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## MORAL RIGHTS IN TATTOOS: REASSESSING THE CREATOR–SUBJECT DICHOTOMY IN COPYRIGHT LAW

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### Abstract

This paper explores the intersection of copyright law and body art by examining the legal status of moral rights in tattoos. Who owns the moral rights to a tattoo: the tattooist or the tattooed? This dilemma situates itself at the confluence of originality, creativity, authorship, and the material medium of expression. With evolving jurisprudence in intellectual property law, particularly in artistic works, this article analyses statutory provisions, domestic and international case laws, and scholarly commentary to dissect and address the rightful claimant of moral rights in tattoos.

### Introduction

Tattoos, as a form of artistic expression, pose a unique challenge to traditional copyright law paradigms. The conflict arises over whether the tattooist (the creator) or the tattooed individual (the bearer) holds moral rights over the inked design. This debate transcends simple ownership of physical property, delving into the heart of intellectual property jurisprudence, specifically the doctrine of moral rights under copyright law.

### Understanding Moral Rights in Copyright Law

Moral rights (droit moral), distinct from economic rights, protect the personal and reputational bond between authors and their works. Codified under Section 57 of the Indian Copyright Act, 1957 and under Article 6bis of the Berne Convention, these rights include:

- The right of paternity (authorship)
- The right of integrity (to prevent distortion or mutilation of the work)

In *Amarnath Sehgal v. Union of India* [(2005) 30 PTC 253 (Del)], the Delhi High Court recognized moral rights as essential to preserving the sanctity of artistic integrity, even after the sale or transfer of economic rights.

### Originality and Fixation in Copyright Law

To qualify for protection under copyright law, a work must be:

- **Original** (derived from the author and not copied)
- **Expressive**, not merely an idea
- **Fixed** in a tangible medium

Under Indian law (Section 13 of the Copyright Act, 1957), artistic works such as drawings, paintings, and sculptures are protected. Tattoos, though unconventional, satisfy these criteria. In the U.S., the landmark judgment *Feist Publications v. Rural Telephone Service Co.*, 499 U.S. 340 (1991) held that a “modicum of creativity” suffices to establish originality.

In the tattoo context, the fixation criterion is met when the artwork is permanently etched onto the skin. Although human skin is not a traditional medium, courts have not limited fixation to canvases or papers (*Whitmill v. Warner Bros. Entertainment Inc.*, No. 4:11-cv-00752, E.D. Mo. 2011).

### The Legal Personhood of the Tattooed Subject

The bearer of the tattoo may assert autonomy over their body, raising questions about whether bodily autonomy overrides the creator’s moral rights. However, ownership of the skin as a

medium does not equate to ownership of the tattoo as an artistic work. The distinction is similar to ownership of a book without acquiring rights to the literary content within it (*R.G. Anand v. Deluxe Films*, AIR 1978 SC 1613).

### Situational Analysis

#### 1. Where the Tattooed Person Provides the Design

If the tattooed individual conceptualizes and directs the execution of a design, they could be deemed the author under Section 17(c) of the Indian Copyright Act, where a work created under a contract for service can confer authorship to the commissioner. This aligns with *Community for Creative Non-Violence v. Reid*, 490 U.S. 730 (1989), where the U.S. Supreme Court distinguished between employees and independent contractors in authorship determination.

#### 2. Where the Tattoo Artist Independently Designs the Tattoo

In instances where the artist creates the design without direction or influence from the tattooed individual, authorship – and thereby moral rights – resides with the tattooist. This was the argument in *Whitmill v. Warner Bros.*, where the tattoo artist of Mike Tyson's facial tattoo sued over its reproduction in a movie. Although settled out of court, the case validated that tattoo designs can be copyright-protected.

#### 3. Where the Design is a Copy of a Pre-Existing Work

If the tattoo is a direct reproduction of a third-party work (e.g., Leonardo da Vinci's *Mona Lisa* or a copyrighted brand logo), neither the tattooist nor the tattooed has any claim to copyright. This would amount to derivative or infringing use under Sections 14 and 51 of the Indian Copyright Act.

### International Comparisons and Emerging Jurisprudence

Globally, jurisdictions are beginning to grapple with these questions:

- In the U.S., no specific legislation deals with tattoo copyrights, but courts have recognized tattoos as copyrightable works in cases like *Solid Oak Sketches v. Take-Two Interactive Software*, No. 16-CV-724 (S.D.N.Y. 2020), which ruled that NBA players' tattoos featured in video games could constitute fair use due to minimal visibility and transformative context.
- In the U.K., moral rights are governed by the Copyright, Designs and Patents Act, 1988, with similar principles, though no landmark tattoo-related jurisprudence exists yet.

### Legal and Ethical Implications

Tattoo copyright raises questions about:

- The commercial use of one's image (e.g., actors or athletes whose tattoos are featured in merchandise)
- Body integrity and privacy
- Freedom of expression and authorship recognition

Recognition of the tattooist's rights should not infringe upon the bodily rights of individuals, which remain constitutionally protected under Article 21 of the Indian Constitution (Right to Life and Personal Liberty).

### Conclusion

The authorship and moral rights over tattoos cannot be answered in absolutes but must be determined based on the nature of the creative contribution. Where the tattoo artist designs the work independently, they are entitled to moral rights. Where the tattooed person conceives the design, they may assert authorship. The overarching legal principle remains: *Moral rights belong to the creator of the expression.*

This debate invites legislative clarity and further judicial evolution to balance creator rights with personal autonomy, especially as tattoos

increasingly intersect with digital media, gaming, and celebrity branding.

### References

1. Copyright Act, 1957 (India)
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10. Article 6bis, Berne Convention

