

**PRIVACY OF CONSUMERS: CHALLENGE FOR CONSUMER LAW  
AND POLICY**

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**ABSTRACT**

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In today's era of online shopping platforms and e-commerce websites, many of the consumers can now purchase any material or product of their choice by a single click ((click wrap<sup>1</sup>, browse wrap<sup>2</sup> and shrink wrap<sup>3</sup>) on their devices. With increase in popularity of online retail sites, the risks pertaining to data privacy and finances of the customers have greatly increased. The purpose of this article is to address the international reforms with regards to consumer protection and challenges in ensuring the same. It further addresses the transition from 'caveat venditor' to 'caveat emptor' in the online platforms. In addition, lack of proper governing institutions, conflict of laws as to jurisdiction of states in cross-border transactions further aggravates the problem.

To scrutinize this issue further, the authors will be discussing the UN guidelines for Consumer Protection which brought into light the "legitimate needs" of the consumers along with other Conventions and the lacunae either in their implementation or framing proper reforms. However, the scope of research will be limited to privacy related issues of consumer and lacunae in the international framework along with the need for reformation in the international policies.

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<sup>1</sup> *Register.com Inc. v Verio Inc.* 356 F.3d 393 (2<sup>nd</sup> Cir 2004)

<sup>2</sup> See D Clapperton and S Coronos, 'Unfair terms in "clickwrap" and other electronic contracts', (2007) 35 Australian Business Law Review 152.

<sup>3</sup> *ProCD Inc. v Zeinberg* 86 F. 3d 1447 (7<sup>th</sup> Cir 1996)

## INTRODUCTION

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In the past decade, there has been exceptional and unprecedented increase in the rate of technological development that has drastically changed the way how people communicate and their mode of transacting and executing business. Throughout the years, in person correspondence has been replaced by impersonal methods e.g.; the messages, telephonic contract, facsimile machines, and now e-mails along with different instruments of e-commerce, the internet.<sup>4</sup>

Physical documents are often not utilized, and consumers may basically browse the terms on a Site, and demonstrate their consent to those terms by a single click (click wrap<sup>5</sup> and browse wrap<sup>6</sup>). But disputes arising are inevitable and traditional methods need to be re-evaluated to make sure that anticipated thoughts of choice of law, jurisdiction and forum determination are available to the parties without hampering their privacy.<sup>7</sup>

A great part of existing commercial law is thoughtfully established in the physical world, while e-commerce transactions are in a virtual domain. The absence of physical documents and settings exposes crevices in a great part of the law that aids organizations and courts when they endeavour to apply existing laws to virtual situations.<sup>8</sup>

The section tries to discuss the issues like flaw in different laws and conventions regarding the privacy laws in e-commerce in the world. The authors have tried to keep focus on the US and UK e-commerce privacy laws and the steps taken to overcome this. This section also focuses on the Chinese e-commerce market regulations. It also tries to encapsulate various disputes that arise out of cross-border commercial transactions along with relevant case study and the failure of international conventions to bring about a uniform enforceable law for the world at large and the need for reformation.

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<sup>4</sup> Henry C Lucas, *Strategies For Electronic Commerce And The Internet* (1st edn, MIT Press 2002).

<sup>5</sup> 'Click Here To Accept The Terms Of Service' (*Americanbar.org*, 2017)

<[http://www.americanbar.org/publications/communications\\_lawyer/2015/january/click\\_here.html](http://www.americanbar.org/publications/communications_lawyer/2015/january/click_here.html)> accessed 23 February 2017

<sup>6</sup><http://www.lexology.com/library/detail.aspx?g=4b4b93da-c40a-4724-916c-3bdd9011698d>

<sup>7</sup> 'Against cyberlaw', (2005) 15 Berkeley Tech LJ 1145

<sup>8</sup> 'The law of the horse: What cyberlaw might teach', (1999) 113 Harv L Rev 501

## I. CROSS-BORDER E-COMMERCE DISPUTES: NEED FOR REFORMATION

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### (1.1) CONSISTENT GLOBALIZATION

A more perplexing issue is postured in the cross-border transactions. Commercial laws remain emphatically grounded inside the physical boundaries of every nation. On the web, in any case, parties can expose in seamless transactions that cross various national boundaries, frequently without the parties realizing to leave the security of their own laws and courts.<sup>9</sup>

For instance, when a company makes a site to publicize or offer its services, it can be accessed anywhere in the world. An issue exists for a customer who goes into an agreement through a site of an organization situated in an outside nation, while the site might be facilitated in a third nation.<sup>10</sup> Customers can be left pondering where to go to look for cures if the exchange goes astray.

