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Of wicked wizards and indigo jackals: legal regulation of online identity in cultural comparative perspective.

Burkhard Schafer



Regulation of digital identity and digital identity management systems are high on the agenda of the UK government and the European Union. Despite the global nature of the internet phenomenon though, proposed legislative initiatives bear the clear hallmark of a very specific, western-centric understanding of the notion of “identity”. Whether this conception can be extended to other cultures, and in particular to those in the rapidly increasing online

markets in Asia, has been doubted. The talk will look at online identity in India, questioning how concepts from Hinduism on the one hand, pan-Indian mythology on the other can shed light on the commensurability of the notion of identity, identity theft/fraud and identity protection that can underpin legal and other regulatory solutions to online identity assurance.¹

While there have been attempts to describe Indian culture as communitarian, collectivist or non-individualist, the better empirical studies qualified these typically as “tendencies”, not absolutes. There is no such thing as a monolithic “Indian legal mentality”, cultures are internally too fragmented, diverse and heterogeneous to allow such a reification.² This is particularly true for India, with its history of colonialism, the reception of the common law that nonetheless left parts of Hindu law as a parallel legal system, the economic and social differences between educated and affluent urban elites and impoverished, undereducated rural communities, and also the diversity of religions – from Christian³ and Islamic⁴ minorities to the rich tapestry of Hinduism, that ranges from atheist philosophies⁵ to polytheistic approaches⁶ to monotheism.⁷ In addition, we find several hundred linguistic groups⁸ and a variety of ethnicities. The attempt to derive a concept of DI from certain core concepts of Hinduism therefore is by no means meant to claim ethical, let alone religious, authority for this approach. Rather, it uses concepts and ideas that are of immediate intelligibility across the Indian communities, and in this way set free the heuristic, problem solving potential of law, while avoiding stereotyping or reifying “Indian culture” beyond what the empirical evidence suggests.

In addition to the “high philosophy” that is used to develop a culturally situated notion of legal protection of digital identity, there are numerous other, pan-Indian myth, folklore tales

¹ This paper benefited greatly from working with Rowena Rodrigues during her time in Edinburgh. Some of the research that informs this paper come from her PhD thesis, Rodrigues, Rowena, "Revisiting the legal regulation of digital identity in the light of global implementation and local difference", University of Edinburgh, 2011. Any mistakes in this paper for the Albertus seminar are however mine and mine alone, and I also take sole responsibility for the opinions expressed therein.

² Burkhard Schafer 'Form Follows Function Fails - as a Sociological Foundation of Comparative Law' (1999) *Social Epistemology* Vol. 13 No 2 pp.113-128

³ Robert Eric Frykenberg, *Christianity in India: From Beginnings to the Present..* Oxford History of the Christian Church. New York: Oxford University Press, 2008.

⁴ Theodore P. Wright, Jr Muslim Legislators in India: Profile of a Minority Élite *The Journal of Asian Studies* Vol. 23, No. 2 (Feb., 1964), pp. 253-267

⁵ Sen Gupta, Anima. *The Evolution of the Sāṃkhya School of Thought*. Munshiram Manoharlal Publishers Pvt. Ltd.: New Delhi, 1986.

⁶ Alain Danielou, *The Gods of India: Hindu Polytheism*. Dehli, Inner Traditions 1985

⁷ Matchett (2000). *Kṛṣṇa, Lord or Avatara? the relationship between Kṛṣṇa and Viṣṇu: in the context of the Avatara myth as presented by the Harivamsa, the Viṣṇupurana and the Bhagavatapurana*. Surrey: Routledge

⁸ Andrew Simpson (2007). *Language and national identity in Asia*. Oxford University Press.

and narratives that can also be utilised first, to communicate these legal ideas to an Indian audience, and second, to shape and educate their understanding of the dangers, obligations and rights that come with an online identity and lives lived in cyberspace. As a result, these stories form a seamless web with the approach taken in the first part of this chapter, and further develop our attempt to find a culturally situated right to identity that is communicated through shared stories and narratives –indeed, the distinction between folk mythology and “high religion” is often fleeting. We can here but briefly indicate some of the “common narrative capital” of Indian culture that are particularly pertinent for situating online rights and to explain them to an Indian audience independently of their educational, religious or ethnic background.⁹

a) the blue jackal.

