
COPYRIGHTABILITY OF TATTOOS: ANALYSING THE CHALLENGES AND POSSIBILITIES OF RECOGNISING TATTOOS AS A PIECE OF WORK

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ABSTRACT

Tattoo is an age-old art that has been flourishing since time immemorial, yet it is left to be wholly recognised by the copyright legal regime. The trend of tattooing has been increasing manifold making the area of research important for future litigations. The tattoo requires certain rights to be conferred on the medium of the work, since the recipient who gets the tattoo done on their body must be able to communicate it to the world. Thus, the question arises, if at all tattoo work is recognised, who may be considered as the copyright-holder, the artist who has created the tattoo or the recipient who is bearing the tattoo? The need for a concrete status to tattoos is important both artistically and economically. In the absence of the same, tattoo artists may lose control over the work and artists may have no encouragement for fostering creativity. On the other hand, the recipient would not enjoy the work done as long as the work does not entail right to display, communicate or even remove the work as per the discretion of the client and that's the conflict of interest dealt by the paper.

INTRODUCTION

“A tattoo is more than a painting on skin; its meaning and reverberations cannot be comprehended without the knowledge of the history and mythology of its bearer. Thus, it is a true poetic creation, and is always more than meets the eye. As a tattoo is grounded on living skin, so its essence emotes a poignancy unique to the mortal human condition.”

-V Vale and Andrea Juno¹

The art of tattooing that we see today is not alien to the Indian population. The tribal communities have been practising the art of marking ones' body from time immemorial. The understanding and purpose of tattooing one's body has been indeed quite different from what the present understanding is. Tattoos are defined in the Cambridge Dictionary as “a permanent image, pattern, or word on the skin that is created by using needles to put colours under the skin”.² The contemporary understanding of tattoos in India has undergone a drastic shift from what it once contained. Tattoos today, are a fashion statement where one puts forward ones' past, belief or faith in an ideology. Tattoos in contemporary world has taken the shape of ones' own extension of personality. The recipients have a greater say in directing the kind of tattoo that they would like to be engraved on their body compared to the culture of tattooing amongst the tribes.

The women of *Apatani* Tribe in Arunachal Pradesh are known for tattooing their faces in order to turn them unattractive for the rival tribes and prevent them from being abducted.³ The brave and warrior like *Konayaks* of Nagaland used to tattoo their faces like head hunters or head takers in order to establish their identity.⁴ *Nagas* asserted the idea of inflicting bodily pain of engraving tattoo on ones' body with that of power, valour and bravery that the tribe signify.⁵ In the *Singpho* tribe of Assam and Arunachal Pradesh, men and women tattooed their legs and limbs in order to declare their matrimonial status to the world at large.⁶ Tattoos were formerly called *godna* in *Awadh* region which majorly focused on tattooing names and religious symbols

¹V. Vale & Andrea Juno, *Modern Primitives: Tattoo, Piercing, Scarification- an Investigation of Contemporary Adornment & Ritual*, (1st edition, 1989).

²Meaning of tattoo in English, Cambridge Dictionary, <https://dictionary.cambridge.org/dictionary/english/tattoo>

³Sanghamitra Baruah, *Tattoos- A tribal Heritage*, Times of India (February 19, 2011, 12:00 a.m.), <https://timesofindia.indiatimes.com/life-style/fashion/buzz/Tattoos-a-tribal-heritage/articleshow/6040717.cms>

⁴Maria Thomas, *These portraits of India's last tattooed head-hunters capture a vanishing culture*, Quartz India, (November 24, 2017), <https://qz.com/india/1136007/the-konyaks-of-nagaland-indias-famed-tattooed-headhunters-are-a-vanishing-tribe/>

