Speaking for the Dead: Idziski and the Forum for Post-Mortem Likeness Claims

by Marta Liduma, LLB candidate in International and European Law, University of Groningen

A Dutch actor dies in March. By April, his likeness starts to appear widely. Generated videos show him promoting a supplement, and one clip ends with a link to a shop selling shirts printed with his face. A single man in Germany creates all of this, in large quantities, using a dozen deceased performers.

Who can sue, and in which court?

Dutch law answers the first question readily. Article 21 of the Auteurswet allows publication to be resisted when a reasonable interest of the portrayed person, or after his death of one of his surviving relatives, opposes it. Article 25a, in the same paragraph of the Act, identifies those relatives as the parents, the spouse or registered partner and the children, each of whom may act independently of the others. Article 21 addresses whoever holds the copyright for the portrait, which poses a problem for a generated video that may have no author at all. However, Article 35 makes the publication of a portrait without entitlement an offence for anybody, and Dutch practice has long read the two provisions together. German law follows a similar design. Section 22 of the Kunsturhebergesetz (KUG) requires the consent of the family of the deceased (Angehörige) for ten years after death, and defines them as the surviving spouse or registered partner and the children, failing whom the parents.

The second question leads to the Court of Justice and its judgment on 18 June 2026 in Idziski (C-232/25). The concentrating head of Article 7(2) Brussels Ia puts two questions to a single individual. Does the content identify you, and where are your interests centred? Death creates separation between these questions, and current case law keeps them apart.

The custodial pattern

Both provisions grant the post-mortem entitlement to a closed class of relatives, a group defined by their relationship to the deceased and not by any interest in the estate they left. A disinherited son may object, while the residuary legatee under the will stands outside the class entirely. Such relatives are best described as custodians, since the entitlement is all they hold of the deceased.

The German decade deserves a moment's attention. Since section 22 of the KUG requires consent for ten years after death, the Federal Court of Justice has extended this same period by analogy to the pecuniary side of the post-mortem personality right in kinski-klaus.de (BGH, 5 October 2006, I ZR 277/03, BGHZ 169, 193), while the dignitary side endures beyond the ten-year mark. German law thus surrenders its transmissible part ten years after death. What survives is the dignitary part, which rests on constitutional grounds and is exercised by whoever is entitled to act for the deceased.

Whose interest the custodian asserts is settled in Germany and open in the Netherlands. German law divides the post-mortem personality right in two. The dignitary components rest upon Article 1(1) of the Basic Law, the right to free development of personality under Article 2(1) belonging to the living alone, and after death they are exercised by a person entitled to act on the deceased's behalf (Wahrnehmungsberechtigter), in the case of images the Angehörige of section 22. That person holds defensive claims alone, and no claim for damages (BGH, 6 December 2005, VI ZR 265/04, BGHZ 165, 203, restated in kinski-klaus.de). The pecuniary components are separate. They are inheritable and pass instead to the heirs (Erben), who may bring damages claims in respect of them (Marlene Dietrich, BGHZ 143, 214), an allocation the Federal Constitutional Court held in 2006 (BVerfG, 22 August 2006, 1 BvR 1168/04) to be consistent with section 22, that provision governing consent rather than commercial value. Article 21 of the Auteurswet is drafted the other way about, speaking of a reasonable interest of the surviving relative herself.

The Dutch question may be left open, since the two readings fail for different reasons. Upon the first, the claimant asserts her own interest, and everything the video discloses belongs to her husband. Upon the second, the content identifies the person whose interest is asserted, and the difficulty moves to the place. Either reading leaves the concentrating head requiring one person to satisfy both of its

conditions, a burden that under a custodial statute falls to two.

The existing commentary has been occupied with a different question. Giacomo Marola reads Idziski as a judgment of continuity in his contribution to the EAPIL Blog. Tobias Lutzi, at ConflictofLaws.net, entitled his note Nothing to See Here. Both readings are sound. The difficulty is that a rule which the Court has reaffirmed without qualifying it is now settled law for situations nobody has yet brought before it. A parallel debate has been running in Denmark and the Netherlands, where legislators have considered giving a person a statutory right in their own likeness, and it turns on who ought to hold such a right once its subject has died, and for how long. Neither literature has yet asked what follows once that question receives the answer the existing statutes already give it, which is to place the entitlement in the hands of somebody whom the content passes over.