This tale is a version of the story of the blue jackal taken from the Pūrṇabhadra recension of the *Pancatantra* (also called the *Panchatantra- as hereinafter referred to*).¹⁰ A jackal named Āandarava lived in a cave in the forest. One day driven by hunger, and desperately in need of food he ventured into a nearby city. While he was foraging for food, some mongrels on spotting him turned upon him and viciously attacked him. Petrified, Āandarava fled helter skelter in search of safe place to hide. He jumped through the nearest window and fell into a vat of indigo dye.

The other animals, on seeing the blue Jackal, were taken aback: They had never seen any creature like him before. They wondered who he was and where he had come from. They speculated amongst themselves about the strange indigo coloured creature’s strength and recalled a wise saying:

When you do not know someone’s strength,
Or his lineage or conduct,
It is not wise to trust him –
And that is in your best interests.

⁹ For a very comprehensive account, see Kirin Narayan, *Storytellers, Saints and Scoundrels: Folk Narrative in Hindu Religious Teaching*, University of Pennsylvania Press 1989

¹⁰ See Visnu Sarma, *The Pancatantra*, Translated by C Rajan, Penguin Classics (1993)

Ćandarava realised that all the animals of the forest were scared of him. He called upon them, “My dear friends, be not scared of me, or run away from me in terror. The sovereign gods have anointed me as your King- to rule over you. Come to me and I will protect you.”

Hearing this proclamation, all the creatures of the forest – the lions, tigers, monkeys, elephant, deer, leopards, hares and all the others came forth and paid their respects to their new King. Ćandarava then proceeded to appoint his cabinet- he appointed the lion as his chief minister and the tiger as his chamberlain. The leopard was given control over the royal beetle casket; the elephant was made the royal doorkeeper while the monkey was made the bearer of the royal umbrella. However, all the jackals were banished from the kingdom.

All was well for a while. One day, while Ćandarava was holding court, he heard some jackals howling. Mesmerised and with absolute delight, Ćandarava howled back to his heart’s content. His ministers and courtiers were astonished, aghast and soon became infuriated as Ćandarava’s true identity became apparent. Ćandarava was killed by a tiger during his attempt to flee the jungle.

The Panchatantra is a collection of ancient animal stories built on political strategies and statecraft. It plays a very important part in Indian literature and philosophy and was said to rank only second to the Bible in world circulation.¹¹ According to Hertel, in 1914, there were over 200 versions in fifty languages.¹² It has had a profound influence on world literature¹³ and has been subject to work and re-work, revision, expansion, abstraction, conversion into prose, verse, translation and re-translation.¹⁴

The authorship of the Panchatantra is primarily attributed to Visnu Sarma, a renowned teacher from Mahilaropya.¹⁵ But, questions still exist as to its authorship. Particularly because there is not a great amount of knowledge about Visnu Sarma and also because story telling in ancient India was largely oral in nature and form (stories were told and recounted by numerous story tellers who often added to them and adapted them to suit their audiences).

¹¹ Winternitz, DLZ (1910) 2693

¹² Hertel, J. *Das Pancatantra, seine Geshichte und seine Verbreitung; Leipzig and Berlin, 1914, p 451*

¹³ See A Macdonell, *India's Past*, Oxford University Press, 1927 p 122

¹⁴ Edgerton, F. *The Panchatantra Reconstructed*, Vol II, Introduction and Translation, 1931

¹⁵ H H Wilson thought this was a reference to the Peacock City, part of the present capital of Tamil Nadu

Sarma's name could have been a fictional appellation, representing the many story tellers who contributed to the work.¹⁶

The most common account of how Visnu Sarma came to be attributed as the author of the work goes thus. Visnu Sarma was appointed by king Amara Sakti to instruct his young ignorant sons (three princes) and awaken their judgement and learning. A number of teachers had tried to educate the princes and had miserably failed. Sarma came up with the method of using real life experiences set in frames of contexts and sub-contexts that would encourage the thought process thorough human and animal role plays. Thus, the Panchatantra is not just an entertaining collection of tales; it had a purpose and was meant to be instructive and educative especially on normative concepts – a tradition that this thesis tries to revitalise.

The tale of the indigo jackal has much to inform our research into identity and identity management.