⁵ Supra at 3

⁶Supra at 3

on their bodies.⁷ Tattoo art also came to be known as *pachakutharathu* in Tamil Nadu for cultural symbolism.⁸ Tattooed rebels of Chhattisgarh, famously known as *Ramnami*, fought the traditional problems of caste oppression and discrimination prevailing in the area. The *Munda* tribe of Jharkhand are also known for tattooing their body.⁹ The *Kondhs* of Odisha are a farming tribe, who worship nature and possess great knowledge of the forests, would tattoo beautiful art work on their faces.¹⁰ The *Santhals* of Bihar, West Bengal and Odisha tattooed the boys at the age of eight or ten; and girls, as soon as they start menstruating. The tribal methods involved burning of skin, cutting of skin in order to create a scar in the desired body part or infecting a part of the skin to leave a life-long mark. Thus it involved creating patterns which were branded on body parts of all men and women in the tribe, without exercising much skill and creativity. The members in the tribe have no say with respect to what was engraved and how they would like it to be engraved. The patterns also could not be attributed as a work of one particular member of the tribe as the patterns are simple and commonly applied on all members of the tribe irrespective of their choice and decision by almost all members of the tribe who replicate the same patterns on everyone and the source of such artistic work is unknown.

In the urban tattoo centres, catalogue of tattoos give a wide variety to the clients to choose from. If the art works in the catalogue are designs created by the tattoo artist himself, the catalogue is an already protected work of copyright. Any number of clients are allowed to choose from these catalogues for getting it imprinted into their bodies. The art work is not imprinted by the tattoo artist on just the body of the recipient, rather it fulfils the fixation criteria of the copyright law on the sheet of a paper first, which is a copyrightable design and it is a well decided area of work. For the purpose of the research, the paper is restricted to such instances where the tattoo work is extended on the skin of a fellow human being, fulfilling the fixation criteria on someone's else's body and demanding rights over the piece of art, as opposed to the recipient who has rights over his skin and exercises greater autonomy over his body. Tattoos which are found in the catalogue and tribal tattoos are out of the scope of this research paper. The research aims to aid the future discourse of copyrighting tattoos and a

⁷Deekshita Baruah, Changing trends of tattooing in India: It's more customised now, but do you know the 3W formula?, The Indian Express, (June 17 2016, 8:56 p.m.), <https://indianexpress.com/article/lifestyle/fashion/tattoo-trends-in-india-2859271/>

⁸*Id*

⁹Encyclopedias almanacs transcripts and maps, Mundas, Encyclopedia.com, <https://www.encyclopedia.com/humanities/encyclopedias-almanacs-transcripts-and-maps/mundas>

¹⁰ Anurag Mallick & Priya Ganapathy, The Tribes of Odisha, Outlook Traveller, (November 7, 2017), <https://www.outlookindia.com/traveller/ot-getaway-guides/the-tribes-of-odisha/>

legislative aid for issues that are envisaged to come up in near future. The research is majorly focused to find out if copyright protection can be extended on original works of art imprinted on human body directly. And the conflicting consequences that arise thereafter, as in, whether the tattoo artist or the recipient is the real owner of the art work? Similar issues do not arise in other forms of artistic work as the drawing paper or canvass is incapable of asserting similar rights. However, the human hand on which the tattoo is engraved seeks all the rights to display, showcase, remove the same as per his discretion. Some of the instances copyright protection of such tattooed work and their infringements are discussed in the paper.

SOME FAMOUS INSTANCES OF COPYRIGHT INFRINGEMENT OF TATTOOS

The Indian jurisprudence with regard to copyrightability of tattoos is at an infant stage. With the instance of Shah Rukh Khan's Don 2 tattoo which has been registered under the present Indian copyright legal regime¹¹, it can be deduced that the legislation is open to including tattoos under the ambit of artistic copyrighted work. However, there has been no case of copyright infringement and thus, the paper would discuss the cases that have taken part in other parts of the world to understand the nature of the problem. The question of whether tattooed work gets copyright is yet to be determined by the courts and remains unsettled as the instances of copyright infringement have mostly been settled through mutual agreements and settlements outside the court.

