



Inking Cultures: Authorship, AI-Generated Art and Copyright Law in Tattooing

Melanie Stockton-Brown^{1,2}

Accepted: 24 May 2023 / Published online: 22 June 2023
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Abstract

This article considers current advances in tattooing that are challenging community-held views of authorship and ownership, and the need to address this tension. The key challenge is from AI-generated artworks being used as tattoo designs, but the authorial role of the tattooist is also challenged by body art projects such as tattoo collection. Legal clarity for tattooing is lacking, and in addressing this, this article advocates for an open, community-based form of shared copyright ownership and authorship for projects as tattoo collecting, drawing on Dusollier’s and Mendis’ work. This article contributes to both copyright and cultural heritage legal scholarship, and to tattooing scholarship and the tattooing community. AI-generated art being tattooed on people has not been explored in the literature to date, and this article fills this gap. Furthermore, this article contributes a pilot study of the tattoo community’s views on AI-generated tattoos, which is currently lacking from the scholarly debate on AI-generated art. This article argues that the debate within the tattoo community about AI-generated art being used in tattoos needs to be addressed within the community through agreed extra-legal norms, which may well depart from how copyright law decides to approach AI-generated art globally. This article also asserts that AI should *not* be regarded as the “author” of tattoo works in the traditional copyright sense, as only a human tattooist can draw from a number of cultural, textual, audiovisual and visual, cultural folklore, history and mythical references in creating their tattoo designs, as well as drawing on the client’s personal stories. This article explores the following: (i) an understanding of tattooing as an artform; (ii) tattoos in UK copyright law; (iii) an exploration of the authorial role of the tattooist within tattooing; (iv) the authorial role of the tattooist within tattoo collecting; (v) AI-generated tattoos—perspectives from the tattoo community, through a pilot study of YouTube videos and viewer comments about this; and (vi) a consideration of whether copyright legal reform is the solution for the tattooing community.

Keywords Copyright law · Tattooing · AI art · Authorship

Extended author information available on the last page of the article

1 Introduction

Tattooing plays a fundamental role within many cultures globally and has done so for thousands of years. The ways people have carried out tattoos, the tools used, and the inks or colourings used to mark the skin, the designs people chose, the reasons for being tattooed, what social or cultural discourses were read by others from the tattoos: all of these factors are unique to the culture in which they were practiced. Tattoos are contextually based symbols of cultures and identity, and the authorship of the tattooist—and the process by which people are tattooed—often plays a fundamental part in the symbolism and meaning carried in the tattoo. This tattooist authorship has often been minimised in the literature and public discourse. The question of tattooist authorship has come to the fore in current discussions about Artificial Intelligence “AI”-generated art and tattoos, along with other contemporary tattooing practices. This article will consider this from the UK context predominantly.

From both a contemporary and historical perspective, tattooing is subject to—and often restricted or oppressed by—legal regulation. Although widespread globally, it continues to be viewed by some as an alternative lifestyle choice that lacks sufficient merit to be considered as a vital part of individual identities¹ and shared cultures.² Contemporary laws continue the suppression of traditional and culturally significant tattooing practices in a number of ways.³

¹ See for example, Roux, D. and Belk, R. The Body as (Another) Place: Producing Embodied Heterotopias Through Tattooing. *Journal of Consumer Research*, 2019, 46(3), pp. 483–507. <https://doi.org/10.1093/jcr/ucy081>. In this article, Roux and Belk explore the concept of tattooed people as creating intentional “embodied heterotopias”: “...this study considers [the body] ontologically as the ultimate place we must live in, with no escape possible...and the “embodied heterotopia” that it becomes when people rework their bodies as a better place to inhabit...”.

² Over the centuries, law has regulated who is allowed to be tattooed; it has prohibited tattooing in some places altogether; it has regulated where on the body a person can be tattooed; what tattoo imagery is prohibited; what inks and tools can be used; and regulated the ownership of these tattoo designs.