Like Āandarava, people visit varieties of (virtual) “worlds”, conduct ecommerce transactions on the net, socialise, entertain themselves, seek health and other information and communicate with loved ones. If a need is not fulfilled in one virtual world, domain, chat room, or an email provider, users seek out another that best satisfies their needs. In the real life context, people who are not happy with the money they earn, change jobs or move home in search of employment to another city.

But borders are protected by customs and immigration, and cities are patrolled by police to protect citizens and residents and maintain law and order. The mongrels ensure that only “approved identities” enter the city – in the online world, their role is played digital identity management companies, websites, login screens, Linden Labs, ISP's, Universities, employers, UK government. All these indulge in some form of gate keeping and control.

Āandarava, in his attempt to flee the mongrels, fell into a vat of indigo dye and was coloured indigo all over. This is symbolic of a change in identity, for in Āandarava's case his colour represented a very important aspect of his self and who he was. The reaction of the animals to this change is interesting: one the one hand, they cannot trust him – as the quote above

¹⁶ See Visnu Sarma, *The Pancatantra*, Translated by Chandra Rajan, Penguin Classics

indicates, trusting someone requires to “know who they are”, their lineage and heritage. In an online world, this corresponds to the trust rating associated with e.g. a digital identity as an ebay seller.¹⁷ Losing your identity also means to lose this type of “accumulated trust”, your past that allows you to be trusted in the present – one of the reasons why our solution puts more arduous burdens on identity reservation than commonly found.

Ćandarava’s change of identity came about circumstantially. He did not move to the city to change or disguise his identity. It was not something he had actively pursued. It happened as the result of a situation he was thrown into. Similar things happen in the digital world. A person acquires digital identities while doing other important things like buying insurance cover, shopping, banking, paying bills or entertaining themselves. Some of these digital identities may be connected and linked to one another at some times, and at other times they function independently. A person may also be assigned an identity by a cookie of a website s/he visited. Thus, many forms of digital identity come about consequentially and are not the result of a conscious effort of self-generation. At other times, digital identities change. Old ones are discarded and new ones are acquired. At other times, people are randomly and routinely assigned identities by third parties, identities that they have to live with or make their peace with. e.g. a university user name, work place identity.

Ćandarava saw first definite positive benefit of his changed identity (his indigo colour) when he escaped from a potentially fatal attack by the mongrels. This corresponds to the liberating potential of online identities, and the loose connection they may have with offline reality – freeing yourself from the accidents of birth and the constraints it can bring with it..^{18 19}

Nuances of Ćandarava’s identity (and parallels with digital identity terminology)

Let’s explore the nuances of Ćandarava’s new identity in depth. Accordingly to Windley, the fact that Ćandarava was a jackal represented a **trait** (feature of the subject; however Windley perceived a trait as being inherent). So therefore, Ćandarava’s new colour could be an **attribute**. Windley stated that attributes were, “things like medical history, past purchasing

¹⁷ MaryAnne Patton and Audun Jøsang Technologies for Trust in Electronic Commerce Electronic Commerce Research Volume 4, Numbers 1-2, 9-21