In the case *Whitmill v Warner Bros Entertainment Inc.*,¹² a copyright infringement complaint was filed by Mr. S. Victor Whitmill, who was the tattoo artist of the famous boxer Michael 'Mike' Tyson, against Warner Bros Entertainment Inc. for unauthorised copy of the tattoo on the face of another character in the movie Hangover II. An acknowledgement was signed between the recipient Mike Tyson and the tattoo artist, by the virtue of which the ownership of the tattoo work lied with the tattoo artist.¹³ Moreover, Whitmill argued that the tattoo was "distinctive" and the tattoo was drawn on the face of the recipient on the first instance. The tattoo artist further argued that Warner Bros Entertainment Inc. infringed the right to copy, distribution rights and public display of the work since the movie posters had already been

¹¹Meena Iyer, Tattoo design registered on SRK's name!, Times of India, (Jul 14, 2011, 12:00 a.m.), <https://timesofindia.indiatimes.com/entertainment/hindi/bollywood/news/Tattoo-design-registered-on-SRKs-name/articleshow/9210770.cms>

¹²S Victor Whitmill v. Warner Bros. Entertainment Inc., Civil Action No. 4:11-CV-752, 2011, (United States District Court for The Eastern District of Missouri. Apr. 25, 2011) https://www.wired.com/images_blogs/threatlevel/2011/05/tysonatattoo.pdf

¹³Id

published with the character displaying the tattoo work. The images provided in the complaint in Fig (i) where the part of the movie poster Hangover II showcases the tattoo and Fig (ii) exhibits the original artistic work drawn on Mike Tyson. Justice Catherine D Perry held tattoos to be copyrightable in nature and consistent with the copyright legal regime.¹⁴ However, the parties dismissed the case following the court's denial of injunction to release the movie, causing lack of written precedence which could explicitly favour tattoos to be a work of copyright.



Fig (i)¹⁵



Fig (ii)¹⁶

In another case famously known as *Reed v Nike Inc.*, Mathew Reed, a tattoo artist filed a complaint against the following three defendants: Rasheed Wallace, a player in the National Basketball Association (NBA), Nike, and Weiden + Kennedy, an advertising agency.¹⁷ Mathew Reed alleged that the tattoo work drawn on the arm of Rasheed Wallace was infringed in an advertisement of Nike footwear where the tattoo was shown to be created by a computerised simulation and the voice over was provided by player, Rasheed Wallace.¹⁸

¹⁴Noam Cohen, Citing Public Interest, Judge Rules for 'Hangover II' The New York Times, (May 24 2011, 4:05 p.m.) <https://mediadecoder.blogs.nytimes.com/2011/05/24/citing-public-interest-judge-rules-for-hangover-ii/>

¹⁵*Id.* at 12

¹⁶*Id.*

¹⁷Karen Reed v. Nike, Inc., No. 1:2017 cv 07575 - Document 110 (United States District Court Southern District of New York. May. 31, 2019) <https://law.justia.com/cases/federal/district-courts/new-york/nysdce/1:2017cv07575/481593/110/>

¹⁸C. Harkins, Tattoos and Copyright Infringement: Celebrities, Marketers, and Businesses Beware of the Ink, 10 Lewis & Clark Law Review. 313 (2006).

However, in this instance, no agreement or release document was signed between the tattoo artist and the client Rasheed Wallace regarding the authorship of tattoos and the tattoo artist, Reed was issued the copyright registration after filing the complaint.¹⁹ Finally, the present case was also settled as a result of a confidential settlement agreement, leaving no precedent for the future discourse of events.

In the case of *Allen v Electronics Arts Inc.*, Stephen Allen, applied his skill and creativity to imprint a tattoo on football player, Ricky Williams and signed a document providing consent to tattoo.²⁰ Stephen Allen had knowledge of the celebrity status of Ricky Williams and thus alleged no issues with respect to the display of the tattoo work on television. However, Allen alleged copyright infringement when the tattoo work was exhibited on the video games of Electronics Arts Inc., namely NFL Street, Madden NFL 10 and Madden NFL 11. However, here again, there exists no concrete solution to the problem, since the allegations of copying, reproducing, distributing, adapting and public display of the tattoo work was ultimately decided out of the court months before the court could provide with a decision.

