



Rigorous empirical  
research on  
intellectual property

## The copyright protection of tattoos

Host: Dr. Claudia Tapia, President of 4iP Council

Presenter: Dr. Paula Westenberger



# What do we do?



Non-Profit Activities



High Quality Academic Research



Education



Promote Innovative SMEs

# Free materials on...



Summaries of  
papers, studies,  
guides and case law



Interactive  
graphics



Interviews  
to inspire SMEs



Webinars

## For SMEs:



# European Court Decisions:

## Which types of intellectual property do you need?

Filter table columns

	<b>P</b> PATENTS	<b>C</b> COPYRIGHTS	<b>D</b> DESIGN	<b>R</b> TRADE MARKS	<b>TS</b> TRADE SECRETS
<b>What do they protect?</b>	Invention - a new and original idea or process, or a new way of doing something, or a new machine or product. <a href="#">See also:</a> <a href="#">Patents</a> <a href="#">Inventions</a> <a href="#">Innovation</a>	Invention - a new and original idea or process, or a new way of doing something, or a new machine or product. <a href="#">See also:</a> <a href="#">Copyrights</a> <a href="#">Inventions</a> <a href="#">Innovation</a>	Invention - a new and original idea or process, or a new way of doing something, or a new machine or product. <a href="#">See also:</a> <a href="#">Designs</a> <a href="#">Inventions</a> <a href="#">Innovation</a>	Invention - a new and original idea or process, or a new way of doing something, or a new machine or product. <a href="#">See also:</a> <a href="#">Trade Marks</a> <a href="#">Inventions</a> <a href="#">Innovation</a>	Invention - a new and original idea or process, or a new way of doing something, or a new machine or product. <a href="#">See also:</a> <a href="#">Trade Secrets</a> <a href="#">Inventions</a> <a href="#">Innovation</a>
<b>Examples of what is protected</b>	Software, products and processes, or a new way of doing something, or a new machine or product. <a href="#">See also:</a> <a href="#">Patents</a> <a href="#">Inventions</a> <a href="#">Innovation</a>	Software, products and processes, or a new way of doing something, or a new machine or product. <a href="#">See also:</a> <a href="#">Copyrights</a> <a href="#">Inventions</a> <a href="#">Innovation</a>	Software, products and processes, or a new way of doing something, or a new machine or product. <a href="#">See also:</a> <a href="#">Designs</a> <a href="#">Inventions</a> <a href="#">Innovation</a>	Software, products and processes, or a new way of doing something, or a new machine or product. <a href="#">See also:</a> <a href="#">Trade Marks</a> <a href="#">Inventions</a> <a href="#">Innovation</a>	Software, products and processes, or a new way of doing something, or a new machine or product. <a href="#">See also:</a> <a href="#">Trade Secrets</a> <a href="#">Inventions</a> <a href="#">Innovation</a>
<b>How are they rights protected?</b>	Patents are granted by the government. <a href="#">See also:</a> <a href="#">Patents</a> <a href="#">Inventions</a> <a href="#">Innovation</a>	Copyrights are granted by the government. <a href="#">See also:</a> <a href="#">Copyrights</a> <a href="#">Inventions</a> <a href="#">Innovation</a>	Designs are granted by the government. <a href="#">See also:</a> <a href="#">Designs</a> <a href="#">Inventions</a> <a href="#">Innovation</a>	Trade Marks are granted by the government. <a href="#">See also:</a> <a href="#">Trade Marks</a> <a href="#">Inventions</a> <a href="#">Innovation</a>	Trade Secrets are granted by the government. <a href="#">See also:</a> <a href="#">Trade Secrets</a> <a href="#">Inventions</a> <a href="#">Innovation</a>
<b>How long is my innovation protected?</b>	Up to 20 years. <a href="#">See also:</a> <a href="#">Patents</a> <a href="#">Inventions</a> <a href="#">Innovation</a>	Up to 70 years. <a href="#">See also:</a> <a href="#">Copyrights</a> <a href="#">Inventions</a> <a href="#">Innovation</a>	Up to 25 years. <a href="#">See also:</a> <a href="#">Designs</a> <a href="#">Inventions</a> <a href="#">Innovation</a>	Up to 10 years. <a href="#">See also:</a> <a href="#">Trade Marks</a> <a href="#">Inventions</a> <a href="#">Innovation</a>	Up to 10 years. <a href="#">See also:</a> <a href="#">Trade Secrets</a> <a href="#">Inventions</a> <a href="#">Innovation</a>
<b>Do I have to register it?</b>	Yes, you have to register it. <a href="#">See also:</a> <a href="#">Patents</a> <a href="#">Inventions</a> <a href="#">Innovation</a>	No, you don't have to register it. <a href="#">See also:</a> <a href="#">Copyrights</a> <a href="#">Inventions</a> <a href="#">Innovation</a>	Yes, you have to register it. <a href="#">See also:</a> <a href="#">Designs</a> <a href="#">Inventions</a> <a href="#">Innovation</a>	Yes, you have to register it. <a href="#">See also:</a> <a href="#">Trade Marks</a> <a href="#">Inventions</a> <a href="#">Innovation</a>	No, you don't have to register it. <a href="#">See also:</a> <a href="#">Trade Secrets</a> <a href="#">Inventions</a> <a href="#">Innovation</a>

