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David Bender — Safe Harbor 3.0 After "Schrems II" — What it Says May Be Less Important than Where it Gets Adjudicated

A major rationale for the CJEU's invalidation of Privacy Shield was its perceived overreach and lack of proportionality. Unfortunately, the CJEU may have an overly rarified notion of proportionality. The article compares (i) how the CJEU handles conflicts between surveillance and privacy provisions of the Charter, and (ii) how the ECHR handles conflicts between surveillance and corresponding privacy provisions in the ECHR. This comparison seems to suggest that any Safe Harbor 3.0 adequacy decision should ultimately be heard in a forum other than the CJEU.

John Beardwood / Mark Penner — Dead or Alive - Your Image is Coming with Me — How well is your image protected, especially post mortem?

This article first evaluates what privacy rights exist in an image (I.1.), and whether these rights need to be characterized as privacy or property rights in order to survive after death and therefore be exercised by their estates/heirs (I.2.). Then a review follows of what intellectual property rights govern the resurrection of a deceased's image: specifically, trademark rights (II.1.), copyright (II.2.) and the common law right of misappropriation of personality (II.3.).

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