In another case of similar background, popularly known as the case of *Escobedo v. THQ Inc.*,²¹ Chris Escobedo, the tattoo artist had engraved a lion tattoo on Carlos Condit which was also registered by the US Copyright Office. The Defendant, THQ Inc., developed video games where the lion tattoo featured on the video game character of Carlos Condit. Chris Escobedo claimed copyright infringement over his work. With respect to the display rights, the tattoo artist held lending implied license to the tattoo holder, the display rights of his work but no such rights of reproduction and creation of derivative work was conferred on the defendant company. The fate of this case also remained the same, as the case was settled outside the court by means of confidential agreement.

In the case of *Solid Oak Sketches LLC v 2K Games Inc. and Take two Interactive Software Inc.*,²² Solid Oak Sketches possessed rights of around eight tattoos of five tattoo holders. These tattoo artists agreed to surrender all their rights to Solid Oak Sketches in lieu of royalties. Solid Oak Sketches then sued 2K Sports and Take two Interactive Software Inc., video game makers depicting players exhibiting tattoos without authorisation of the same, amounting to copyright

¹⁹*Id* at 17

²⁰*Allen v. Electronics Arts*, No. 5:12-V-3172 (W.D.La. Dec. 31, 2012).

²¹*Escobedo v. THQ*, No. 2:12CV02470 (United States District of Arizona. Nov. 11, 2012) <https://randazza.files.wordpress.com/2012/12/escobedo-complaint.pdf>

²²*Solid Oak Sketches, LLC v. 2K Games, Inc.*, No. 16CV724-LTS (S.D.N.Y. 2016).

infringement. The first infringement took place with the NBA 2K14 in the year 2013, when the tattoos were not registered. The tattoos got registered only by the year 2015. The Defendants argued *De Minimis* and Fair use.²³ However the court in both the judgements, released in 2016 and 2018 did not clarify the stand and the case is further referred to the Magistrate's Chamber to settle the issue.

TATTOOS AS AN ORIGINAL WORK OF AUTHORSHIP

In the midst of all the cases, it still remains unclear if tattoos qualify as an original work of authorship. This part of the paper aims to realise if copyright subsists in a tattoo work. Thus, the following parameters is looked into for determining the outcome of the work.

A. CLASSIFYING TATTOO WORK AS A WORK OF COPYRIGHT

In India, copyright subsists in a "work" defined under Section 13 of the Copyright Act, 1957. Statutorily, there exists six major classes of work, which are namely, "*literary, dramatic, musical or artistic work; a cinematograph film; a sound recording.*"²⁴ By an easy stretch of imagination or elimination, one can easily bring tattoo work within the ambit of "artistic work" which is defined as "*a painting, a sculpture, a drawing (including a diagram, map, chart or plan), an engraving or a photograph, whether or not any such work possesses artistic quality; a work of architecture and any other work of artistic craftsmanship.*"²⁵ Although, a painting, sculpture, drawing or an engraving is not further defined but it is to be understood that categorisation of work is important from the perspective of understanding the nature of rights and protection derived from the legal regime. Each class of work, when determined, is vested with exclusive bundle of rights with respect to the work classified.²⁶

B. THRESHOLD OF ORIGINALITY

Originality is the fundamental benchmark used by courts in the world, to determine protection of a work under the copyright regime. Even then, the test to determine originality has neither been laid down by the Legislators, nor the term "original" as mentioned is defined anywhere in the Act. Different jurisdictions have developed different standards of originality. For

²³Solid Oak Sketches v. Visual Concepts, LLC No. 16-CV-724-LTS-SDA (S.D.N.Y. 2016) <https://law.justia.com/cases/federal/district-courts/new-york/nysdce/1:2016cv00724/452890/117/>

²⁴ The Copyright Act, Section 2(y) (1957).

²⁵ The Copyright Act, Section 2(c) (1957).