³ Tattooing is subject to other legal regulation, such as the very recent 2022 EU decision to ban many tattooing inks used in the EU, for fears about the safety of chemicals used in the inks. See for more, European Chemicals Agency, “Tattoo inks and permanent make-up”. Available at: <https://echa.europa.eu/hot-topics/tattoo-inks>. Many EU tattooists argue that this ban is causing excessive strain on tattooing businesses that have struggled during the Covid pandemic, as well as an argument that they do not believe the inks are unsafe, which resulted in a ‘Save the Pigments’ petition in the EU with more than 175,000 signatures. See: Euro News, “World’s oldest working tattoo parlour hit by EU ink ban”, 25th January 2022. Available at: <https://www.euronews.com/culture/2022/01/25/world-s-oldest-working-tattoo-parlour-hit-by-eu-ink-ban>. The European Society of Tattoo and Pigment Research carries out extensive research into tattoo inks in particular, and has campaigned for fairer measures for tattoo artists in the EU, noting that approximately 60 million people in the EU are tattooed (this included the UK as a member). See The European Society of Tattoo and Pigment Research, “Letter to the European Ombudsman Legal uncertainties of the current REACH Restriction on tattoo ink and permanent make-up”, 6th November 2020. Available at: https://estpresearch.org/fileadmin/user_upload/ESTP/LettertotheOmbudsman_signed2.pdf.

The are legal prohibitions of certain tattoo designs or tattoo placements on the body. For example, in Adelaide, Australia, a recent legislative change means that people in violation of the new “prohibited insignia offence” will face a 12-month jail term and fines of up to \$12,000 AUD (\$8864 USD). This includes tattoos of prohibited insignias, and the Biker groups in Adelaide feel this is targeted at them,

Copyright ownership enables a person to control how their work is used, viewed or copied; and grants both economic and moral rights. The first owner of a copyright work is the “author” of the work, as set out in s.11(1) CDPA. S.9(1) CDPA sets out that an “author” for copyright purposes “means the person who creates it”. Section 9(3) of the CDPA states: “In the case of a literary, dramatic, musical or artistic work which is computer-generated, the author shall be taken to be the person by whom the arrangements necessary for the creation of the work are undertaken.” These concepts of authorship and copyright ownership are settled for many types of work; but unfortunately, this is not the case for tattoos. Tattoos are not expressly included in the examples of the eight categories of copyright work; though as will be expanded on in Part 1, it seems evident that they would fall within the scope of a “graphic work” under the category of “artistic works” in s.4. This leads to ambiguity for the tattooing community and tattooed people in the UK as to whether tattoos are eligible for copyright protection. There are differing views of “authorship” of tattoos within the tattooing community; given that many tattoo traditions draw on long heritage of images being replicated and retattooed again and again. This sits uncomfortably with the concept of an individual creator for tattooing.

The emergence of AI-generated art is culminating in both legal and cultural discussions of authorship, ownership, and originality within art. These conversations go to the heart of what it means to create, what it means to intentionally make something beautiful for its own sake, and what it means for AIs to create images that convey culturally-accepted meanings to humans, regardless of whether the AI has intended to imbue these meanings into the artworks. Following on from these developments, AI-generated artworks are being tattooed onto people. Within the tattoo community, there are passionate views on the meaning of creativity and originality

Footnote 3 (continued)

as some of their insignias are the banned insignias. There is a legislative failure to recognise being tattooed as a category of protection for equality and non-discrimination laws in many countries. In South Korea, tattoos still hold a substantial social taboo. Tattooing someone is legally prohibited unless you are a medical doctor, and this legal prohibition was upheld at the end of March 2022 by the Constitutional Court of South Korea. See Yeni Seo and Minwoo Park, “S.Korean court upholds tattooing ban” (Reuters, 31 March 2022) Available at: <https://www.reuters.com/world/asia-pacific/skorean-court-upholds-tattooing-ban-2022-03-31/> Prohibitions on tattoos are also still found in many workplaces globally, which normally stems from the lack of legal protection in national legislations against anti-tattooing discrimination. For example, in the UK, being tattooed is not a protected characteristic. Employers are legally able to include policies against tattooing in the workplace/ to choose not to hire someone because they are tattooed. The only exception would be in a case of religious markings under the 2010 Equality Act. Air New Zealand in 2019 ended its prohibition on its staff having visible tattoos, as long as the tattoos that are visible are “non-offensive”, see BBC “Air New Zealand drops ban on staff tattoos” 10th June 2019. Available at: <https://www.bbc.co.uk/news/business-48577668>.