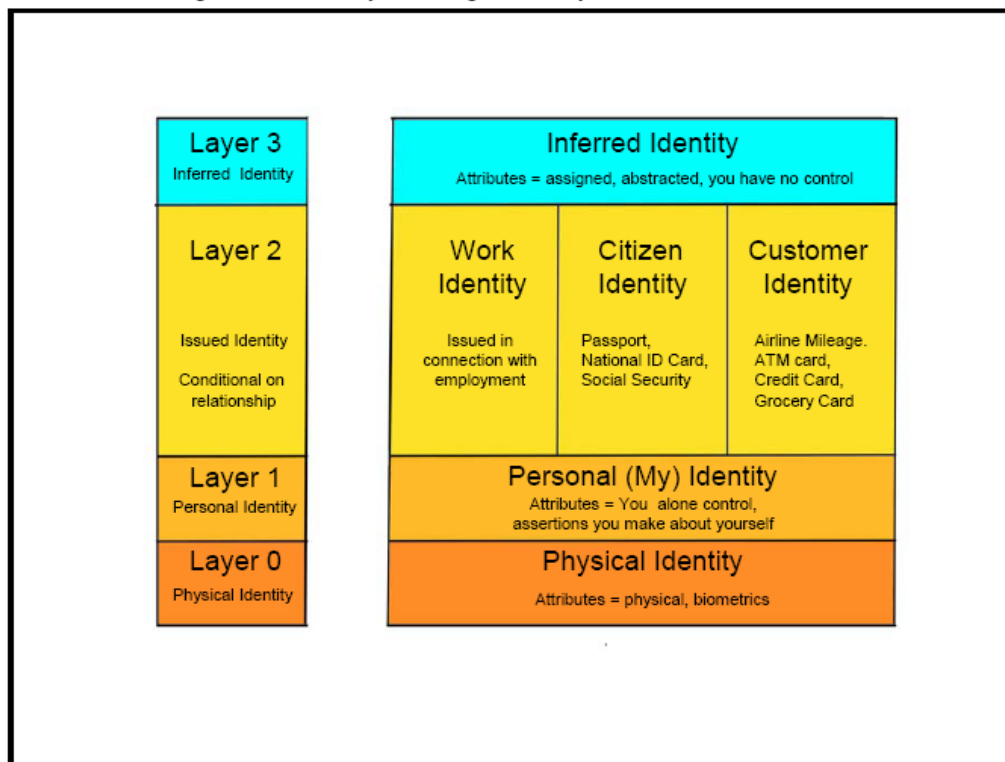
¹⁸ A fact proven by history. One example is the large number of people clamouring to be identified as belonging to the Scheduled castes and tribes of India to take advantage of reservations in education and jobs.

¹⁹ See Joseph Bensman & Robert Lilienfeld, *Between Public And Private: Lost Boundaries Of The Self* 174 (1979)

behaviour, bank balance, credit rating, dress size, age, and so on.”²⁰ Ćandarava’s proclamation that he was God sent coupled with his uniqueness was his **credential**.²¹ One might suggest that this credential was flawed (this will be discussed further), but it was this credential in the absence of any other proof that Ćandarava used to become king of the forest.

Ćandarava’s identity can also be explained in terms of Durand’s tiers or layers of digital identity.²² Durand expressed digital identity to be represented in terms of a framework of layers:

Figure 2.4 Layers of Digital Identity



Source: André Durand, Ping Identity Corporation

In terms of our case study, we can interpret these layers as follows:

1. Layer 3 (Inferred Identity): Ćandarava’s indigo colour and his “strangeness”
2. Layer 2 (Issued Identity): Ćandarava as king.
3. Layer 1 (Personal identity): Ćandarava the jackal
4. Layer 0 (Physical identity): Ćandarava the jackal

²⁰ Windley, P. Digital Identity (2005)

²¹ Windley defines credential as “proof that a subject has a right to assert a particular identity.”

²² Durand, André. Thoughts on Digital Identity, Federation & Life, <http://discuss.andredurand.com/2005/01/03>, March 2005. See also Liberty Alliance Project, Digital Identity Management A Critical Link to Service Success: A Public Network Perspective - 1/2007, A Telecompetition Group Market Study Report, January, 2007, p 8 http://www.projectliberty.org/liberty/resource_center/papers

It must be noted that all the layers do not come into play in all circumstances or transactions. Also there can be overlaps between the layers of identity. Durand's layers recognise the externality of identity (its coming from different sources) as also the fact that one layer of identity may take precedence over the other.

Types of identity management

It is relevant to examine how the three types of identity management (namely user-centric, domain centric or federated) are present in our tale. User-centric systems like OpenId and CardSpace are those that permit the user to decide what identity attributes he/she should reveal to the content provider. In a domain centric system, the user approves domain specific identity attributes. In a federated system, the user approves the transfer of identity attributes already released to other federation members to be transferred between them.²³

In our illustrative tale, Candarava chose and decided what attribute of his identity he was going to reveal to the animals of the forest. This is typical of user centric behaviour. The feature in question, his colour, can be seen as analogous to a biometric identifier – a pattern that uniquely identified him as different from all other animals.

In an attempt to maintain and manage his new identity to his advantage, Candarava had all the jackals of the forest banished. The jackals were the only ones who had the capacity to recognise him for what he was (a jackal not unlike them). This he couldn't let happen. Individuals often do the same. On social networking sites, they do this by blocking and limited access to individuals they do not like or want accessing their profiles. Some consciously choose not to belong to communities one is normally associated with.