Two bounds before going further. Neither reform is in force. The Danish bill, which would add new sections 65a and 73a to the Copyright Act and protect a person's appearance and voice for fifty years after death, went out to consultation in July 2025 and was notified to the Commission under the TRIS procedure that October. The standstill ran into February 2026, when the Commission issued comments, and the entry date of 31 March 2026 written into the draft passed with the bill still not introduced. By February the Ministry of Culture had already moved its expectation to 1 July 2026, and a general election in March then removed the introduction slot as well. The Dutch initiative bill prepared by the member Dral, which would create a neighbouring right covering deepfakes of living and deceased persons, was consulted on between October and December 2025, and in May 2026 the Commissie Auteursrecht advised abandoning the proposed neighbouring right as an unsuitable instrument. Its author has since left the House of Representatives, and the government has said that it is for her successor to decide whether the project continues (Aanhangsel Handelingen II 2025/26, no 1351). The custodial provisions therefore govern. If either of the reforms arrives and if its related-right characterisation were to be recognised as an autonomous matter of Union law, the claim would move out of personality law and fall outside the scope of what follows. Secondly, if the defendant is domiciled outside the Union, then Article 6(1) applies together with the residual national rules of the forum.

What Idziski allocates

The judgment was given under Regulation 44/2001, the Polish proceedings having begun in 2013, and at paragraphs 26 and 27 the Court confirmed that its reading applies equally to Article 7(2) of Brussels Ia.

Upon the concentrating head the Court restated Mittelbayerischer Verlag (C-800/19). The courts of a claimant's centre of interests may hear a claim for the entirety of the damage only where the content carries verifiable and objectively ascertainable material identifying that person, directly or indirectly, as an individual (paragraph 50). Indirect identification requires certainty, by reason of "attributes which are specific to them and which distinguish them from all other individuals" (paragraph 55). Membership of a defined group falls short of that standard, even where the group itself is unmistakable (paragraphs 53 and 54).

Consider the widow suing upon her own interest. Everything the video displays belongs to her husband, and the very feature that makes her claim worth bringing defeats her under the test.

The representative reading raises a different problem. If she exercises the deceased's right, identification is satisfied since the content identifies the actor with precision. The centre of interests must then be located, and it belongs to a man who has died. eDate and Bolagsupplysningen both proceed upon a claimant with a life to be centred somewhere, and substituting the claimant's own would detach the connecting factor from the person the content concerns.

Paragraph 56 confirms the difficulty rather than resolving it. The requirement exists so that the issuer of content may ascertain the centre of interests of those who are its subject, and predict where proceedings against him will lie. An uploader who generates a video of a well known actor may discover within a minute where that actor lived. The daughter's residence remains obscure to him, and under Article 25a there may be four custodians acting independently, with four centres of interests between them. Predictability is served by asking after the person depicted, while the rule asks after the person suing.

The mosaic head remains available, and the point should be acknowledged. Paragraph 64 confirms, following Gtflix Tv, that compensation can be divided and recovered in each Member State for the damage caused there. Paragraph 67 applies as much to Z.R., who failed the identification test and could still recover in

Poland. Both custodial provisions describe a territorial wrong. Section 22 covers distribution and public display, while Article 21 deals with openbaarmaking. This means the injury is spread across the states where the video was viewed. Nevertheless, the concession does nothing for the German dignitary custodian. Because his claim is defensive, a damages jurisdiction is of no use to him, and the removal he seeks lies with a court that paragraph 67 places elsewhere.

Ruling 2 limits what survives. A court with territorially limited authority hears divisible claims and does not have jurisdiction over a non-pecuniary remedy that seeks to correct information placed online (paragraph 67). This is based on the indivisibility principle from Bolagsupplysningen (paragraph 48). Removal is the remedy that answers content that can be regenerated faster than damages can be assessed. Lutzi adds that such non-pecuniary remedies as do survive face poor chances of being enforced in the defendant's own Member State.

What remains

Paragraph 47 reassures that a claimant may always bring an action for damages covering all the harm caused, at the defendant's domicile or at the place of the causal event. For a corporate co-producer, the two are distinct and useful. For a single uploader, they have the same address. Article 8(1) offers a joinder that these facts fail to satisfy. Uploaders who share a subject and a model are too loosely connected to risk irreconcilable judgments. Therefore, custodians must file a separate action for each uploader in that uploader's own courts, based on whatever conflict rules the forum has in place. Personality claims are not covered by Rome II according to Article 1(2)(g). For this type of claim, the concentrating head of Article 7(2) leads to dispersal.

