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# NAVIGATING THE CONVERGENCE OF INTELLECTUAL PROPERTY RIGHTS AND DATA PROTECTION LAW

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## ABSTRACT

Apart from being practiced under an umbrella practice head known as TMT in law firms, the domains of Intellectual property law and Data Protection primarily deals with the regulation of privately held data or information. The only difference is that the intellectual property law focus on granting an exclusive right to exploitation for the creator or the person who owns the said information ( i.e. copyrights), whereas Data Protection legislation primarily focuses on reassuring autonomy and control rights over their own personal information.

With the increased investments in big data analytics, machine learning, artificial intelligence and even the legislations in developed jurisdictions like EU, Canada, USA are notably sluggish in keeping up with the said advancements, the demand for preserving privacy and intellectual property is paramount. To statistically understand the priority of the above statement:

According to a study released by the European Union Intellectual Property office titled “2019 Status Report on IPR infringement, the infringements related to intellectual property rights in international trade in 2016 reached to a level roughly around 3.3% of global trade and the said infringements causing a European Union an annual loss of 92 billion Euros between 2012 and 2016<sup>1</sup>.

Further According to IBM cost of data breach report 2023” which shows that the average cost of data breach in India reached around 179 million rupees in 2023 and globally almost 95 % of organizations have experienced more than one breach<sup>2</sup>.

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<sup>1</sup> 2019 STATUS REPORT ON IPR INFRINGEMENT ; Why IP rights are important, IPR infringement and the fight against counterfeiting and piracy XXXX (EUROPEAN UNION INTELLECTUAL PROPERTY OFFICE 2019), [https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/docs/2019\\_Status\\_Report\\_on\\_IPR\\_infringement/2019\\_Status\\_Report\\_on\\_IPR\\_infringement\\_en.pdf](https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/docs/2019_Status_Report_on_IPR_infringement/2019_Status_Report_on_IPR_infringement_en.pdf).

<sup>2</sup> *Cost of a data breach 2023* | IBM, IBM in Deutschland, Österreich und der Schweiz | IBM, [https://www.ibm.com/reports/data-breach?\\_gl=1\\*123btkc\\*\\_ga\\*MTE5NjY0NzAyNy4xNjk2NTI3OTQ0\\*\\_ga\\_FYECCS21D\\*MTY5NzY1MzMyNS4yLjAuMTY5NzY1MzMyNS4wLjAuMA..](https://www.ibm.com/reports/data-breach?_gl=1*123btkc*_ga*MTE5NjY0NzAyNy4xNjk2NTI3OTQ0*_ga_FYECCS21D*MTY5NzY1MzMyNS4yLjAuMTY5NzY1MzMyNS4wLjAuMA..) (Last visited Oct. 30, 2023).

With the monetary damage and risk fundamental rights of privacy is being at stake, this article tried to understand the intersections between intellectual property law and Data Protection laws and examine the potential conflicts arising out this intersection.

**Keywords:** Intellectual property rights, privacy, copyrights, data subject rights, data protection

## Introduction:

Article 17 of European Union charter of fundamental rights ensures that everyone has the right to own, dispose of lawfully acquired possession and no such person shall be deprived of such possession subject to the exemptions of public interest. Further Article 17(2) of the EU charter assures that the protection which ensures personalized enjoyment and exclusive control over certain property is equally applicable to intellectual property also.

In the same charter Article 8 assures that everyone has the right to the personal data protection and any such personal data subjected to processing shall be done in a fair manner for specified purposes. The article further instills the importance of the data subjects to express explicit consent or legitimate interest laid down by law for processing such personal data.

These two articles depicts the importance of assuring intellectual property and privacy rights at similar level. But this backdrop has been functioning smoothly on the pretext that almost every jurisdiction in the world have proper functioning intellectual property legislation. For instance, former lord justice of appeal Robin Jacob observes that the history of intellectual property can trace backs to as early as 600 BCE. This earliest right was honored in Sybaris in ancient Greece. This right granted a yearlong exclusivity of bakers to an exploit their culinary invention<sup>3</sup>. Later in 1883 Paris convention for the protection of industrial property agreement was signed to ensure protection of intellectual property of creators in other countries<sup>4</sup>. With regards to information privacy law, in 1970 Hesse a state in Germany has enacted the world first comprehensive data protection law to regulate the automated data processing in public

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<sup>3</sup> *History and Evolution of Intellectual Property*, Intellectual Property Firm in the Middle East | ABOU NAJA (Aug. 17, 2020), <https://www.abounaja.com/blogs/history-of-intellectual-property#:~:text=The%20earliest%20records%20relating%20to,from%20the%20rising%20of%20bread>.