²⁶ The Copyright Act, Section 14 (1957).

instance, the standard laid down in the United States of America, one of the most developed copyright regime in the world, advocates “Modicum of creativity”. This doctrine was first put forth in the landmark judgement of *Feist Publication Inc. v. Rural Telephone Service*²⁷ where the court upheld the importance of minimal intellectual creativity in the creation of the work. On the contrary, the standard in the United Kingdom is rather low as it advocates the “sweat of the brow” doctrine where the quality of work need not be high and the expression need not be original, novel, unique or distinct, as long as it originates from the author.²⁸ The position in India, as initially followed, was that of United Kingdom’s “Sweat of the Brow” approach. However, the stand took a shift with the landmark judgement of *Eastern Book Company v D.B. Modak*²⁹ which clarified the standard test to be applicable in India. The Supreme Court, in this case, rejected the “sweat of the brow” doctrine and held that skill, judgement and minimal creativity as the settled standard for determining originality. The standard however, is not as high as the United States, and not as low as the United Kingdom.

Tattoo works which are borne from the minds of the tattoo artists, even if they are not novel in nature but, satisfies the standard of skill, judgement and creativity may be allowed copyright protection over the work. After all, tattoo artists do possess the skill of tattooing and embedding ink on human skin, and the required judgement and creativity is employed in what is to be tattooed. This criteria can be easily met by the tattoo artists, as even inspired designs, different colour combinations and employing of minimal creativity is all that a tattoo artist requires for copyright protection.³⁰ However, the level of creativity is not a determining factor for the tattoo work and no work is denied due to the degree of creativity, as long as some amount of freedom is granted to the tattoo artist by the recipient with respect to the work seeking copyright protection.

C. FIXATION

Ideas are not copyrighted. Expression is. Thus, every work of copyright is required to be fixed in a tangible form in order to claim copyright protection over it. Such fixation is important in order to be displayed, copied and communicated to the world.³¹ India being signatory to TRIPS,

²⁷ *Feist Publication Inc. v. Rural Telephone Service*, 499 U.S. 340, 342 (1991).

²⁸ *University of London Press v. University Tutorial Press*, England, Chancery Division, 2 Ch. 601 (1916).

²⁹ *Eastern Book Company v D.B. Modak*, 1 SCC 1 (2008).

³⁰ E. McCutcheon, *Wearables and Where They Stick: Finding a Place for Tech Tattoos in the IP Framework*, 25 J. Intellectual Property Law, 331 (2017).

³¹ C. Harkins, *Tattoos and Copyright Infringement: Celebrities, Marketers, and Businesses Beware of the Ink*, 10 Lewis & Clark Law Review, 313 (2006).

one of the major requirements of copyright protection is the "expression" of the idea, procedure, method or operation,³² making the fixation criteria an essential mandate. Similarly, even WIPO Copyright Treaty, 1996 or as popularly known as WCT defines the scope of protection of copyright and upholds fixation to be the first criteria.³³ No copyright is extended to the idea unless it is fixed in expression. In the present issue, the problem arises, because the medium of this artistic work, is a human skin, capable of claiming rights unlike a paper or a canvass, where the author exercises complete autonomy over the work. However, it is to be duly noted that neither TRIPS nor WCT describes the mode of fixation for copyright protection, as long as the work is fixed. Thus, human skin may be considered as a valid medium since the fixation of the work does not prescribe any qualification apart from its ability to be fixed in any tangible medium for a permanent stretch of time.