The merchandise version follows the same pattern. Shirts with a dead actor's face are the paradigm the provisions were drafted for, unambiguously commercial and readily quantified. Dutch law has long recognised that a reasonable interest under Article 21 may be commercial, as the Hoge Raad addressed in Cruijff v Tirion (14 June 2013, ECLI:NL:HR:2013:CA2788). The shirt, however, depicts the actor alone.

One reply claims that the difficulty is merely academic, since notice and action can resolve such disputes, and questions of jurisdiction rarely come up. The argument holds so long as the platform agrees. Under Article 16(3) of the Digital Services Act, a notice is considered to give rise to actual knowledge when it

permits a diligent provider to recognise the illegality without needing detailed legal examination. A notice sent by a Dutch widow, using a Dutch provision against a German uploader, in a field where applicable law is determined by residual national rules, is precisely the case that requires such an examination, and so falls outside the provision. Consequently, the notice keeps the provider where Article 6 of that Regulation found it, whatever other circumstances may later establish knowledge. Notice and action have concealed the defect instead of curing it.

Each part of the argument is old. Indivisibility dates back to 2017, and the identification requirement comes from 2021. Their combined effect on a claimant outside the contemplation of both is the novelty.

Anchoring the forum to the decedent

The solution proposed here aims to anchor the connecting factor to the deceased rather than to the person suing. This way, the concentrating forum shifts to the last centre of interests of the person the content concerns. Such a rule provides the predictability that paragraph 56 needs, locates the proceedings where evidence of the deceased's reputation can be found, and restores the pairing that the head presupposes.

The concept allows for this development. In paragraph 39, the Court notes that the centre-of-interests option exists in the interests of the sound administration of justice rather than for the specific protection of the applicant. This clarifies why, in Bolagsupplysningen, the natural or legal character of the claimant was not important. A head of jurisdiction serving the administration of justice may perfectly well locate its connecting factor elsewhere than in the claimant. It should be found where the dispute belongs. For content concerning one identified deceased person, that location is where that person's life was centred.

The proposal needs a development in doctrine rather than just application of it. The custodial provisions work by designation instead of transmission, and Article 25a allows four possible custodians to exercise independently, which resists simplification to a single inherited position. Lutzi and Marola both suggest that this kind of recalibration belongs to the recast of Brussels Ia rather than to the Court, and they are probably correct on this general point. The challenge is timing. Custodial claims will come with the next well known death, whereas the recast will take some more years to arrive.

The alternative solution is a private one and stems from a situation before Idziski. In the case of Stichting Right to Consumer Justice and Stichting App Stores Claims (C-34/24, 2 December 2025), the Court allowed representative foundations, asserting their own right to defend the collective interests of a group of unidentified but identifiable persons, to rely upon Article 7(2), a development which Burkhard Hess referred to as the creation of a new forum actoris through judicial lawmaking. Idziski continues this approach at paragraphs 57 to 59. A family could thus set up a foundation in order to defend the actor's dignity, reputation and memory and to litigate through that foundation.

The course is inferior to the proposal made above even where it succeeds, since the availability of a forum would then depend upon whether a family possessed the means and the foresight to incorporate. It very likely fails in any event. The operative ruling speaks of a group whose members form a closed category, and a single deceased individual falls outside that description. Paragraph 59 grounds the exception in predictability, and the exception was predictable in Idziski because the series addressed the unit directly, whereas an uploader generating at volume remains ignorant of a foundation's existence and of where it operates. The exception arose, moreover, in a Polish case concerning the collective dignity of a wartime unit, and may generalise less readily than its wording invites.

The question for the Court, when a national court eventually puts it, is whether the identification requirement in Article 7(2) attaches to the claimant or to the person whose interest is asserted. Idziski assumed the two to be one person, as the earlier case law had done, because on the facts of all those cases they were. Under a custodial statute they are always two.

AI was used in the creation of this post for feedback and research. All writing and analysis is the author's own.

Update (September 2026): Since publication, I have become aware that the proposal to locate jurisdiction at the deceased's last centre of interests was developed earlier by Lisa-Charlotte Krause, Der Schutz des postmortalen Persönlichkeitsrechts im Internet: Internationale Zuständigkeit und Kollisionsrecht (Duncker & Humblot 2022) 117–118, who confines it to the non-material components of the right (124–130). Readers should consult that work.