<sup>4</sup> Paris Convention for the Protection of Industrial Property, Mar. 20, 1883, last revised at Stockholm, July 14, 1967, 21 U.S.T. 1583, 828 U.N.T.S. 305

sector<sup>5</sup>. Later in 1973 due to the increased negative sentiments regarding the collection of census data and facilitation of automated data processing by such census data, the state of Sweden after several consultations enacted the Data Law in July 1973<sup>6</sup>. In order to understand the intricacies of friction between these two rights, it is inherent to analyze the evolution of both laws. It is being clear that historically, these two domains of law shares a common point of evolution from same set of rights and obligations in common law countries<sup>7</sup>.

The current evolution of informational privacy law has resulted in recognizing it as an inherent part of fundamental rights in almost every common and civil law internal jurisdiction. The article intends to clearly identify the place of balancing both the rights and at the same time tries to examine the possibility that in cases of conflict which right shall give preference over another. In order to demark the prioritization it is inherent to examine whether the evolution of intellectual property rights has still been kept in par as a basic human fundamental right.

At a primary level the term human rights were simply considered as a timeless expression of fundamental entitlements of a human person<sup>8</sup> irrespective of any differences in nationality, sex, residence, color or any other ascribed or achieved status. And as a matter of fact, since mid-20<sup>th</sup> century United Nations and other international treaties and declarations contains provisions commonly citing intellectual property as human rights. For instance Article 27 (1) of UDHR says that everyone has the right freely to participate in the cultural life of the community and enjoy the arts and to share in scientific advancement and its benefits and article 27 (2) assures that everyone is entitled for protection of moral and material interest arising out of such scientific, literary or artistic production of which he/she is the author<sup>9</sup>. In spite of this recognition by UN, there is preference of human rights angle was discussed in any of the major IPR related conventions like Paris and Berne conventions. Even TRIPS agreement in 1994

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<sup>5</sup> Bellamy, F. (2023, January 12). *U.S. data privacy laws to enter new era in 2023*.

Reuters. <https://www.reuters.com/legal/legalindustry/us-data-privacy-laws-enter-new-era-2023-2023-01-12/>

<sup>6</sup> *The history of data protection law*. (2018, September 20). Medium. <https://medium.com/golden-data/data-protection-law-how-it-all-got-started-df9b82ef555e>

<sup>7</sup> Richardson, Megan, 'Intellectual Property and Privacy Law', in Irene Calboli, and Maria Lilla Montagnani (eds), *Handbook of Intellectual Property Research: Lenses, Methods, and Perspectives* (Oxford, 2021; online edn, Oxford Academic, 23 Sept. 2021), <https://doi.org/10.1093/oso/9780198826743.003.0010>, accessed 17 Oct. 2023.

<sup>8</sup> Helfer, L.R., 2003. Human rights and intellectual property: conflict or coexistence?. *Minn. Intell. Prop. Rev.*, 5, p.47.

<sup>9</sup> Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. GAOR, 3d Sess., pt. 1, art. 27, U.N. Doc. A/810 (1948).

refers to the recognition granted to such IP rights as private rights<sup>10</sup>. But these agreements and conventions justifies the private rights in the lens of economic and instrumental benefits that flow from protecting intellectual property rights rather from ethics based claims about inalienable liberties<sup>11</sup>. But the preferential treatment of intellectual property is being engrained in most of the privacy legislations. Since the right to privacy is not absolute it is always being overridden with public interest and common good. But with an over a period of time, the jurisprudence of positive theory of privacy law starts to emerge<sup>12</sup>. In current era, almost every country in the world has recognized the right to privacy and in most cases like India and USA even though privacy is not being expressly mentioned it is being recognized by the court decisions. As with the advent of technological innovations the importance of big data has become an inherent part in the current hyper competitive business landscape<sup>13</sup>. And with the said improvement in the notions of technology, the connotation of informational privacy have been perceived as a main stream and distinct fundamental right<sup>14</sup>. In a report published by OHCHR the nexus between general privacy regulations including informational privacy and the promotion of right to freedom of expression and opinion is being discussed. The report identifies that the insufficient protection of such general privacy rights may have a chilling effect on the exercise of rights like right to freedom of expression<sup>15</sup>. With the advent of this notion, the task of demarking informational privacy is being carried out by most of the nations. For instance, according to UNCTAD report around 137 of 194 countries in the world had enacted a legislation or a legal framework to protect the privacy of the individual<sup>16</sup>.