It's difficult to track and comprehend the substantive laws of each country in which one may be regarded to execute business on the web, without knowing where other parties are located. Additionally, the laws of different countries are frequently conflicting, bringing about circumstances where a transaction is lawful in one nation, however may lead to lawful liability in another.<sup>11</sup>

If EU and U.S. laws on e-commerce are compared they have contrasting rules. On one hand, in EU jurisdiction to adjudicate a dispute is largely governed by Brussels Convention in which merchants are allowed to file suit only in the consumer's domicile whereas in US, the jurisdiction can be both general (when the court can exercise jurisdiction inspite of not having any say in the activity in question) or specific (subject matter falls under its jurisdiction).

e.g. In UK any person having age 18 or above can buy alcohol but in US the age is 21 in all states. Now, it's quite possible for a UK based business to sell alcohol in US through online

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<sup>9</sup> Davidson, A. (2011). The law of Electronic Commerce. Cambridge University Press; South Asian edition (29 September 2011).

<sup>10</sup> See M Kirby, 'Privacy in cyberspace', (1998) UNSWLJ 47.

<sup>11</sup> Quirk, P., Forder, J. and Akindemowo, O. (2003). Electronic commerce and the law. Milton, Qld.: John Wiley.

platforms.<sup>12</sup> Now the question would definitely be which jurisdiction to be followed; whether the country of origin or the consumer's domicile?

### **(1.2) ORGANIZATIONS, THEIR EFFORTS AND CREVICES IN POLICIES**

A great part of the present exertion<sup>13</sup> is centred on noting this basic question: if a dispute emerges, what is the pertinent law?

Ideally, the contract would contain a choice of the parties as to the jurisdiction that would apply in case of disputes. But this is not that simple and easy.

In many examples, particularly in business-to-consumer transactions, the agreement might be quiet as to decision of governing law. In different circumstances, no formal contract exists between the parties.<sup>14</sup> In such circumstances, the parties look to one of two essential sources to give the legal framework. The first is to apply a specific national law either of buyer or of seller or may look to some type of private international law.<sup>15</sup>

Private international law is in itself a very abstract idea.<sup>16</sup> It varies drastically from national laws as no global sovereign can enforce its will as the rule of law.<sup>17</sup> International law is viewed as an voluntary agreement among the interested parties that comes into power from the assent of the parties either in the form of treaty which can govern the actions the actions of any parties residing in the state or may appear as a model law, for example, United Nations Commission on International Trade Law Model Law on Electronic Commerce, which are not themselves enforceable and binding unless adopted by the nations. Other remarkable cases of private international law incorporate the Hague Convention<sup>18</sup> on the Enforcement of Judgments and standards put forward by the International Chamber of Commerce<sup>19</sup>. For each

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<sup>12</sup> Sharma, V. and Sharma, R. (2000). *Developing e-commerce sites*. 1st ed. Reading, Mass.: Addison-Wesley.

<sup>13</sup> *Ibid*.

<sup>14</sup> Pepper LLP, "Controlling Chaos: Frameworks For Governing Virtual Relationships" (*Pepper Hamilton LLP*, 2017) <<http://www.pepperlaw.com/publications/controlling-chaos-frameworks-for-governing-virtual-relationships-2005-12-28/>> accessed 21 February 2017.

<sup>15</sup> See *Atlantic Underwriting Agencies Ltd v Compagnia di Assicurazione di Milano SpA* [1979] 2 Lloyds Rep 240.

<sup>16</sup> Zhao, Y. (2005). *Dispute resolution in electronic commerce*. Leiden: Martinus Nijhoff Publishers.

<sup>17</sup> Andrea E Goldstein and David C O'Connor, *Electronic Commerce For Development* (1st edn, OECD, Development Centre of the Organisation for Economic Co-operation and Development 2002).

<sup>18</sup> Anon, (2017). [online] Available at:

[http://ec.europa.eu/justice/policies/privacy/docs/wpdocs/2009/wp158\\_en.pdf](http://ec.europa.eu/justice/policies/privacy/docs/wpdocs/2009/wp158_en.pdf) [Accessed 14 Jul. 2017].

<sup>19</sup> Maureen A. O'Rourke, *Progressing towards a Uniform Commercial Code for Electronic Commerce or Racing towards Nonuniformity*, 14 Berkeley Tech. L.J. 635, 658 (1999)

of these, the enforceability of choices under their guidelines is liable to standards under the laws and public policy of the domicile of the respective parties.

