THE ENFORCEMENT CHALLENGES FOR TATTOO COPYRIGHTS

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ABSTRACT

This Article is the second of a series of articles to examine the applicability of copyright law to tattoos. The Article addresses the challenges that the owner of a copyright in a tattoo will face if the owner decides to enforce her rights in court. The first article in the series, The Challenges “Facing” Copyright Protection for Tattoos, concluded that notwithstanding the lack of published court decisions in this area of law, tattoos are copyrightable. However, recognizing the potential validity of the copyright is only the first step to pursuing copyright infringement. To pursue a claim of infringement, the copyright owner must also show violation of one of the exclusive rights granted to the owner of a copyright, such as reproduction, distribution, or public display of the work. This Article posits that the owner of a tattoo copyright should expect less protection than the copyright owner of a work fixed in a traditional medium. An artist’s choice of the human body as the medium of expression raises ethical, legal and practical concerns that necessitate a diminution in the exclusive rights of the copyright owner.

A complicating factor for the enforcement of tattoo copyrights is the fact that ownership of a copyright can be shared by more than one person. A tattoo is often developed in collaboration between the tattoo artist and the person seeking to purchase a tattoo. The Article explores the complexities in determining the ownership of the copyright in a tattoo and recommends that the tattoo artist and her customer discuss copyright ownership in the tattoo. A person seeking to purchase a tattoo is often asked to sign an agreement certifying her consent to application of the tattoo to the body, requiring disclosure of any medical or skin conditions, and acknowledging receipt of instructions concerning the care of a new tattoo. An agreement regarding copyright ownership should also be reduced to writing. Yet, even if ownership is not disputed, enforcement of the copyright will be difficult. This Article concludes by encouraging owners of tattoo copyrights to enforce their rights in their artwork in court but cautions these owners that courts will determine that they must relinquish some control of a work embodied on another person’s body.