D. PERMANENCY

The fixation criteria has derived its importance from the basic understanding that what is copyrighted must be fixed in a permanent form to be able to be copied from. Human skin may be a medium for fixation of the artistic work, however, the same cannot be protected if it is not fixed in permanent form. For instance, body art, face painting, nail art, sand art and make-up may all be copyrighted as it has the capacity of being fixed on the human skin as a medium of expression, but they cannot retain the permanent nature. Thus, it can be deduced that it is not sufficient to be fixed, as it is required to be permanent as well. Thus, the question here pertains to permanent tattoos, and if they can be considered permanently fixed enough to qualify for copyright protection. One of the major arguments for granting tattoos as an artistic work worth copyright protection is the fact that permanent tattoos do not weather away, fades or changes with time and provides a rather, tangible form to the tattoo.³⁴ However, Nimmer, while extending his expertise in the *Whitmill v Warner Bros Entertainment Inc.*, case, refutes the above rationale, by bringing out a practical issue to the argument and holds that, if human body was allowed to be used as a medium of fixation, recipients' autonomy over his or her body would be at stake. The client, may then may not be able to remove the tattoo as per his or her discretion.³⁵ And, if the tattoo artist is given autonomy over the work, the availability of the

³² Trade-Related Aspects of Intellectual Property Rights, Article 9(2) (1995).

³³ The WIPO Copyright Treaty, Article 2 (1996).

³⁴ E. McCutcheon, Wearables and Where They Stick: Finding a Place for Tech Tattoos in the IP Framework, 25 J. Intellectual Property Law 331 (2017).

³⁵ *Id* at 12

option of removal of the permanent tattoo can be argued as a strong basis for not extending copyright protection to tattoo works. To which, it is argued that, although the tattoo work is removable, the task of removing a tattoo is expensive, painful and not successful all the time.³⁶ And, thus can be considered permanent enough for copyright protection.

ANALYSIS/CONCLUSION

Copyright protection over tattoos is at its nascent stage. There is no concrete development in the jurisprudence. The need for a concrete status to tattoo works is important, both creatively and economically. There exists no such case where the courts have tried the matter in hand and clarified the position. In the absence of the same, tattoo artists may lose control over the work. In all the cases discussed in the paper, it has been observed that litigations are avoided by the parties and tattoo artists are often paid damages for the infringement by the huge corporations. Lack of awareness of copyright in the country should not be a reason for the art to not get recognition, especially when tattooing has become one of the most commercial forms of art in the country.

The trend of tattooing has been increasing manifold, making the area of research, important for future course of events and litigations. Economically speaking, within a span of a decade, the country has found mushrooming growth of tattoo parlours. From a range of around five thousand parlours in the early 2000s, there has been a hike of fourteen thousand tattoo parlours in 2012,³⁷ generating a huge amount of revenue from the tattoo industry. Tattoo industry, being an unorganised structure, as defined under the Report on Conditions of Work and Promotion of Livelihoods in the Unorganised Sector³⁸ requires the need to be aware of the artistic work that it is generating and the copyright protection that the artists deserve over the work that they are producing. On the contrary, there are way too less number of tattoo artists and tattoo holders who are aware of the copyright protection and infringement consequences of the same. And the lack of awareness is creatively demeaning for an artist and the recipient who is exhibiting the tattooed work to the world. Tattoos often express journey of one individual, and their beliefs and ideologies which are unique to one individual. The recipient may have an issue if a third party copies the same artistic work without prior permission and exhibits the same for various

³⁶ Yolanda M. King, The Challenges “Facing” Copyright Protection for Tattoos, 92 Oregon Law Review (2013).

³⁷ Abhishek Chakroborty, Business of tattoos: Patterns of money, Financial Express, (Sep 15, 2013, 18:21pm) <https://www.financialexpress.com/archive/business-of-tattoos-patterns-of-money/1169251/>

³⁸ Report on Conditions of Work and Promotion of Livelihoods in the Unorganised Sector, National Commission for Enterprises in the Unorganised Sector, Jan. 2008, at 1774.

purposes without asserting the due credits to the author of the work. In a situation, where the artists and recipients are not aware of the rights, one may not be able to seek the required protection for infringement.