### **(1.2.1) UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW<sup>20</sup>**

Probably the most notified work in international e-commerce has been undertaken by United Nations Commission on International Trade Law (UNCITRAL)<sup>21</sup>, a subsidiary of the United Nations General Assembly. Specifically, it has been entrusted with:

- Promoting more extensive cooperation in existing international conventions and more extensive acknowledgment of existing model and uniform laws<sup>22</sup>;
- Preparing or advancing the selection of new international conventions, demonstrate laws and uniform laws and advancing the codification and more extensive acknowledgment of international transactions and trade and practices, in joint effort with the associations working in this field;
- Promoting ways and methods for guaranteeing a uniform understanding and use of worldwide conventions and uniform laws in the field of the law of international trade.

One of six working groups inside UNCITRAL is building up a noteworthy proposition for managing universal contracts titled the Draft Convention on the Use of Electronic Communications in Electronic Contract (UECEC) which will be bind all those states that choose to be parties to it and would permit the parties to quit being represented by the convention, and it would exclude contracts went into for individual, family or other household purposes.

### **(1.2.2) HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW<sup>23</sup>**

The Hague Conference on Private International Law has contributed essentially to draft a worldwide law of judgments and jurisdictions. Taking as a treaty, instead of a model law, the convention is specifically binding on signatory countries.<sup>24</sup>

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<sup>20</sup> Uncitral.org. (2017). General Assembly Resolutions. [online] Available at: <http://www.uncitral.org/uncitral/en/GA.html> [Accessed 15 Jul. 2017].

<sup>21</sup> General Assembly Resolution 51/162 of 16 December 1996 amended in 1998.

<sup>22</sup> (2017) <<https://www.uncitral.org/pdf/english/texts/arbitration/arb-rules/arb-rules.pdf>> accessed 17 February 2017.

<sup>23</sup> Hcch.net. (2017). HCCH | Conventions, Protocols and Principles. [online] Available at: <https://www.hcch.net/en/instruments/conventions> [Accessed 11 Jul. 2017].

The convention focuses on making an exclusive choice of court to settle the matter of international transactions. It would force three obligations on the courts of contracting states: (i) the chosen court must be obliged to hear the question; (ii) other courts must be obliged to decline jurisdiction; and (iii) the judgment rendered by the chosen court must be perceived and authorized by courts in other contracting states. Consumer contracts are rejected from the extent of this convention.

### **(1.2.3) ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OECD)**

OECD is the successor group to the Organization for European Economic Co-Operation, in the wake of satisfying its establishing objectives, the groups changed into the OECD in 1961. From that point onward, it has submitted itself to advancing democratic ideals along with the market economy around the world. Today, the OECD incorporates 30 member countries, and keeps up working relationship with more than 70 others.

The OECD's far-reaching connections in the international community position it well to impact private international law. Like the ICC, in any case, it is not an authoritative or law making body, and it has no authority to enforce it. Rather, the OECD's strength originates from the acknowledgment of its membership<sup>25</sup> for the benefit of cooperating to create unified positions on policy initiatives, and from their collective acknowledgment for the OECD's broad involvement worldwide, exceedingly highly detailed analysis of policy.<sup>26</sup>

In spite of these advantages, the present frameworks are not thorough, and its development is not without risk and problems. The larger part of the initiatives, are aimed at business-to-business situations, for the most part leaving business-to-consumers e-commerce to the laws of purchasers' domicile. Any endeavours to create private international consumer law needs to defeat the existing consumer protection of many countries. To be really fruitful, private international law should unite national representatives who have the ability to make authoritative, uniform laws for the administration of a wide range of agreements.

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<sup>24</sup> 'HCCH | Electronic Commerce And The Internet (Press Release Including A Synthesis Of The Round Table'S Recommendations)' (*Hcch.net*, 2017) <<https://www.hcch.net/es/news-archive/details/?varevent=63>> accessed 24 February 2017.

<sup>25</sup> *Oecd.org*. (2017). OECD Guidelines for Consumer Protection in the Context of Electronic Commerce (1999) - OECD. [online] Available at: <http://www.oecd.org/sti/consumer/oecdguidelinesforconsumerprotectioninthecontextofelectroniccommerce1999.htm> [Accessed 9 Jul. 2017].