And with the advent of above two domains of law, there are certain instances where the possibility of balancing both of them at the same time becomes impossible, this research paper tried to analyze the situations in which the confrontation occurs between intellectual property

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<sup>10</sup> Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, LEGAL INSTRUMENTS–RESULTS OF THE URUGUAY ROUND, vol. 31, 33 I.L.M. 1197 (1994).

<sup>11</sup> Chapman, A.R., 1999. A human rights perspective on intellectual property, scientific progress, and access to the benefits of science. *WIPO/OHCHR, Intellectual Property and Human Rights, A Panel Discussion to Commemorate the 50th Anniversary of the Universal Declaration of Human Rights, Geneva, Switzerland*, pp.127-168.

<sup>12</sup> Lior Jacob Strahilevitz, *Toward a Positive Theory of Privacy Law*, 126 HARV. L. REV. 2010 (2013)

<sup>13</sup> *The Role of Big Data in Modern Market Research*, Voxco, <https://www.voxco.com/blog/the-role-of-big-data-in-modern-market-research/> (last visited Oct. 26, 2023).

<sup>14</sup> Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, ¶ 12, OHCHR, U.N. Doc. A/HRC/13/37 (Dec. 28, 2009) (Martin Scheinin)

<sup>15</sup> Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression at 4-7, OHCHR, U.N. Doc. A/HRC/23/40 (April 17, 2013) (by Frank La Rue)

<sup>16</sup> *Data Protection and Privacy Legislation Worldwide*, UNCTAD, <https://unctad.org/page/data-protection-and-privacy-legislation-worldwide> (last visited Oct. 28, 2023).

rights and data protection rights and the adjacent decisions and observations made by the court with respect of taking a balancing view thereby providing a harmonized interpretation and legislative validness.

The first instance is the blockage of intellectual property protection (particularly in the lens of copyright) while exercising rights enshrined under data protection legislations.

### **Copyrights, privacy and DSR requests:**

The interaction between intellectual property rights of one person can threaten the privacy rights of the other and as a result it is often bound to generate conflicts<sup>17</sup>. The notion of right to privacy has been developed from a tort to a separate, comprehensive framework. Most of the national data protection legislation has certain rights which are enshrined to the data subjects. The real intention behind regulating informational privacy under data protection law is because of the fact that privacy is not just about hiding personally identifiable information<sup>18</sup>. Preserving privacy involves exercising legitimate control over personal information and guaranteeing that having access to an individual's personal information can only be done with the authorization by the said data principal's consent or by other approved legitimate means.

According to article 14 of General data protection regulation, the data subjects have been enshrined with the right to access<sup>19</sup>. According to article 14 (1), the data subjects can demand the controller to confirm as to whether or not personal data concerning him or her are being processed and in case the answer is yes, then the controller shall disclose the purpose and categories of personal data processed and in case existence of automated decision making including profiling. The term profiling is defined under article 22 of GDPR<sup>20</sup>. The enforcement of the said right arises two important problems. First, is the involvement of law enforcement agencies, under article 6 of GDPR the data controllers are obliged to provide the relevant personal data of data subjects if it is being mandated by the competent law enforcement

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<sup>17</sup> Rohi, A., 2022. Intellectual Property Rights and Informational Privacy Rights: Conceptualizing the Intersection for the Data Protection Regulator in India. *Christ ULJ*, 11, p.1.

<sup>18</sup> Angin, P., Bhargava, B., Ranchal, R., Singh, N., Linderman, M., Othmane, L.B. and Lilien, L., 2010, October. An entity-centric approach for privacy and identity management in cloud computing. In *2010 29th IEEE symposium on reliable distributed systems* (pp. 177-183). IEEE

<sup>19</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) [2016] OJ L 119/1 4.5.2016, p. 1–88 Art.