## How do I use intellectual property to grow my business?

## 2 - NEGOTIATING

## 3 - FUNDING

## 4 - STRATEGIC VALUE

Explore how patents add value with our [interactive guide](#).

## 3 - COLLABORATION

## 4 - FUNDING

Explore the benefits of copyright with our [interactive guide](#).

## 4 REASONS 4 TRADEMARKS

- 1 - DIFFERENTIATION
- 2 - PROTECTION
- 3 - REPUTATION
- 4 - REVENUE

Explore the benefits of trademarks with our [interactive guide](#).

## 4 REASONS 4 DESIGN RIGHTS

- 1 - EXCLUSIVITY
- 2 - COMMERCIALISATION
- 3 - REPUTATION
- 4 - VALUE

Explore the benefits of design rights with our [interactive guide](#).

[Case Law post CJEU ruling \*Huawei v ZTE\*](#)

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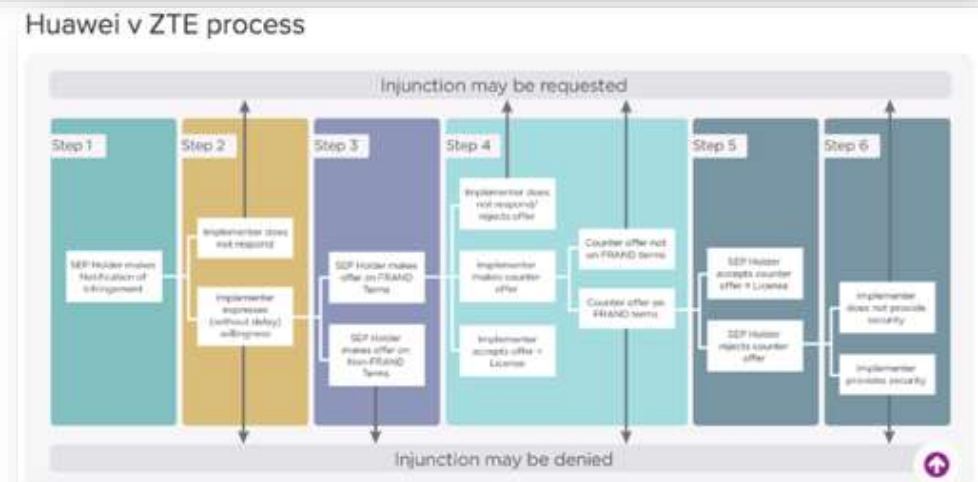
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# Who owns your ink? The copyright protection of tattoos



Dr Paula Westenberger is a Senior Lecturer in Intellectual Property Law at Brunel University London and Deputy Editor of the European Copyright and Design Reports. She holds a PhD with Scholarship awarded by the Centre for Commercial Law Studies and an LLM in Intellectual Property Law, both from Queen Mary University of London. Her research interests cover the relationship between copyright law and art.