<sup>26</sup> <http://www.oecd.org/sti/consumer/oecdguidelinesforconsumerprotectioninthecontextofelectroniccommerce1999.htm>

Second major hazard is the expanding number of organizations attempting to develop new initiatives and policies. While the expanded thoughtfulness regarding creating uniform laws for transnational e-commerce may seem valuable, it overlooks the bigger potential issue. As more free organizations present proposals for "uniform" frameworks, and endeavour to actualize them in their minute circles of influence, the danger of disarray and struggle increments.<sup>27</sup> Genuine consistency and uniformity requires the collaboration of numerous associations on a world platform. Unified dialogues are expected to keep the business and lawful scenes from being littered with disparate initiatives and dissimilar organizations looking to lead the way. Lastly, a proper law enforcing authority is also absent in case of disputes and all the present international laws are applicable to signatory nations which are also given the chance to opt out of the law of those organizations.

### **(1.3) CASE STUDY**

In *Yahoo! Inc. v. La Ligue Contre Le Racisme et L'Antisemitisme*,<sup>28</sup> two French human rights groups, International Anti-Racism and Anti-Semitism League and the Union of Jewish students, sued Yahoo Inc. over the online sale of Nazi memorabilia being against French law to offer any Nazi-related things available for sale in France. At the time, Nazi memorabilia was recorded for online auction on Yahoo! Sites, including yahoo.fr, its site coordinated toward French clients. After a French court decided that Yahoo! needed to block all Nazi-related things for French, Yahoo! expelled the Nazi substance from yahoo.fr. In any case, the Nazi material was accessible on other Yahoo! sites, including yahoo.com, its site coordinated towards American clients, where there is no comparative law. The French courts were not satisfied, calling attention to that French Web clients were still ready to get to Yahoo! Sites went to access in different nations that still offered the Nazi materials for auction. The French court demanded a fine of \$13,000 every day against the company.

Yahoo! brought a suit in Federal court of California, claiming the free speech grounds. Nonetheless, the district court ruled against Yahoo!, remarking that it had accepted the danger of exposure to international law by its online business.

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<sup>27</sup> Oecd.org. (2017). Consumers in the Digital Economy - OECD. [online] Available at: <http://www.oecd.org/sti/consumer/consumersinthedigitaleconomy.htm> [Accessed 29 Jun. 2017].

<sup>28</sup>"Yahoo!, Inc. V. La Ligue Contre Le Racisme, 169 F. Supp. 2D 1181 (N.D. Cal. 2001)" (*Justia Law*, 2017) <<http://law.justia.com/cases/federal/district-courts/FSupp2/169/1181/2423974/>> accessed 21 February 2017.

A steady and predictable legal framework for e-commerce is pivotal to the worldwide economy and its development otherwise, e-commerce will be eased back by a need to supplement virtual documentation with more customary structures, and if the advantages are lost, e-commerce could decay. In a 2004 Review on Global Internet Jurisdiction supported by the American Bar Association and International Chamber of Commerce, 75 percent of North American respondents referred that they were worried over the dangers of jurisdiction, as did 55 percent of Asian respondents and 47 percent of European respondents.

A reliable stage can best be set up by the helpful exertion of the international community, including governments and industry. This participation is important to build up the arrangement of treaties, voluntary standards and model laws that make up private international law.

## II. PRIVACY

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'Privacy' has numerous meanings, and its importance varies greatly among individuals, communities, organisations and governments. It is an aspect of freedom and human rights. Civil libertarians may believe that our actions and behaviour should not be subject to public or governmental scrutiny; protectionists may accept such erosions for the greater good in the name of law and order. The development of technology together with social, economic and political factors has raised the antennas of those concerned with interference from governments, enterprises and others on personal freedoms<sup>29</sup>.

Historically, governments seem to have pursued increasing and systemic invasions of privacy in the name of law and order, fighting crime and terrorism. However, their role is in fact to ensure and balance security issues and the proper protection of the privacy rights of the individual. In the 1990s the Clipper Chip was proposed by the US government, ostensibly for the purpose of allowing the government to override individual encryption to protect society from 'gangsters, terrorists and drug users'<sup>30</sup>. Such a process would have allowed the governments to access and decipher all encrypted files. The proposal was unsuccessful. In Australia in 1984, an attempt to pass a Privacy Act failed because it set in place an anti-privacy provision: a central national identification card.<sup>31</sup>

Privacy can be divided into two broad categories: information privacy and personal privacy. Information privacy refers to the ways in which information is gathered, recorded, accessed and released. In the digital age there are multitudes of records of individuals on databases. Only since the advent of electronic recording has information privacy become a serious matter for regulation and control. The most significant step towards regulation began with the drafting of privacy principles by the Organisation for Economic Co-operation and Development (OECD) in the 1970s.