There is very interesting contemporary research being carried out that challenges the belief that employers, and members of the public, will give negative attitudes towards people with tattoos (although this is nuanced), see for example Zidenberg, A. M., Dutrisac, S., & Olver, M. (2022). “No ragrets”: Public perceptions of tattooed mental health professionals. *Professional Psychology: Research and Practice*, 53(3), 304–312. <https://doi.org/10.1037/pro0000441>; and Timming, A. R. (2017). Body art as branded labour: At the intersection of employee selection and relationship marketing. *Human Relations*, 70(9), 1041–1063. <https://doi.org/10.1177/0018726716681654>. The Inking of Immunity podcast speaks with a variety of researchers and experts in a number of excellent episodes, and both Dr Zidenberg and Professor Timming speak about their research on this podcast: <https://soundcloud.com/inkingofimmunity>.

of these AI-generated tattoo artworks, and even of the importance of the “soul” or “essence” of the tattooist being carried into the tattoo process. Copyright law in the UK has lapsed behind in addressing tattooing; and this legislative gap is further widened by the innovation in AI being able to create artworks, including tattoo designs.

The advancement of AI-generated tattoos is further challenging notions of authorship of tattoos within the tattooing community. Tattoos and AI-generation both fall beyond the culturally-agreed upon boundaries of art. Consequently, it becomes very difficult to decide where these boundaries of authorship and ownership should be redrawn, and even if they should be. This contested issue emphasises the ongoing tension between copyright law and tattooing, with many tattooists and tattooed people unsure who “owns” their tattoos in both a legal and moral sense, whether tattoo designs can be replicated, and whether tattoos need to be attributed to the tattooist. AI authorship within many areas, including journalism,⁴ has been considered in the copyright literature, as has the role of AI as an inventor in relation to DABUS⁵ (and the reimagining of the incentive step⁶) within patent law.

It is beyond the scope of this article to explore the biases inherent within AI due to the data sets they are trained on,⁷ and this article will also not explore how AI systems create new artworks. This article proceeds from the view that AI is *already* being used within the tattooing community as part of the tattooing process, and so the exploration in this article does not look to question whether this should be taking place, as this would be redundant.

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This article argues that the debate within the tattoo community about AI-generated art as tattoos needs to be addressed within the community through agreed extra-legal norms, which may well depart from how copyright law decides to approach AI-generated art globally. This article also asserts that AI should *not* be regarded as the “author” of tattoo works in the traditional copyright sense, as it currently only the human tattooist can draw from a number of cultural, textual, audiovisual and

⁴ Krausová, A. and Moravec, M. Disappearing Authorship: Ethical Protection of AI-Generated News from the Perspective of Copyright and Other Laws, 13 (2022) *JIPITEC* 132.

⁵ Matulionyte, R. AI as an Inventor: Has the Federal Court of Australia Erred in DABUS? 13 (2022) *JIPITEC* 99 para 1.

⁶ Schellekens M., Artificial Intelligence and the re-imagination of inventive step, 13 (2022) *JIPITEC* 89 para 1.

⁷ For an excellent article on this, see Lim, D. AI, Equity, and the IP Gap, 75 *SMU L. REV.* 815 (2022) <https://scholar.smu.edu/smulr/vol75/iss4/4>.

visual, cultural folklore, history and mythical references in helping them create their tattoo designs, as well as drawing on the client's personal stories.

This article is set out as follows: (i) an understanding of tattooing as an artform; (ii) tattoos in UK copyright law; (iii) an exploration of the authorial role of the tattooist within tattooing; (iv) the authorial role of the tattooist within tattoo collecting; (v) AI-generated tattoos—perspectives from the tattoo community, through a pilot study of YouTube videos and viewer comments about this; and (vi) a consideration of whether copyright legal reform is the solution for the tattooing community.

2 Part 1: Tattooing as an Artform

The academic literature and cultural debates have historically regarded tattooing largely as a social phenomenon (and often regarded as an alternative, counter-cultural activity),⁸ and not as an artform carried out in the medium of skin.⁹ Lodder puts it beautifully when he states that:

In contrast to tattooing, painting is conventionally understood as a medium whose meaning must be understood as contextual to its cultural circumstances, not interestingly reducible to basic acultural observations about its materiality... [Tattooing is not considered to be] a medium with historical and cultural specificity beyond its basic technology.¹⁰

This article wholly embraces that tattoos are living embodiments of art.¹¹ Tattooing sits at the very heart of cultures, and is a fundamental part of a way of life and a way of engaging with the past, the landscape, and the spiritual world. Tattooing is simultaneously an art form and also a cultural practice enmeshed in a number of different embodied meanings, roles, and functions.