# Who owns your ink? The copyright protection of tattoos



**Dr Paula Westenberger**  
**Brunel University London**

**4IP Council**  
26 January 2023

**Are tattoos protected by  
copyright law?**



## Definition of work

Copyright law protects **works** and stops others from using these without permission from the copyright owner

Tattoos can be considered **artistic works**



Photo by [Hung Pham](#) on [Unsplash](#)



# Originality / idea-expression

Copyright protects **original** works

Original = not copied

In the EU, originality = author's own intellectual creation; free and creative choices

Copyright protects **expression** and not **ideas**

**Ideas** are free to use

It is difficult to draw the line between idea and expression

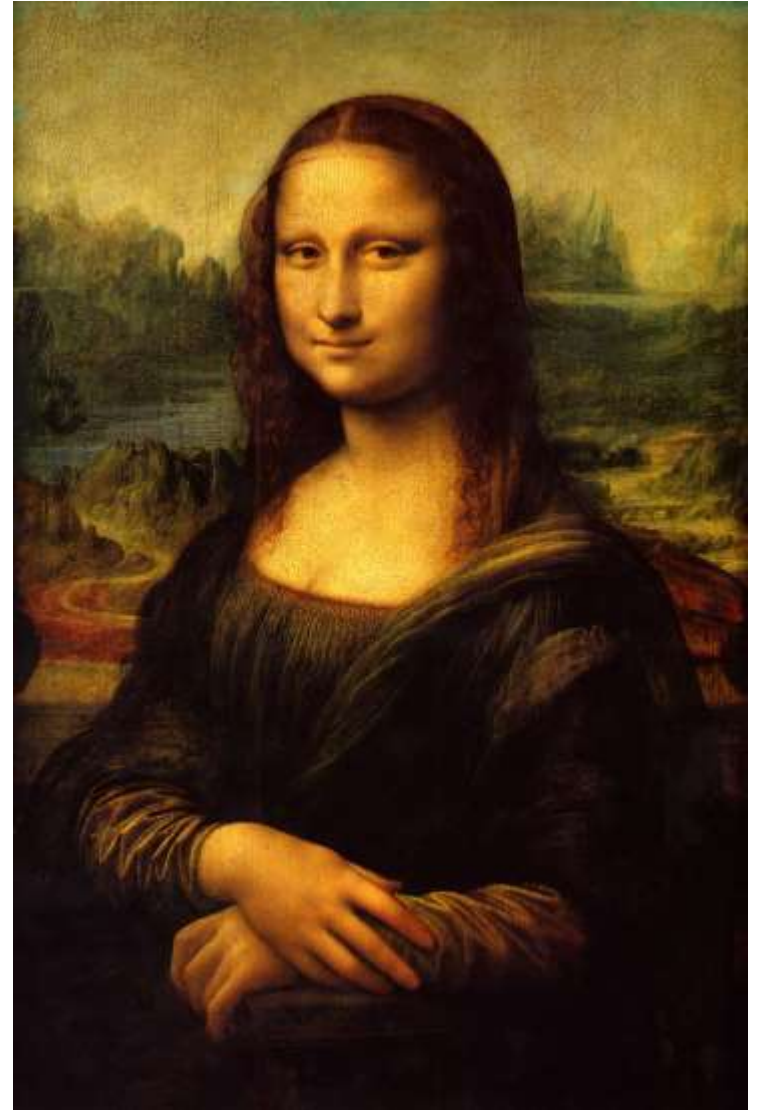


# Duration of copyright protection

Usually life of the author + 70 years

It depends on the legislation of the country

If copyright duration expired = public domain



# Copyright exceptions

It depends on the legislation of each country

US – fair use – four factors should be considered/balanced:

- 1: Purpose and character of the use (commercial/non-profit?)
- 2: Nature of the copyrighted work
- 3: Amount/substantiality of the portion used
- 4: Effect of the use on the potential market for or value of the work

UK – fair dealing

For example, parody

Other exceptions, such as incidental use?