Personal privacy relates to privacy of the person, of an individual's personal space: it can be invaded by those seeking to photograph, film and record in public and private places<sup>32</sup>.

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<sup>29</sup> Michael Lee; Sean Pak; David Lee; Aaron Schapiro, *Electronic Commerce, Hackers, and the Search for Legitimacy: A Regulatory Proposal*, 14 Berkeley Tech. L.J. 839, 888 (1999)

<sup>30</sup> Mark Berthold, *Regulating surveillance: Hong Kong's proposals*, PLPR, 44 (1996) and Graham Greenleaf, *OECD searches for crypto-consensus*, PLPR, 22, (1998).

<sup>31</sup> Michael Kirby, *Privacy in cyberspace*, UNSW LJ, 121, (1998).

<sup>32</sup> Rebecca Lipman, *Online Privacy and the Invisible Market for Our Data*, 120 Penn St. L. Rev. 777, 806 (2016)

## UNITED STATES

In the United States, the right of freedom of speech granted in the First Amendment has limited the effects of lawsuits for breach of privacy. The US *Privacy Act 1974* was passed during the administration of President Nixon. The Act provides:

*No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains.*<sup>33</sup>

There are a number of specific exceptions. They include for statistical purposes by the Census Bureau and the Bureau of Labour Statistics, archival purposes, law enforcement purposes, congressional investigations and other administrative purposes<sup>34</sup>. Every US federal government agency must put in place an administrative and physical security system to prevent the unauthorised release of personal records.<sup>35</sup>

The US Computer Matching and Privacy Protection Act 1988 amended the Privacy Act to include protections for the subjects of Privacy Act records whose records are used in automated matching programs. These protections are designed to ensure procedural uniformity in carrying out matching programs, due process, and oversight of matching programs through the establishment of Data Integrity Boards at each agency engaging in matching to monitor the agency's matching activity.

### (2.1) CHINA

China having the world's largest population also shares a larger fraction of the e-commerce market like the *Alibaba* ecommerce platform which is not only limited to China. But there exist no effective rules and regulations for the protection of right to privacy.<sup>36</sup> E-commerce consumer cannot sue the e-commerce company either through the traditional protection of the right to privacy or specific e-commerce consumer privacy protection laws and regulations. Only the terms and conditions on the website of the concerned company is the only way to get through it. There are a lot of problems while dealing with these rules and regulations on

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<sup>33</sup> Privacy Act 1974, 5 USC 552(a).

<sup>34</sup> Joel R. Reidenberg, *Restoring Americans' Privacy in Electronic Commerce*, 14 Berkeley Tech. L.J. 771, 792 (1999)

<sup>35</sup> US Computer Matching and Privacy Protection Act, 1988.

<sup>36</sup> Jochen Wirtz, May O. Lwin, Jerome D. Williams, *Causes and consequences of consumer online privacy concern*, 18, INTERNATIONAL JOURNAL OF SERVICE INDUSTRY MANAGEMENT, 326, (2007).

the websites because most of them will be written in ambiguous words and for explanation of those terms they are attached to further numerous exemption clauses. Also there exists no specific act relating to privacy protection in e-commerce; only there are regulations' relating to the right to privacy is there in the constitution. Right to privacy is also discussed in General Principles of Civil Law, Administrative Law, Procedural Law, etc but still there are lot of shortcomings in this area. Even in these areas the right to privacy has not been defined clearly for e.g. the constitution defined the right to privacy as personal dignity which should not be infringed. And also the General Principles of Civil Law, which is the most important law sector, even it does not defined the concept of right to privacy and does not even consider it as a separate aspect of human nature. Right to privacy has not been even considered as a human right in China.

Hence it can be concluded that the laws regarding privacy of the consumers in the ecommerce sector is almost none, a lot of development is required in order to safe guard the interests and grave issues like privacy of the consumers. Development here means development in the context of passing of specific legislations which would cover each and every aspect to counter the problem of privacy infringement in case of ecommerce sector. Thus to make the protection mode effective and better is to include legislations regarding this aspect.

