20, n. 4, p. 336–349, 2018. DOI: <https://doi.org/10.1177/1527476418796632>
- DAVENPORT, T. H.; BECK, J. C. **Economia da atenção**. São Paulo: Editora Campus, 2001.
- DIVINO, S. B. S. Critical considerations on artificial intelligence liability: e-personality propositions. **Revista Eletrônica Direito e Sociedade**, [s. l.], v. 8, n. 2, p. 193-213, 2020. DOI: <https://doi.org/10.18316/redes.v8i2.5614>
- FORNASIER, M. de O.; KNEBEL, N. M. P. Regulação by design, lex informati-ca e o Direito como metatecnologia para os resultados tendenciosos sob o sistema de recomendação de bens culturais imateriais. **Duc in Altum - Cadernos de Direito**, [s. l.], v. 12, n. 28, p. 309-346, 2021. DOI: <https://doi.org/10.22293/2179-507x.v12i28.1435>
- GONÇALVES, D. C. **Pessoa e direitos da personalidade: fundamentação ontológica da tutela**. Coimbra: Almedina Brasil, 2008.
- LOHR, S. **Data-ism: inside the big data revolution**. London: OneWorld, 2015.
- MACHADO, R. de J. “Eu digital”: identidade e audiovisualidades na web. *In*: FLICHY, P.; FERREIRA, J.; AMARAL, A. (org.). **Redes digitais: um mundo para os amadores**. Novas relações entre mediadores, mediações e midiatizações. Santa Maria: FACOS-UFSM, 2016. p. 97-120. Disponível em: <https://www.ufsm.br/editoras/facos/redes-digitais/>. Acesso em: 02 set. 2024.
- MAGRANI, E. **A internet das coisas**. Rio de Janeiro: FGV, 2018.
- MARACCINI, G. Bebês reborn: entenda o que são e por que chamam atenção. **CNN Brasil**, 16 maio 2025. CNN pop. Disponível em: <https://www.cnnbrasil.com.br/lifestyle/bebes-reborn-entenda-o-que-sao-e-por-que-chamam-atencao/>. Acesso em: 02 set. 2024.
- MIRANDA, F. A. O direito fundamental ao livre desenvolvimento da personalidade. **Revista do Instituto do Direito Brasileiro**, [s. l.], v. 2, n. 10, p. 11175–11211, 2013. Disponível em: [https://www.cidp.pt/revistas/ridb/2013/10/2013\\_10\\_11175\\_11211.pdf](https://www.cidp.pt/revistas/ridb/2013/10/2013_10_11175_11211.pdf). Acesso em: 10 jan. 2025.
- MOURA, M. B. de S. As disposições preliminares da LGPD. *In*: FEIGELSON, B.; SIQUEIRA, A. H. A. (org.). **Comentários à Lei Geral de Proteção de Dados: lei 13.709/2018**. São Paulo: Thomson Reuters, 2021. p. 6-19.
- RIBEIRO, W. C. As modernas relações entre direito civil e direito constitucional: a tutela da pessoa em foco. **Pensar – Revista de Ciências Jurídicas**, Fortaleza, v. 19, n. 3, p. 859-886, set./dez. 2014. Disponível em: <https://ojs.unifor.br/rpen/article/view/2877/pdf>. Acesso em: 19 maio 2025.
- RODOTÀ, S. Transformações do corpo. **Revista Trimestral de Direito Civil**, Rio de Janeiro, v. 5, n. 19, p. 65–107, jul./set. 2004.
- RODOTÀ, S. Pós-humano. **Revista Brasileira de Direito Civil**, [s. l.], v. 27, n. 1, p. 113–144, jan./mar. 2021. Disponível em: <https://rbdcivil.ibdcivil.org.br/rbdc/article/view/712>. Acesso em: 06 jun. 2024.
- RODOTÀ, S. Palestra Professor Stefano Rodotà. *In*: GLOBALIZAÇÃO E O DIREITO, 2003, Rio de Janeiro. **Anais eletrônicos** [...]. Rio de Janeiro: Universidade do Estado do Rio de Janeiro; Procuradoria Geral do Município, 2003. p. 1-11. Disponível em: <chrome-extension://efaidnbnmnibpcjpcglclefindmkaj/https://www.rio.rj.gov.br/dlstatic/10112/151613/DLFE-4314.pdf/GlobalizacaoeoDireito.pdf>. Acesso em: 06 jun. 2024.
- RUARO, R. L.; SARLET, G. B. S. O direito fundamental à proteção de dados sensíveis no sistema normativo brasileiro: uma análise acerca das hipóteses de tratamento e da obrigatoriedade do consentimento livre, esclarecido e informado sob o enfoque da Lei Geral de Proteção de Dados (LGPD) – Lei 13.709/2018. *In*: MENDES, L. S.; DONEDA, D.; SARLET, I. W.; RODRIGUES JÚNIOR, O. L. (coord.). **Tratado de proteção de dados pessoais**. Rio de Janeiro: Forense, 2020. p. 177-191.
- SALDANHA, R. R. **A quarta expressão dos direitos da personalidade e o conjunto informativo digital como uma nova classificação da personalidade na sociedade da informação**. 2022. 325f. Tese (Doutorado

em Ciências Jurídicas) – Programa de Pós-Graduação em Ciências Jurídicas, Universidade Cesumar, Maringá, Paraná, 2022.

SCHREIBER, A. **Direito civil e constituição**. São Paulo: Atlas, 2013.

SESSAREGO, C. F. **Derecho a la identidad personal**. Buenos Aires: Astrea, 1992.

SRNICEK, N. **Platform capitalism (theory redux)**. New Jersey: John Wiley & Sons, 2017.

VAN DIJCK, J. Datafication, dataism and dataveillance: big data between scientific paradigm and ideology. **Surveillance & Society**, [s. l.], v. 12, n. 2, p. 197-208, 2014. DOI: <https://doi.org/10.24908/ss.v12i2.4776>

VAN DIJCK, J. Confiamos nos dados? as implicações da datificação para o monitoramento social. **Matrizes**, São Paulo, v. 11, n. 1, p. 39-59, 2017. DOI: <https://doi.org/10.11606/issn.1982-8160.v11i1p39-59>

WENDT, E. Internet: percepções e limites em face do direito à intimidade na rede. **Revista Jurídica Luso-Brasileira**, [s. l.], n. 6, p. 297-318, 2015. Disponível em: [https://www.cidp.pt/revistas/rjlb/2015/6/2015\\_06\\_0297\\_0318.pdf](https://www.cidp.pt/revistas/rjlb/2015/6/2015_06_0297_0318.pdf). Acesso em: 05 jun. 2025.

ZUBOFF, S. **A era do capitalismo de vigilância**. São Paulo: Intrínseca, 2021.