Tattooing has occurred for millennia, with Ötzi the Iceman being the oldest known human remains with clear tattoos present on his body from approx.

⁸ Lodder, Matthew (2022) *A Medium, Not a Phenomenon: An Argument for an Art-Historical Approach to Western Tattooing*. In: *Tattooed Bodies: Theorizing Body Inscription Across Disciplines and Cultures*. Palgrave Studies in Fashion and the Body book series (PSFB) Palgrave Macmillan, London, pp. 13–42, 15.

⁹ Tattooing is not the only art form that has struggled to be recognised as such. Tang has written an interesting chapter about land art, and the difficulty there has been in case law regarding land art as art, as "...judges' natural distrust of land art owes much to modernism's insistence on a purity of art form—meant to be placed in the museum, free from the everyday, and transcendent in its aspirations"—See Tang, X. "Copyright in the expanded field: on land art and other new mediums" In Bonadio, E. and Lucchi, N. (eds) *Non-Conventional Copyright: Do New and Atypical Works Deserve Protection?* (Edward Elgar, 2018), 32–33. Burke has also spoken about the "medium-specific" approach in various jurisdictions in relation to copyright works, see Shane Burke "Copyright and conceptual art" In Bonadio, E. and Lucchi, N. (eds) *Non-Conventional Copyright: Do New and Atypical Works Deserve Protection?* (Edward Elgar, 2018), 46.

¹⁰ Lodder (n. 9) 14–15.

¹¹ Sizer, L. (2020) The Art of Tattoos *British Journal of Aesthetics* 60(4), pp. 419–433.

3370–3100 BCE.¹² For more than 3000 years, women in the Arctic have been tattooing people, with these tattoo recipients predominantly being women.¹³ Tattooed remains from the Benguet area of the Philippines, from around 1300 CE, provide evidence of beautiful “Ibaloi full-body tattooing (known as *burik*).”¹⁴ The Mohave people believed that anyone without facial tattoos “would end up in a desert rat hole instead of in the land of the dead” upon dying,¹⁵ demonstrating the fundamental nature of tattooing in that community. Early textual and archaeological evidence indicates that tattooing was widely practised across Europe, including by the Celts and Picts of Britain,¹⁶ with concrete evidence of tattooing in Europe “back to the 1500 s”.¹⁷ In England there is evidence even further back to the 11th Century, as people were said to have had “skin adorned with punctured designs”.¹⁸

In some indigenous cultures, tattooing holds a fundamental significance in being incorporated into the culture’s religious or spiritual cosmology, which is often transmitted orally.¹⁹ Coptic Christians have for centuries tattooed crosses or Christian symbols, often on their wrists or arms.²⁰ Krutak recounts the tattooing practices of traditionally tattooed Catholic women (and some men) from Bosnia and Herzegovina.²¹ He explains that the tattoos were usually done by older women within the community, and that there were traditional designs that were often tattooed, including symbols for types of tree and other forms of nature, cross symbols, etc.²² This tattooing was interwoven with their Catholic faith, and therefore Christian celebration days were common tattooing days, including Good Friday and Palm Sunday.²³ This traditional tattooing practice was oppressed during occupation by other countries and also when the country was incorporated into a communist state, as the tattooing was considered “primitive”, and was therefore banned.²⁴ These tattoos were

¹² Renaut, L. “What to Make of the Prehistory of Tattooing in Europe” in Lars Krutak and Aaron Deter-Wolf (eds.) *Ancient Ink: The Archaeology of Tattooing*. (University of Washington Press, 2017), pg. 243.

¹³ Krutak, L. “A Long Sleep. Reawakening Tattoo Traditions in Alaska” in Lars Krutak and Aaron Deter-Wolf (eds.) *Ancient Ink: The Archaeology of Tattooing*. (University of Washington Press, 2017), pg. 286.

¹⁴ Miller, J. *The Philosophy of Tattoos* (The British Library, 2021, pg. 17.)

¹⁵ Mifflin, M. *The Blue Tattoo: The Life of Olive Oatman*. (University of Nebraska Press, 2009), pp. 77–78.