## **(2.2) BUDAPEST CONVENTION<sup>37</sup>**

Budapest Convention was drafted by the Council of Europe comprising of the members of European Commission and its observer states in the year 2001. This convention provides the framework to counter cybercrime and it also tries to solve the issue of privacy and jurisdiction in case of any breach on behalf on another party<sup>38</sup>. This convention is open for ratification even by those states that are not part of the Council of Europe. It is widely recognised even by the non-signatories states as a decisive document on curbing the cybercrime and privacy issue related to ecommerce sector of the consumers.<sup>39</sup>

The Article 23 of the Budapest Convention talks about the parties' co-operation in case of any breach in the computer privacy. This article says that the countries can solve the matters

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<sup>37</sup> Budapest Convention, 2001

<sup>38</sup> Jonathan Clough, *A World of Difference: The Budapest Convention of Cybercrime and the Challenges of Harmonisation*, 40 Monash U. L. Rev. 698, 736 (2014)

<sup>39</sup> Terence Craig, Mary E. Ludloff, *Privacy and Big Data: The Players, Regulators, and Stakeholders*, 12 VIRGINIA LAW REVIEW 113 (1996) at 119

of cybercrime and privacy through co-operation on whose law will be applicable and whose jurisdiction in which the matter lies<sup>40</sup>. Many member states did not approve to this by contending that it will be violation of our sovereignty (how can a foreign country prosecute our citizen for committing such a deed which is not a crime in our country). So there is huge lack of uniformity in laws regarding privacy issue all across the members of the convention<sup>41</sup>.

This convention had been under severe criticism for failing to protect the privacy right of both the individual and the state in case of infringement of the personal right of the consumer. It had been criticized both by the member as well as the non-member countries for infringing the state sovereignty, as it gives the jurisdiction to the local police (under Article 32 of the convention) to access servers located in another country without taking any permission (sanctions) from the concerned authorities of that country<sup>42</sup>. And in order to get the quick securing of the concerned server they can also contact directly the service provider of that area without any sanctions. It can also access the stored data computer data which is a clear violation of right to privacy<sup>43</sup>. It is same like violating someone's privacy just because your privacy was violated. There must be a system of arbitration where both the parties agree to a solution to this common problem and only the actual culprits should suffer. Many countries does not sign this convention only due to this provision e.g. Russia finds this particular provision a clear infringement of sovereignty, which no country could afford to do<sup>44</sup>.

Another major default about this convention is that only the majority in the convention are developed country with nominal no. of developing countries, which is contrary as most of the cases of breach of privacy in ecommerce happens in the developing countries.

This convention was a total failure, as it was unable to counter the different aspects of cybercrime and even if it tried to counter some of the problems that became controversial. The only way through which this problem can be countered is to develop a harmonious law that will be acceptable by every country in the world, and then only it can be eradicated.

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<sup>40</sup> Daniele Cangemi, *Procedural Law Provisions of the Council of Europe Convention on Cybercrime*, 18 Int'l Rev. L. Computers & Tech. 165, 172 (2004)

<sup>41</sup> Miomira Kostic; Vida Vilic, *Measures for the Protection the Right to Privacy According to Council of Europe Convention on Cybercrime*, 63 Collection Papers Fac. L. Nis 83, 94 (2012)

<sup>42</sup> Amalie M. Weber, *The Council of Europe's Convention on Cybercrime*, 18 Berkeley Tech. L.J. 425, 446 (2003)

<sup>43</sup> Shannon L. Hopkins, *Cybercrime Convention: A Positive Beginning to a Long Road Ahead*, 2 J. High Tech. L. 101, 122 (2003)

<sup>44</sup> Edel O'Herlihy, *The Cybercrime Convention: A Pioneering Text of International Legal Scope*, 4 Hibernian L.J. 145, 176 (2003)

## CONCLUSION

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It is exceptionally hard to apply customary laws of international private law on jurisdiction when a transaction is concluded or executed through the Web. The enactments are currently developing to fulfil the necessities of this field some particular guidelines have been adopted. However, there are still various issues to be dealt<sup>45</sup>. Specifically, elucidation of international private law in e-commerce and business world has intense tensions about wide interpretation of such terms<sup>46</sup>. Some additional time is needed to confirm contemporary enactments to prerequisites of these days in the light of new commercial advancement keeping in mind that such laws provide enough space for the issue of privacy to be addressed across borders.

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<sup>45</sup> David Bender; Danice M. Kowalczyk, *Avoiding Intellectual Trespass in the Global Marketplace: Encryption & Privacy in E-Commerce*, 5 Va. J.L. & Tech. 1, 14 (2000)

<sup>46</sup> Robert W. Hahn; Anne Layne-Farrar, *The Benefits and Costs of Online Privacy Legislation*, 54 Admin. L. Rev. 85, 172 (2002)