**Introduction**

Tim Parks, a renowned legal scholar, emphasized the importance of individual intellect and the need for copyright in a society that values individuality. This awareness and curiosity have led to rapid changes in technology and art forms, resulting in the emergence of various industries, including the tattoo industry. The tattoo industry, which has roots dating back to 8000 BC, has grown to become billion industry. The legal framework for regulating and enforcing copyrighted tattoos is evolving, with questions about adequate laws and the extent of these rights. The question remains whether tattoos are artistic enough to be copyrightable, who owns these rights, and how to enforce them. As the tattoo industry continues to grow, it is crucial to address these fundamental questions and ensure a fair and efficient legal system for the tattoo industry.

Tattoos should qualify for copyright protection as they are artistic forms of expression on tangible mediums. Indian law does not explicitly specify the need for a tangible medium of expression, but due to the permanent nature of tattoos and the human body being the "tangible medium of expression," reservations against tattoos not being copyrightable work should be ruled out. The Indian Copyright Office has validated the validity of tattoos as copyrightable works, with Shahrukh Khan receiving a copyright registration for his tattoo of the letter “D” in film “Don 2” in 2011. Thus, a tattoo design can be protected by copyright, provided it shows sufficient originality and is fixed on a physical or tangible medium. Though there are no cases of disputes relating to copyright infringement in India yet but there exist many cases relating to the same in various other countries.

**Applicability and Extent of Copyright**

To understand the applicability of copyrights to tattoos, it is essential to recognize that only original and custom-made tattoos are considered. The originality is the principal ingredient for copyright existence. However, tattoo artists' efforts in inculcating the imagination of the tattoo bearer are worth admiring. If the copyrights of a tattoo remain in the possession of the tattoo artist, the rights to exploit the copyrighted "piece of art" also rest with them. Section 14(c) (ii) of the Indian Copyright Act, 1957, specifies that the copyright holder has the right to communicate the piece of work to the public.

In the defense of tattoo artists' rights to obtain the copyright, it may be argued that like painters, they too create art and have a right to copyright the same to retain their originality. The tattoo bearer may merely own the piece of art, and the copyrights of the designs may still rest with the tattoo artist. A certain amount of royalty may be reimbursed to the artist for replication or incorporation of this piece of art on various mediums, such as video games. In the legal matter of Escobedo v. T.H.Q., THQ Inc., [[1]](#footnote-1)the creators of an Ultimate Fighting Championship (UFC) themed video game, faced a copyright infringement lawsuit initiated by a tattoo artist. The artist had executed a lion tattoo on the torso of fighter Carlos Condit, asserting its originality and asserting ownership through a registered copyright. The artist argued that THQ's utilization of the tattooed work in the video game, depicting Carlos Condit, constituted an infringement upon the copyright he held for the design. THQ may have presumed that the likeness rights obtained for Condit to feature in the games would encompass such scenarios. However, Escobedo and his legal representative contended that Condit did not possess legal rights to his own tattoo, thereby lacking the authority to grant usage rights to others. Addressing a common misconception, Escobedo's attorney, Maria Crimi Speth, clarified that individuals often mistakenly believe they own the images tattooed on them. In actuality, the exclusive creator of the tattoo artwork is considered its owner unless there exists a written assignment of the copyright, which was absent in this case between Escobedo and Condit. Consequently, the tattoo's ownership vested solely in Escobedo. Subsequent to a settlement, the contested tattoo was removed from the fighter, precluding its appearance in the EA Sports "UFC" series that ensued. This case underscores the legal principle that artists retain copyright over their unique works, irrespective of the canvas, including the human body.

Section 17 of the Copyright Act states that the creator of a work, including a tattoo artist, is the copyright owner. In the legal dispute ensuing from the film "The Hangover: Part 2"[[2]](#footnote-2), notable for featuring a character portrayed by Ed Helms awakening with a tribal tattoo resembling that of Mike Tyson, a copyright infringement suit was initiated by the original tattoo artist, S. Victor Whitmill. Having previously obtained copyright protection for Tyson's tattoo through the United States Patent and Trademark Office approximately eight years prior, Whitmill alleged that Warner Bros. impermissibly utilized his artistic creation without obtaining prior consent. Warner Bros., in defense, asserted that their use of the tattoo fell within the parameters of the "fair use doctrine." However, presiding Judge Perry dismissed this argument as "silly," emphasizing that the tattoo in question constituted an exact replica of Whitmill's original work. Despite Whitmill's plea for an injunction against the film's release being denied, the case did not progress to a formal trial, as both parties opted to settle the dispute for an undisclosed sum before reaching the courtroom.

In one more notable legal case, tattoo artist Mr. Reed [[3]](#footnote-3)asserted his ownership of a tattoo adorning the arm of Mr. Wallace, contending that he held the rights, title, and interest to the original artwork. To seek redress, Reed articulated three primary claims: Firstly, Reed alleged that Mr. Wallace engaged in copyright infringement by duplicating, replicating, distributing, and publicly utilizing the tattoo without obtaining prior authorization from Nike and Weiden. Additionally, Reed posited a contributory infringement claim against Wallace, asserting that he misled Weiden and Nike into believing that Wallace possessed exclusive ownership rights to the copyright of the tattoo. Furthermore, Reed contended that he was entitled to a portion of the profits garnered by Wallace for the utilization of his tattoo in the Nike advertisement. Notably, this legal dispute did not proceed to a court hearing, culminating instead in an out-of-court amicable settlement.

**Remedies**

• Tattoo Artist Independent Contractor Agreement: A contract between the tattoo artist and client outlining services, financial obligations, and ownership of intellectual property.

• Assignment under Section 18 of the Copyright Act: Ownership of the copyright can be assigned to anyone, as long as it occurs at the time of creation.

• Relinquishment of Copyright: Rights can be relinquished under Section 21 of the Act.

• Granting a License: Tattoo artists can grant any interest in the right through a license signed by them or their legally authorized representative under Section 30 of the Act.

**Conclusion**

The evolution of technology and art, driven by individual intellect and copyright, has led to the emergence of diverse industries, including the tattoo industry. The legal framework for regulating copyrighted tattoos is still in its formative stages, raising questions about the artistic merit of tattoos, ownership of rights, and enforcement mechanisms. The Indian Copyright Office's validation of tattoos as copyrightable works, such as Shahrukh Khan's "Don 2" tattoo, supports the argument that tattoos should qualify for copyright protection. International cases like Escobedo v. T.H.Q. emphasize the importance of addressing the rights of tattoo artists, as they retain copyright over their unique works. Section 17 of the Copyright Act establishes the creator, including tattoo artists, as the copyright owner. Legal disputes, such as S. Victor Whitmill's case against Warner Bros., emphasize the need for protecting tattoo artists' rights. Tattoo artists can choose various options for copyright ownership, such as independent contractor agreements, assignments, relinquishment, and granting licenses. Addressing fundamental questions surrounding copyright is crucial to establish a fair and efficient legal system in the tattoo industry.

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1. *Christopher Escobedo v. THQ Inc., U.S. District Court, District of Arizona (Phoenix)* [↑](#footnote-ref-1)
2. *S. Victor Whitmill v. Warner Bros. Entertainment Inc.*  [↑](#footnote-ref-2)
3. *Reed v. Nike, Inc., 2005* [↑](#footnote-ref-3)