The law is required to be settled. Otherwise, artists may have no encouragement for fostering creativity. Ideally, the copyright regime provides for the author of the work to be the first owner of copyright, unless a contrary agreement exists.³⁹ And all rights, exclusive to the class of work are then vested on the author. And the law is justified in doing so. But the medium of work gives rise to problems which are exclusive to the tattooed work. Mediums such as paper, canvass or even wood for that matter, on which the work is fixed, is the exclusive work of the author and all rights related to the artistic work, both moral rights and economic rights lies with the author. Moral rights, such as the right to claim authorship of the work and the rights to claim damages in instance of distortion, modification which is prejudicial to the author;⁴⁰ and economic rights, such as the right to copy, reproduce, communicate adapt, sell etc.⁴¹ But tattooed work, on the other hand, requires certain rights to be conferred on the medium of the work, since the recipient gets the tattooed work done on their body to be able to communicate it to the world. And the recipient would not enjoy the work done as long as the work does not entail right to display, communicate or even remove the work as per the discretion of the client. And that's where the conflict of interests arise.

And the law is also not clear about instances where recipients or clients direct the tattoo artist as to how they would like the tattoo work to be done on them. If such directions are verbal in nature, the recipient may have no claims of authorship over it because ideas are not copyrighted and such sharing of ideas will not even qualify as joint authorship since it does not amount to "copyrightable contribution" as prescribed in the enactment.⁴² The issue may arise with pictorial directions on a paper or any other tangible form, where the tattoo artist is only allowed to replicate what is given on the paper to the skin of the recipient and no such judgement or creativity is employed by the tattoo artist apart from the skill of tattooing. And, the origin of the expression of the artistic work remains with the recipient or any other third person who has drawn the design and the tattoo work is a mere reproduction of the same from the paper to the human skin, while applying the skill of tattooing. It is to be noted that tattoo holders often have

³⁹ The Copyright Act, Section 17 (1957).

⁴⁰ The Copyright Act, Section 57 (1957).

⁴¹ The Copyright Act, Section 14 (1957).

⁴² The Copyright Act, Section 2 (z) (1957).

a greater say in what they want to bear on their body and the degree of freedom of author in expressing the idea into the skin is limited by the recipient who wants to get tattooed. Thus, in the author's opinion, no such tattoo work can be held a pure work of the artist as the degree of control over the work depends upon the communication between the tattoo artist and the tattoo holder. The option of commissioned work with respect to tattoos cannot be absolutely neglected. The recipient or client can be easily held as the owner of the work, if a contract of service is drawn between the parties, while the recipient commissions the said tattoo work, paying the required remuneration and enjoys control and economic rights over the work. Thus, it can be concluded that the ownership over the tattooed work are often subjective in nature.

The researcher's solution to such grey areas of law is a well thought out written agreement between the author and the client, where the parties may specify the rights that is conferred on them. So that the tattoo artist does not claim future economic rights over the work in instances where the tattoo is displayed by the recipient on a platform where he is entitled to economic gains.⁴³ Moral Rights, as fairly understood, are independent of author's copyright over the work, and will remain with the author even if the author has wholly or partially assigned the rights to a third party. Since, moral rights are such rights that cannot be negated or neglected, even if the agreements between the parties confers the rights otherwise.⁴⁴ Economic rights are required to be distributed through a well thought out agreement, right at the initial stage in order to avoid future trials and tribulations. This distribution of rights in the agreement is necessary in the instance of tattooed work, because every recipient allows different degrees of freedom to the author and every recipient may have different interest in the tattooed work. In the opinion of the author, a well communicated and written agreement between the tattoo artist and the recipient will help extend copyright protection over the work, since dilemma over the ownership over the tattoo work is one concrete argument that refrains tattoo work from joining the domain of intellectual property, and the artists are not awarded their due credits. This may lead to loss of creative inputs from tattoo artists in future while defeating the very purpose of Copyright Law. Thus, despite all odds that comes with copyrighting tattoos, the author, advocates extending tattoo work into the domain of Copyright.

⁴³ M. Parker, That Old Familiar Sting: Tattoos, Publicity, and Copyright, 15 J. Marshall Review Intellectual Property Law, 762 (2016).

⁴⁴ Manu Bhandari v Kala Vikas Pictures Ltd., 13 AIR (1987).