The identity, security and privacy relationship

The identity, security and privacy relationship is well documented. So what can we infer from Candarava's tale for this relationship? The identity element is represented by Candarava, and his being a jackal. That was his birth identity. Circumstances forced him to turn indigo in colour. He then went on to become the king of the forest. These were all his identities (or attributes thereof, depending on context). Candarava needed privacy for his identity and

²³ These simplified definitions are taken from Liberty Alliance Project, Digital Identity Management A Critical Link to Service Success: A Public Network Perspective - 1/2007, A Telecompetition Group Market Study Report, January, 2007, p 12 http://www.projectliberty.org/liberty/resource_center/papers

achieved it by banishing the jackals. Privacy is simply defined as “the state in which one is not observed or disturbed by others.”²⁴ He made use of his power to seclude himself from his own kind; rather he only wanted to reveal himself selectively. Through eliminating exposure to the jackals he was controlling what personal information was revealed about him. He thereby also controlled what the jackals knew about him. His kingdom boundaries separated them from him. Thus, it was brought him the security he needed to preserve all aspects of his identity and in this case for a while, it meant his right to life.

The story of the blue jackal shows the ambivalence in Indian culture towards multiple identities, discussed above in relation to avatars. The first part of the story reads as liberating – challenging the caste system and its rigidity, and accepting the jackal for who he, individually, is by losing the ability to simply classify him as one of a specific kind, with specific “access rights” and privileges. Very possibly, in the West this is how the story would have ended, a celebration of individualism undermining the caste system. But our story has a bad ending. The jackal was “maya”, deceptive, not true to his own self and therefore ultimately doomed. We find the same ambiguity to the legal protection of online pseudonymity. The present day “jacks mongrels” don’t accept their banishment, the state reserves the right to pierce online pseudonyms, and the liberating abilities of change of online identity change carry the opprobrium of deception. However, we have seen how other narratives can strengthen this aspect of DI in the Indian user’s conceptualisation, when we discussed avatars above.

Of gods and demons

As we discussed above, avatars have special significance in Hinduism. Avatars in the context of Hinduism represent the most popular and potent form of identity that manifests itself in relation to the Gods. Avatar is a description for God taking human form (an incarnation). The most famous Avatar representations are those manifest by Lord Vishnu (the preserver of the Universe) in the form of the Dasavatars (ten avatars) - Sri Rama, Sri Krishna, Matsya the fish, Kurma the tortoise, Varaha the boar, Narasimha the lion man, Vamana the dwarf, Parashurama the Brahmin priest, Buddha and Kalki (avatar to come).

²⁴ Oxford English Dictionary

Gods do not simply assume the form of avatars. Godly Avatars have specific purpose (and reasons for existence). They appear in times of crisis. Vishnu (as Lord Krishna) says this to Arjuna in the Bhagwadgita: Many are my births, and I know them all...unborn and Lord of all creatures I assume this phenomena, and am born by the illusion of the spirit. Whenever there is lack of righteousness or wrong arises, then I emit myself.” All the avatars of Lord Vishnu had specific purposes – Matsya the fish (save holy scriptures from the flood), Kurma (rendering stability to the world by preserving it balance), Varaha the boar (helping keep the earth afloat), Narasimha (to kill an evil demonic tyrant ruler), Parashuram (to deal with the tyranny of the Kshatriyas), Rama (idealise virtue and defeat evil king Ravana), Lord Buddha (to enlighten the world). Thus, avatars come into being for the protection of the righteous and innocent, destruction of the wicked, enlightenment and establishment of order.

These stories emphasise the positive role of multiple identities and shifting contexts. Similar function have common narratives of “guises”. An account from the **Mahabharata** will illustrate: Arjuna, the brave Pandava prince during his exile in the jungle went out to the Himalayas to worship Lord Shiva so that he could obtain the *Paasupataastram*, an infallible weapon. There, he indulged in severe penance. Lord Shiva assumed the guise of a hunter (*Kiraatamurthy*), appeared before him, picked a quarrel with him over a wild boar, and challenged him to a fight. The prince fought the hunter valiantly and to the best of his efforts. When Lord Shiva had stripped the Prince of his weapons and his ego, he revealed his true self and blessed the Prince with the *Paasupataastram*.