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<sup>20</sup> Id. at 12. Art. 22

agencies<sup>21</sup>? Even in the privacy notice, the same shall be disclosed to data subjects. But the problem is that the presence of safeguarding appropriate rights and freedom of data subjects as mentioned under article 10 which shall be respected by the said enforcement authorities while collecting such personal data. It is unclear whether it Most of the copyright legislation authorizes the owner to enforce strict actions to remove infringing material<sup>22</sup>.

The next set of problem is the right to inform the data subjects about the automated decision making. Article 14 (2) (f) mandates the data subjects to provide all the meaningful logic behind the automated decision making and the significant consequences that can arise from the said processing<sup>23</sup>. But in order to enforce such request the data controller has to disclose all the logic behind the deployed automation technique. But the problem is that most of such automation tools are copyrighted, so in order to enforce such right to know about automated decision request it shall be technically impossible to do so without sharing such confidential information. In case of countries like India, the newly enacted digital personal data protection act 2023 chapter III section 11 mandates data fiduciary to provide any information related to the personal data of data principal. Unlike GDPR, there is no explicit provision for the data fiduciary to exempt itself from the liability of right to access. Even if a data fiduciary is refusing to honor the request citing the risk behind disclosing IP protected information. Section 38(2) of DPDPA 2023 specifies that in case of conflicts between provisions of DPDPA 2023 and other laws, the provisions of DPDPA 2023 shall prevail over. This shall force the data fiduciaries to disclose their IP protected software to their data principals.

As previously discussed, the notion of protection of commercial property and right to privacy is being demarked as a fundamental right, the notion of striking a balance between both of them is paramount. In some cases, the legislations itself provide certain safeguards to avoid possible confrontation between the same. For instance, under GDPR recital 63 insists that in case of exercising the right to access, the said right shall not be adversely affect the rights and freedom including intellectual property, trade secrets and in particular copyright protecting the software<sup>24</sup>. This may act as a reason to refuse DSAR request, but the legal problem is the enforceability of recitals. In general, recitals are non-binding guidelines which act as an aid in interpreting the said legislation. In vice versa of recognizing the harmonization of privacy in

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<sup>21</sup> Reg 2016/679, supra note 12. Art. 6

<sup>22</sup> Reg 2016/679, supra note 12. Art.10

<sup>23</sup> Reg 2016/679, supra note 12. Art. 14

<sup>24</sup> Reg 2016/679, supra note 12. Recital 63

IP legislations, the EU directive 2014/26/EU under recital 52 mandates the collective management organizations to respect the rights to personal data protection of any right holder, member, user and other individual whose personal data has been processed<sup>25</sup>. Further in the same directive recital 56 assures that this directive are enacted without prejudice to the application of privacy etc.<sup>26</sup>. Further recital 4 of GDPR also advocates specifically for the act of balancing data protection with other fundamental rights. The recital acknowledges that data protection is not an absolute right and it must implemented in a way to provide proper consideration for balancing against other fundamental rights. This notion may be applicable in the context of EU region, but under section 14 of Indian copyright act restricts the exercise of copyright to a statutory right.

### **Courts, copyright and privacy:**

The core structural similarities between intellectual property and privacy legislations is the jurisprudence of controlling information<sup>27</sup>. In case of confusion, there are certain judicial decisions which tries to clarify the act of balancing those two rights. In 2008 the Promusociae case for the very first time observes that while limiting the users for copyright infringement fundamental rights at stake shall be taken into consideration<sup>28</sup>. Further, in the case of Scarlet Extended SA v Societe belge des auteurs compositeurs ET editeurs (SABAM), CJEU emphasized the protection of intellectual property must be balanced against protection of other fundamental rights. In this case, the appellant Scarlet and internet service provider was under the radar of enabling peer to peer transfer of copyrightable music works. The court of first instance, ordered Scarlet to take appropriate measures to end the sharing or receiving of copyrighted files. Apart from appealing against the practical possibility of enforcing such decisions, Scarlet contended that installing a filtering mechanism for blocking infringing materials technically amounts to general surveillance<sup>29</sup>. This order can cause 2 main serious problems to all such intermediaries. The first one is losing the safe harbor protection ensured

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<sup>25</sup> Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market, OJ L 84/72. Recital 52

<sup>26</sup> Id. 13. Recital 56

<sup>27</sup> Zittrain, J., 1999. What the publisher can teach the patient: intellectual property and privacy in an era of trusted privication. *Stan. L. Rev.*, 52, p.1201.