**Who owns a tattoo work?**

# Authorship/Ownership

**Who designed it?**

Client

Tattoo artist

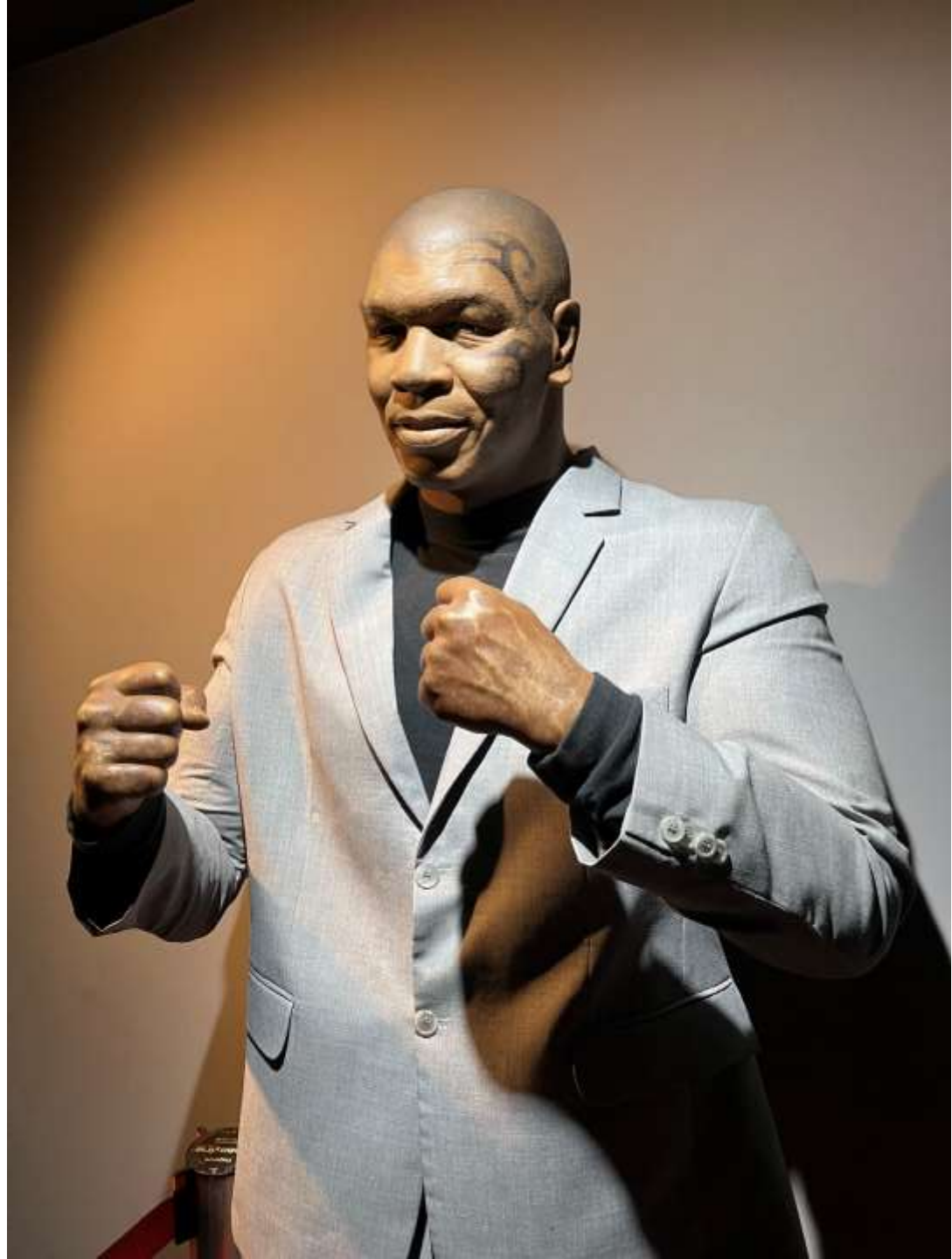
Another source?

**What are the main  
issues?**



## Main issues

1. Commercial usages of celebrities images: videogames, films?
2. Contract/implicit terms?
3. Social norms/bodily autonomy?