¹⁶ Angel, G. “Recovering the Nineteenth-Century European Tattoo. Collections, Contexts, and Techniques” in Lars Krutak and Aaron Deter-Wolf (eds.) *Ancient Ink: The Archaeology of Tattooing*. (University of Washington Press, 2017), pg. 107.

¹⁷ Lodder (n. 25) 106.

¹⁸ “Angli ... puncturatis stigmatiem insignitii,” in William of Malmesbury, *Gesta Regum Anglorum*. Book III, trans. Thomas Duffus Hardy (London: Samuel Bentley, 1839), cited in Lodder (n. 9) 19.

¹⁹ Miller (n. 15) 12.

²⁰ Tadros, M. (2022), Heritage practices as development’s blind spot: A case study of Coptic tattooing in Libya and Egypt. *Dev Policy Rev*. Accepted Author Manuscript, pg. 5. Available at: <https://doi.org/10.1111/dpr.12598>.

²¹ Lars Krutak “Balkan Ink. Europe’s Oldest Living Tattoo Tradition” in Lars Krutak and Aaron Deter-Wolf (eds.) *Ancient Ink: The Archaeology of Tattooing*. (University of Washington Press, 2017).

²² Krutak (n. 22) 151.

²³ Krutak (n. 22) 152.

²⁴ Krutak (n. 22) 152.

given to girls and women in particular, to try to shield them from sexual violence at the hands of the occupying forces.

It is interesting to note that this link between Catholicism and tattooing continues today, with a Catholic centre in Vienna offering free Catholic tattoos to followers, including tattoo imagery of a Franciscan cross or the Ichthys fish symbol.²⁵ Furthermore, the “sacred heart” tattoo image is a very popular “traditional” Western tattoo design. It is usually represented visually as a wounded heart bleeding, often with a thorn crown around the top, and sometimes accompanied by flowers. As Angel has explored, this image is founded in “Catholic representations of the Immaculate Heart of Mary, which typically depict the heart of the Virgin Mary pierced with one or more swords, and wreathed in a garland of roses.”²⁶ From this we can see that this tattoo imagery and practice is inextricably connected with religious imagery, and even derives from the religious practice of skin-wounding as a Christian devotional practice.²⁷

Tattooing and tattoo imagery, is therefore always deeply interwoven in the wider cultural context, specifically the wider visual culture; as is the case for all artforms.²⁸ As an example, we see this in the trend towards “Viking-inspired” tattoos that many people currently choose to be tattooed with, which directly derives from historical legacies, but more directly from contemporary visual representations of Viking culture. Taylor writes about the *vegisir* symbol—“a cluster of eight staves that intersect at the center and point outward in a circle, each ending in a different design of simple lines and curves”—which has become associated in contemporary culture with the Vikings, and often features prominently in “Viking” tattoos.²⁹ The symbol denotes a “wayfinder” or compass. As Taylor discusses, this symbol was not associated with the Vikings in the way that contemporary popular culture portrays, but notes nonetheless that in a “strictly synchronic sense, this *is* a Viking symbol, or a symbol of Vikings, in that, regardless of its documentary connection to the Vikings, it is now exchanged in culture as such a symbol.”³⁰ There are many reasons and motivations that a person may choose to be tattooed with this symbol, and it can be read as having both individual and communal meanings that can be decoded by others.³¹

This aligns to Martin’s research into tattoo narratives, regarding the “polysemic nature of contemporary tattoos” referring to the multiple meanings that can be

²⁵ Moody, O. “Catholic centre offers free tattoos to faithful” The Times, 20th March 2023. Available at: <https://www.thetimes.co.uk/article/catholic-church-offers-free-tattoos-to-faithful-przfsqvg>.

²⁶ Angel, G. “Roses And Daggers: Expressions Of Emotional Pain And Devotion In Nineteenth-Century Tattoos” In Rosenthal, C. and Vanderbee, D. (eds) *Probing the Skin: Cultural Representations of Our Contact Zone* (Cambridge Scholars Press, 2015).

²⁷ See for more, Angel, G. (2016) *The Modified Body: The Nineteenth-Century Tattoo as Fugitive Stigmata*. *Victorian Review*, 42(1) pp. 14–20.

²⁸ Lodder (n. 9) 26.