<sup>28</sup> Case C-275/06 Productores de Música de España v. Telefónica de España SAU [2008] ECR I-00271

<sup>29</sup> Scarlet Extended SA v Société belge des auteurs compositeurs et éditeurs (SABAM), Court of Justice of the European Union (CJEU), Nov. 24, 2011, C-70/10, at XXXX (European Union), <https://curia.europa.eu/juris/document/document.jsf?text=&docid=115202&pageIndex=0&mp;doclang=en&mode=lst&dir=&occ=first&part=1&cid=3119051>.

under EU e-commerce directive. Particularly article 12 of the directive categorized a concept known as “Mere conduit”. It means, if the service provider is not liable for any transmitted information if and only if the 1. They does not initiate the transmission 2. Does not modify the transmitted information 3. Does not choose the receiver of the transmission<sup>30</sup>. The second one is the practical impossibility of intercepting peer to peer message services. In the final appeal in the European court of Justice it is being observed that the rights provided that article 8(3) of Directive 2001/29 and article 11 of directive 2004/48 which enables the IP right holders to apply for an injunction against intermediaries including ISP’s shall not be enforced with the blatant violation of Article 15 (1) of directive 2000/31. The court observed that the preventive monitoring of such kind will require active observation of all the electronic communications conducted in the concerned ISP and this will violate the provision of article 15(1) of directive 2000/31.

From para 44 -46 the court mandated three main observations,

- The first one is the protection of fundamental right to property including intellectual property shall be balanced against the protection of other fundamental rights.
- The measures adopted to protect the copyright holders must strike a balance between protection of copyrights and protection of fundamental rights of the individuals affected by such measures.
- The measures adopted to protect the copyright holders must strike a balance between protection of copyrights and freedom to conduct a business as enjoyed by the internet service providers.

Even though this case tries to legitimize the solution of finding harmonization and striking a balance, this judgment fails to explain the instances in which the balance should be maintained. To be precise this judgment concludes by releasing the ISP from any sort of obligations by the construction of protection of personal data and thereby even in this case a clear prioritization is proven. Further in the case, the ECJ clarified the position that the act of how to strike a balance shall be decided on case by case basis. In the case of *Bonnier Audio AB and others v*

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<sup>30</sup> Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'), Directive No. OJ L 178, July 17, 2000, XXXX (European union), <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex:32000L0031>.



Perfect communication Sweden AB, the ECJ had discussed that even in case of civil proceedings if the Internet service provider under the application of directive 2004/48/EC (enforcement of intellectual property rights) may be ordered to provide information about the identity of a subscriber to the copyright holder with the condition that the said information shall be used for the purpose in accordance with the national legislations of EU countries dealing with the protection of personal data. The court observed that under article 15(1) of directive 2002/58 (e-privacy directive) which deals with the concept of exceptions to the principle of confidentiality. This article stipulates that such restriction constitutes a necessary, appropriate and proportionate measure within a democratic society for prevention, investigation, detection and prosecution of criminal offences confirming with the article 13 (1) of directive 95/46(data protection directive). The Advocate general had analyzed article 6(b) of directive 95 /46 which mandates that personal data must be collected for specified explicit purpose and processing of personal data which is incompatible with the above purposes is not being permitted. So based on the principle of privacy directive and enforcement of IP rights directive there is no specified EU legislation that mandating retention of personal data generated in connection with electronic communications for the purpose of IP infringement cases, So, unless there is a EU legislation or EU national legislation which explicitly specifies data retention of certain categories of data for specified purposes, using the personal data for any other unspecified purposes will be in contravention of personal data protection principles. Since this judgment came before the advent of GDPR, where in the preamble itself paves a path for respecting other fundamental rights, this narrow interpretation of ECJ denotes a strict distinction between enforcing IP rights and data protection.