# Court cases

## *Whitmill v Warner ('The Hangover 2' case) (2011)*

- Mike Tyson's face tattoo, by tattoo artist Victor Whitmill, was reproduced in a character of the *Hangover 2* film
- Warner argued fair use (parody)
- Whitmill's preliminary injunction to stop the film release was denied. But judge allowed case to continue referring to a "strong likelihood" of succeeding on merits of copyright infringement
- Case settled out of court



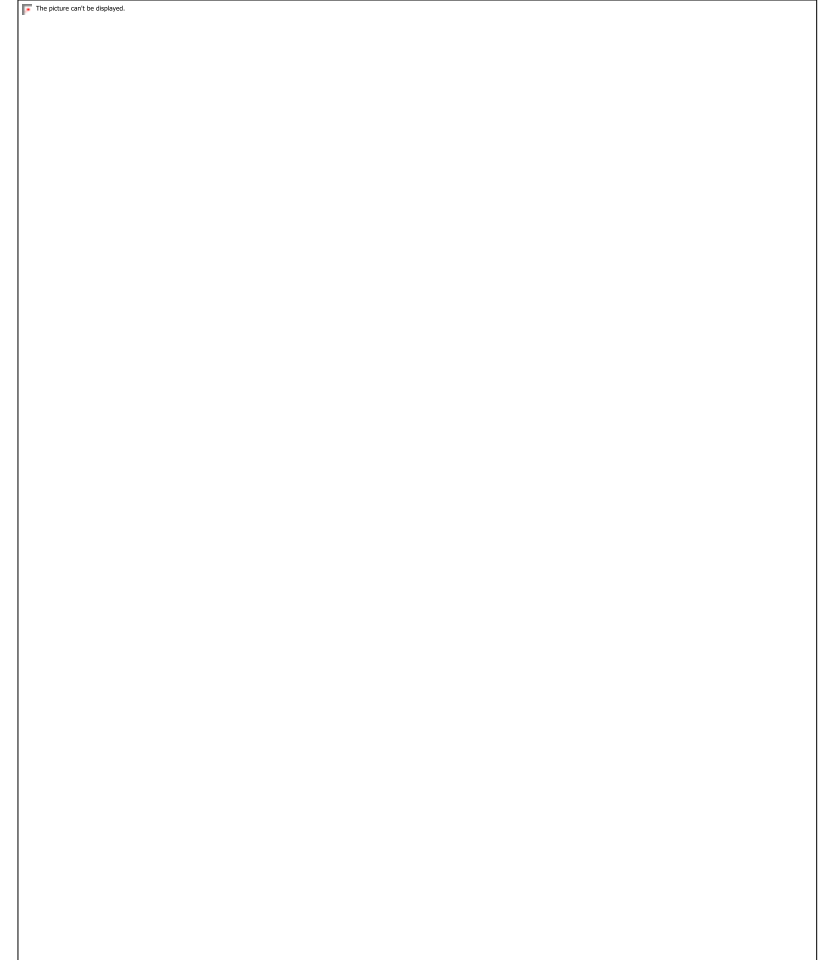
## *Escobedo v. THQ, Inc. (2012)*

- Martial artist Carlos Condit's lion tattoo by tattoo artist Christopher Escobedo was featured in the UFC Undisputed video game
- The complaint states Escobedo impliedly licensed Condit to **publicly display** the tattoo on his body (including in UFC fights) but did not authorise to copy or graphically represent the tattoo
- THQ filed for bankruptcy
- Plaintiff had claimed around \$4 million, but judge capped the claim at \$22,500 (what Condit was paid to appear on the game) without ruling on the merits



# *Solid Oak Sketches v 2K Games Inc. and Take-Two Interactive Software, Inc (2020)*

- Defendant's use of basketball players' tattoos in video game did not infringe copyright
- Fair use found (four factors assessed)
- Although tattoos were included in commercial video games, they did not feature on marketing materials and were incidental to the games' commercial value
- Necessary to use whole tattoos to accurately depict the players
- *De minimis* use
- Players had implied licenses to use the tattoos as elements of their likenesses