²⁹ Taylor, A. A. “Tattoos, “Tattoos”, Vikings, “Vikings”, and *Vikings*” In: *Tattooed Bodies: Theorizing Body Inscription Across Disciplines and Cultures*. Palgrave Studies in Fashion and the Body book series (PSFB). Palgrave Macmillan, London, pp. 145–162.

³⁰ Taylor (n. 30) 146.

³¹ Taylor (n. 30) 150.

coded and decoded in a tattoo. When viewing tattoos we often seek to decode them by drawing on wider cultural, historic, and artistic references. He suggests these polysemic layered meanings that can be read on a tattoo are therefore a motivation for some tattooed people to “hide” meanings in their tattoo imagery or to be tattooed in languages other than their own, as this is “part of the ability agents have in making meaning coded and controlled.”³²

Hall’s seminal work in semiotics captures this dissonance between tattoo imagery and tattoo meanings. Meanings are encoded by one entity, and then decoded by another.³³ “Distortions” or “misunderstandings” result from asymmetry between the coder and the receiver. In tattooing, the meanings intended or “coded” by the tattooed person many differ significantly from the meanings subsequently decoded by people viewing the tattoo. The tattooed person plays a fundamental role in encoding these meanings in tattoo designs, in choosing the imagery, size, and placement on the body. In this sense, the tattooed body can therefore be seen as an “archive”, in which the “meaning of the tattoos are lost when the body dies”.³⁴ For tattooing, this is more complex, and goes to the heart of this idea of authorship. Who is it that encodes these tattoo meanings: the tattooist, or the people being tattooed? This brings us to the question of authorship within tattooing, which we will come to in Part 3 after exploring the applicable copyright law to tattooing.

3 Part 2: Tattoos in UK Copyright Law

Section 4 Copyright, Designs and Patents Act 1988 in the UK³⁵ sets out the definition of “artistic works” that copyright applies to. It does not explicitly include or exclude tattoos in its categories. The drawing of a tattoo that the tattooist creates to show to the client and to stencil onto the body undoubtedly falls within s.4(1) (a) CDPA as a “graphic work”. In the UK, the author is regarded as the individual

³² Martin, C. (2013). Tattoos as Narratives: Skin and Self. *Public Journal of Semiotics*. 4(2), 43.

³³ Hall, S. ‘Encoding/Decoding’, In Stuart Hall, Dorothy Hobson, Andrew Lowe and Paul Tillis (eds), *Culture, Media, Language* (Hutchinson, 1980), pp. 128–138.

³⁴ Sundberg, K. and Kjellman, U. (2018), “The tattoo as a document”, *Journal of Documentation*, Vol. 74 No. 1, pp. 18–35, 18.

³⁵ Artistic works

- (1) In this Part “artistic work” means—
 - (a) a graphic work, photograph, sculpture or collage, irrespective of artistic quality,
 - (b) a work of architecture being a building or a model for a building, or
 - (c) a work of artistic craftsmanship.
- (2) In this Part—
 - “building” includes any fixed structure, and a part of a building or fixed structure;
 - “graphic work” includes—
 - (a) any painting, drawing, diagram, map, chart or plan, and
 - (b) any engraving, etching, lithograph, woodcut or similar work;...

who has put their “skills, labour and judgment” into the creation of the work.³⁶ The CJEU in *Infopaq*³⁷ has stated that copyright works must be the “author’s own intellectual creation.”³⁸

Whether a tattoo, once tattooed onto the body, also benefits from copyright protection is ambiguous in UK law. Some scholars believe that due to the “deep emotional bond connecting an artist and his work”,³⁹ the tattooist should hold some form of copyright protection in the resulting tattoo. Despite this legal ambiguity, it is largely accepted that tattoos could benefit from copyright protection; and the tattoo community operates on the basis that copyright protection does apply, specifically to custom tattoos that have been created as unique artworks for a client by the tattooist. The legal ambiguity also leaves key questions of authorship and ownership of tattoos, if copyright protection does apply to them.

In the tattoo community in the UK, it is widely regarded that the tattooist owns the copyright in the tattoo, and is also the author and owner of the tattoo. However, the person who was tattooed with the design may do as they please with the tattoo, whether this is showing the tattoos in photos online, lasering the tattoo off, covering up or blasting over the tattoo, or incorporating the tattoo into a wider scene or collage of tattoos (known as “patchwork tattoos” on the body. All of these activities can be done freely and without any need for permission or copyright license from the tattooist.