In North American jurisprudence the courts have taken a blatant view of prioritizing IP protection over privacy rights.

There are certain cases where the protection of intellectual property has been prioritized in the context of larger public interest. For instance in the case of *BMG Canada Inc. v. John Doe*<sup>31</sup> the Canadian federal court of appeal had decided to took this interesting decision that the protection of privacy shall not be enforced at the cost of infringing the public concerns for protection of intellectual property rights. In this case the plaintiff was a music company and with the findings of their anti-piracy wing has launched a lawsuit against John Doe and other persons who were allegedly reproducing the sound recordings in a material format and

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<sup>31</sup> *BMG Canada Inc. v. John Doe*, [2004] 3 F.C.R. 241, (2004), 32 C.P.R. (4th) 64, von Finckenstein J.

distributing the same via internet. In this case the plaintiff knew that their copyrighted materials have been in circulation and they did not know about the identity of the alleged persons. In this case, in order to compel the ISP to disclose the addresses of the alleged infringers under section 7 (3)(c ) of Personal information protection and electronic documents act (PIPEDA) the court of first instance has created a five point test to grant such orders. They are:

- a) The applicant must establish a prime facie copyright case against the offenders.
- b) The person sought for discovery must be involved in the topic under dispute in some manner; he cannot be an innocent spectator.
- c) the person from whom discovery is sought must be the applicants' only feasible source of information;
- d) In addition to his legal fees, the person seeking information must be fairly paid for his expenditures incurred in complying with the discovery order.
- e) The public interest in disclosure must outweigh justifiable privacy concerns.

Further the court of appeal has decided that proving a prime face copyright case is not mandatory and explains that the said test was just to determine the bonfire intention of the claimant. And in the court of appeal justice sexton observes the case of enforcing IP rights over privacy violations, the same shall done in a specified directions to what type of information must be disclosed and can only be enforced in cases where the court can justify that the alleged infringers can only be identified by the said disclosure order<sup>32</sup>.

In the case of re Verizon internet services, the appellant RIAA has served a subpoena request under section 512(h)(2)(c) of Digital millennium copyright act to a P2P software company called Verizon for seeking information regarding identification of persons illegally downloading copyrighted songs. The subpoena has requested for disclose for IP addresses of infringers and Verizon refused to comply with the requests of RIAA by claiming that section 512(h) of DMCA is violate of customer's first amendment rights. But the court district acknowledges that the first amendment protects anonymity of the individual and it does not protects copyright infringement<sup>33</sup>. According to Judge Bates, Verizon customers should have

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<sup>32</sup> Ibid. at para. 45

<sup>33</sup> In re Verizon Internet Services, 240 F. Supp. 2d 24 (D.D.C. 2003)

no expectation of privacy or anonymity while violating copyright. Someone who has 'exposed their computer to the world' by adopting peer-to-peer technology cannot eventually expect privacy<sup>34</sup>.

Even though in this case the principle of privacy is being fully extinguished for IP infringers the court in the above case had a strict presumption that even individuals in question of committing IP infringement was being potentially presumed that they were guilty of infringement and thereby forcing them to comply with DMCA notices and denying them their first amendment protection<sup>35</sup>.

### **Conclusion:**

With the concern of conflicting dimensions and interpretations of prioritizing one right over the other. It is quintessential to incorporate two inferences one is that the notion of privacy is not absolute and other is that the notion of IP rights is already being restricted by legislative complexities. Since the jurisprudential understanding of privacy is still under constant evolution it is evident that the countries pioneering in promoting privacy oriented legislations having an overwhelming responsibility to protect informational privacy in absolute. Accordingly, the term Privacy has three components: secrecy, anonymity, and isolation. It is a state that can be lost, either through the choice of the individual in that situation or via the action of another person.<sup>36</sup> So it is essential incorporate a case by case analysis to strike a balance between the IP rights (irrespective of its being perceived as a commercial or a fundamental right) with that of the restrictive informational privacy laws.

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<sup>34</sup> Ibid. at page 267

<sup>35</sup> Sonia K. Katyal, *Privacy v. Piracy*, 7 YALE JL & TECH. 222 (2004-2005)

<sup>36</sup> Gavison, R., 1980. *Privacy and the Limits of Law*. *The Yale law journal*, 89(3), pp.421-471.