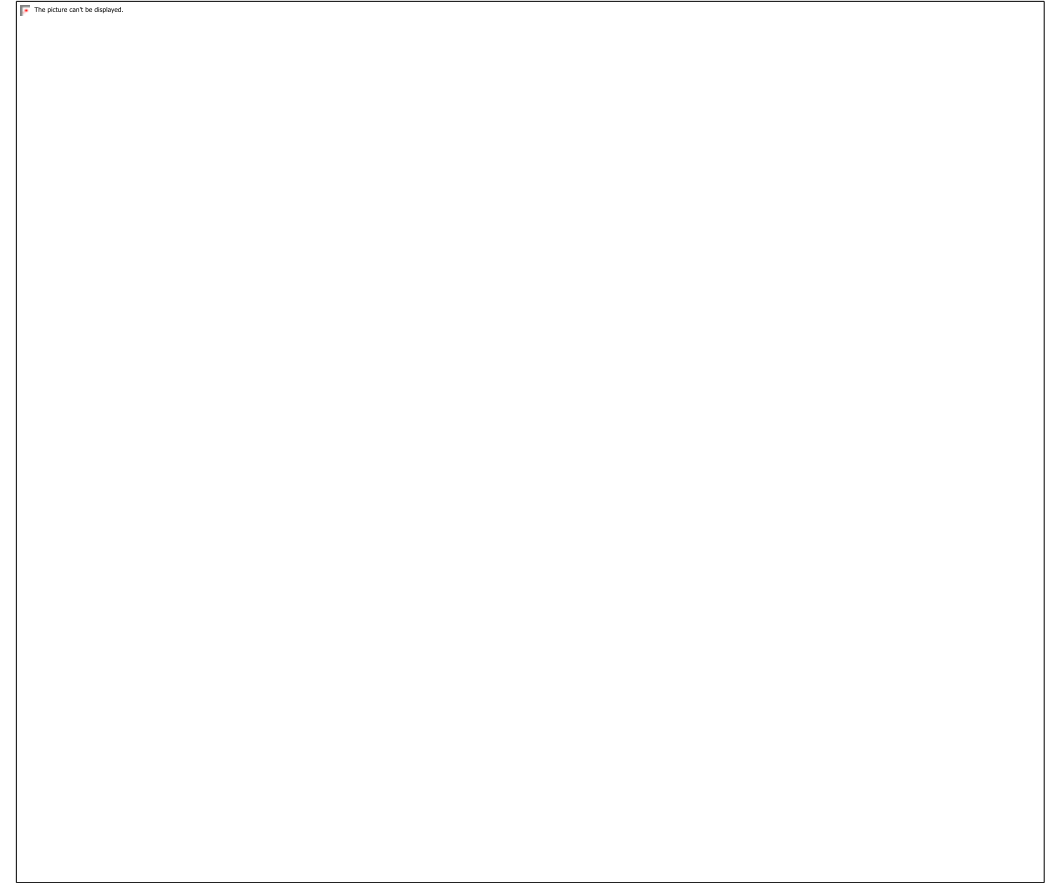


LeBron James Keith Allison CC  
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# *Alexander v Take-Two Interactive Software, Inc (2022)*

- A Jury found that the defendants infringed copyright of tattoo artist Catherine Alexander's in the depiction of wrestler Randy Orton for the video game series "WWE 2K"
- Jury rejected fair use defence
- Alexander entitled to \$3,750 in actual damages, but none of the video game sales profits earned by the defendants were due to the use of the plaintiff's tattoos



Randy Orton WWE 2K



# Conclusions

# Conclusions

1. Original tattoo designs **are in principle protected by copyright law, and permission to reproduce such works may be needed**. Copyright may be owned by the client, tattoo artist or another creator, depending on the situation
2. Fair use? De minimis? Court case in the US signalled to the possibility of certain uses, but copyright infringement was found in another case - **case law is not consistent**
3. Implied license? Celebrities?
4. “**Obtaining a licence** for any potential future uses of your tattoo at the time of its creation would be sensible.” (Charlotte Dunn, <https://ial.uk.com/us-court-case-copyright-law-tattoos/> )
5. Bodily autonomy? “In short, application of these doctrines would suggest that tattooers are generally the sole copyright owners of the designs they create. **But that level of control would conflict with the deeply engrained norm of client autonomy.**” Aaron K. Perzanowski “Tattoos & IP Norms” (2013)  
Minnesota Law Review

**Thank you**

**Questions?**

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# Thank You!

## Q&A

Forthcoming Webinar:

Date	Title	Summary
16 Feb, 2023, 16h (CET)	'Patent Holdout and Small(er) Technology Firms'	With Dr. Bowman Heiden



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