The question of tattoos within copyright law has been addressed to some extent in other jurisdictions. For instance, the Indian Copyright Office has granted a copyright to the actor Shahrukh Khan’s tattoo (it appears as an artistic work); and notably the copyright is registered to Shahrukh Khan, not the tattoo artist.⁴⁰ From the US perspective, King has written extensively on this topic, and has concluded that it is “advisable, and almost inevitable” that tattoos will, be recognised as copyright artistic works in the US.⁴¹ She also comments that under US copyright law, it is the tattoo artist who is likely regarded as the author of the tattoo in many cases, but this could be the client in other cases.⁴²

The question of whether AI-generated works can be protected by copyright law is the topic of much debate in jurisdictions around the world, as are questions of whether AIs can be “inventors” for patent registrations. The UK is rare in protecting works generated by a computer where there is no human creator, through Section 178 of the CDPA defines a computer-generated work as one that “is generated by computer in circumstances such that there is no human author of the work”. This

³⁶ *Ladbroke v William Hill* HL [1964] 1 All ER 465.

³⁷ *Infopaq International A/S v Danske Dagblades Forening* [2009] C-5/08.

³⁸ *Infopaq International A/S v Danske Dagblades Forening* [2009] C-5/08, para. 48.

³⁹ Muralidharan, A. ‘An Inky Enigma: The Challenges Associated with Copyright Protection for Tattoos’ (2022) 12 *Indian J Intell Prop L* 99, pg. 116–117.

⁴⁰ Muralidharan, (n. 40) 111–112, citing the following source: ‘SRK Registers Don 2 Tattoo in His Name’ (The Indian Express, 15 July 2011) accessed 22 Sept 2021.

⁴¹ King, Y.M. “Copyright protection of tattoos” In Bonadio, E. and Lucchi, N. (eds) *Non-Conventional Copyright: Do New and Atypical Works Deserve Protection?* (Edward Elgar, 2018), 111–112.

⁴² King (n. 42) 124.

copyright protection lasts for 50 years from the date the work is made. Section 9(3) of the CDPA states: “In the case of a literary, dramatic, musical or artistic work which is computer-generated, the author shall be taken to be the person by whom the arrangements necessary for the creation of the work are undertaken.”

Thus, it seems clear that computer generated works can be protected in the UK. The UK IPO’s recent open consultation on AI generation and IP stated that: “A copyright work may be created by a human who has assistance from AI. If the work expresses original human creativity it will benefit from copyright protection like a work created using any other tool.”⁴³ It can therefore be claimed, with reasonable accuracy, that a tattooist using an AI entity as a tool to help them (perhaps through creating reference images for the tattooist to draw from or be inspired by) create a unique artwork tattoo design could claim copyright protection in that resulting image, and would be the author of the image. How this applies to AI-generated artworks being tattooed onto people, and the authorship and ownership of the subsequent tattoo, remains unclear.

This issue of recognising AI authorship is one that is being addressed by countries worldwide, and the approaches taken globally are opposing. In March 2023, the US Copyright Office has confirmed that:

In the Office’s view, it is well-established that copyright can protect only material that is the product of human creativity. Most fundamentally, the term “author,” which is used in both the Constitution and the Copyright Act, excludes non-humans... If a work’s traditional elements of authorship were produced by a machine, the work lacks human authorship and the Office will not register it.”⁴⁴

The US Copyright Office does go on to state that “an artist may modify material originally generated by AI technology to such a degree that the modifications meet the standard for copyright protection”, and that the resulting copyright protection will “only protect the human-authored aspects of the work”.⁴⁵ It seems clear from this that the US approach is to restrict AI entities from holding any copyright authorship or ownership, and only works created with AI as a tool, in which the human elements are clear and distinct, could be eligible for copyright protection.

⁴³ UK IPO “Consultation outcome. Intelligence and Intellectual Property: copyright and patents” Updated 28th June 2022. Available at: <https://www.gov.uk/government/consultations/artificial-intelligence-and-ip-copyright-and-patents/artificial-intelligence-and-intellectual-property-copyright-and-patents#copyright>.