Here too we can see the ambiguous attitude towards disguise: it is in this story an acceptable means to an end, but the end is revealing a true identity, a true self. In our legal and technological analogy, this corresponds to the idea that identities must ultimately be traceable to a common source, legitimizing some restrictions on technological solutions to identity management.

Like the Gods, Demons have the capacity to adopt powerful and often lethal identity guises. This is brought home by the account of Golden Deer in the Ramayana. The demon king Ravana covets Sita, the wife of Sri Rama. He asks another demon Maricha for help. Maricha turns himself into a deer of dazzling beauty and begins to graze near Sita’s cottage. Sita is enamoured by the deer’s beauty and asks her husband Sri Rama to capture it for her. Sri Rama’s brother Lakshmana also with them has misgivings about the identity of the deer.

Despite this, Sri Rama on Sita's persuasion goes after the deer leaving her and Lakshmana alone in the cottage. The deer lures Sri Rama very deep into the forest. Sri Rama manages to rent the heart of the deer (or Maricha's) with his arrow. But Maricha disguises his voice to sound like Rama at that moment and calls for help from Sita and Lakshman. Sita sends Lakshman to help Sri Rama. And Ravana is able to take advantage of the situation and abduct Sita.

There are several other examples like this. Another example can be found in the Mahabharata, where Jatasura a cunning Rakshasa used his powers of illusion and took the form of a Brahmin, attempted to steal the Pandavas' weapons and to ravish their wife Draupadi. Bhima arrived in time to intervene, and killed Jatasura in a duel.²⁵

While the guising of the Gods is perceived as legitimate (lacking dishonesty), guising by the demons generally takes the form of the illegitimate. The identities of the demons are problematic, they are not socially acceptable identities, so they assume take on forms of valid and accepted identities, resulting in what can only be termed identity fraud or in Indian legal terms (and per the IPC s 416) cheating by personation. In our context, they allow to increase awareness of potential dangers of online. Less sophisticated users of technology in developing countries like India are particularly vulnerable to crime. The more relaxed attitude towards multiple identities and a right to them, that this thesis advocates is balanced by the use of the common narratives of "identity theft" and "identity fraud" by demons to raise awareness for dangers and available legal remedies. It is, so we argue, the absence of such "contextualising" stories that have resulted in the observed low uptake of both technological and legal means to protect online rights by Indian users.

A particular interesting example for this is the role of privacy in Indian culture. In the West, privacy protection usurped the entire debate on digital identity and associated rights. I'm myself when I'm alone, privacy protects my identity against outside interference, and the stronger this protection the stronger the right to identity. We have argued that this overemphasis on a defensive right that isolates me from others is particularly unsuitable as the foundation for a right to identity that chimes with Indian user's needs and expectations. Nonetheless, we can find ways to translate the privacy aspect into our normative framework

²⁵ Book III: Varna Parva, Section 156

too, and hence give recognition to this concept – both as an educational device to sharpen awareness of the need to protect one’s online privacy, and also as a way to make intelligible to Indian users legal rules on privacy protection they will encounter in a global environment dominated by Western law.

It’s time for another legend. This time it concerns the Lord Shiva & Goddess Parvathi (who were husband and wife). One day Goddess Parvathi was getting ready for her bath and needed someone to guard her chamber. She created a handsome young boy, gave him life and entrusted him with the task of guarding her chamber. Lord Shiva returned home to find a strange young boy standing guard at the entrance to his wife’s chamber and blocking his entry into the chamber. He asked the boy, “Who are you and why are you blocking my path?” The boy replied “No one enters my mother’s chamber.” Taken aback, Lord Shiva replied, “Step away; I have the right to enter my wife’s chamber.” But the young and courageous boy did not move and stood his ground. Angry and not in the least amused at being disobeyed, Lord Shiva cut off the boy’s head.

- From this account, Goddess Parvathi valued her personal privacy and took active steps to maintain it.(Laid down privacy boundaries)
- Her son held his mother’s need for privacy in high regard and did everything he could to maintain it – and paid the price for it.

As noted above, in India concern for privacy is often linked to concern for modesty, and also for the protection of others in addition to oneself. In this case, the violation of privacy would have harmed not just Parvathi, but also the honour of her husband. This results in a right to privacy that is similar to, but has different expression, than the western notion – in particular as the story shows, the second party beneficiary has also rights to “delete” those parts of the privacy protection that are meant to be in his interest.