⁴⁴ US Copyright Office, Library of Congress “Copyright Registration Guidance: Works Containing Material Generated by Artificial Intelligence” 16th March 2023, 88 FR 16190. Available at: <https://www.federalregister.gov/documents/2023/03/16/2023-05321/copyright-registration-guidance-works-containing-material-generated-by-artificial-intelligence>.

⁴⁵ US Copyright Office (n. 45).

3.1 Copyright Tensions in Tattooing

In considering how copyright law interacts with the concept of authorship in tattooing, it is significant to consider that there is almost no litigation between tattooists and their clients in relation to copyright infringements of the tattoos, or even between tattooists.⁴⁶ Disputes in this area, where they arise, usually relate to copyright infringement, in the form of the tattoo design being replicated or reproduced in some way in another medium, without the tattoo artists' permission. These copyright infringement claims are usually related to representations or copies of tattoos in films and video games, in merchandising and other commercial publicity. Athletics and sports leagues have been involved in copyright infringement claims in relation to their athlete's tattoos.⁴⁷ There have been a number of excellent articles that have explored the recent trend in copyright licenses or permissions being sought by organisations, notably sporting organisations such as the NFL Players Association in the US, for the reuse or replication of the tattoos of their players/ celebrity members.⁴⁸

However, for the majority of non-celebrity tattooists and non-celebrity tattooed people, "copyright law plays virtually no part in the day-to-day operation of the tattoo industry."⁴⁹ Hsieh has observed that, given the fact that in many Western cultures tattooing has "been on the margins of society" and with very little legal protection or regulation, "tattoo artists operate on a system of cultural norms to enforce protection of custom tattoo designs" and "believe that a prejudiced view towards the tattoo industry will always lead to unfair outcomes if left for the judicial system to decide."⁵⁰ From this, we can see that cultural norms are a self-regulating force within the tattoo industry, more so overall than copyright law. These self-regulating norms within the tattoo community will be returned to later in the article.

Another way in which tattooing practices in conflict with IP law is through the fact that many examples of tattooing practices are based on repeating and copying existing designs, which sits at odds with requirements of originality within copyright law. As an example, "flash sheet" tattoos emphasise that tattooing culture is often founded in the replication of existing works and motifs. As Lodder remarks, the flash sheets led to "archetypal" tattoo images being widely chosen and accepted as "traditional" Western tattoos.⁵¹ In this sense, copying and replicating tattoo

⁴⁶ Perzanowski A., "Tattoos & IP Norms" (2013) *Minnesota Law Review* 58, pp. 510–591, pg. 530.

⁴⁷ Boozer, C. 'When the Ink Dries, Whose Tatt Is It Anyway: The Copyrightability of Tattoos' (2018) *Jeffrey S. Moorad Sports Law Journal*, 25(2) pp. 275–314, pg. 276.

⁴⁸ See for example, King, Y.M. 'The Enforcement Challenges For Tattoo Copyrights' (2014) *Journal of Intellectual Property Law*, 22(1), pp. 29–70, and Stocking, J.T. 'From Otzi the Iceman to Chris the Birdman: Tattoos as Persona, Not Property' (2020) *Richmond Journal of Law & Technology* 26(2), pp. 1–33.

⁴⁹ Perzanowski (n. 47) 513.

⁵⁰ Hsieh, J. 'Trading Your Skin in Exchange for a Piece of Art: A Legal Analysis of Tattoos as Copyrightable Subject Matter' (2019) *Santa Clara Law Review* 59(1), pp. 135–164, 150.

⁵¹ Lodder, M. "The New Old Style: Tradition, Archetype and Rhetoric In Contemporary Western Tattooing" in Ayla Lepine, Matt Lodder and Rosalind Mckeever (eds.) *Revival: Memories, Identities, Utopias* (The Courtauld Institute of Art, 2015), pg. 106. He advances interesting arguments as to why this was the case: as tattoo designs historically had to be drawn on paper before being placed on the skin, having

designs many times over is an inherent part of tattoo culture; and these shared symbols carry meaning *because* they are shared by the community.

4 Part 3: The Authorial Role of the Tattooist Within Tattooing

The role of the author within tattooing is seen as integral within the tattoo community; and this intersects with notions of ownership. The legal and tattoo community understandings of these concepts do not always align, bringing this aspect into tension with copyright law.

Within traditional Japanese tattoos historically, specifically full-piece back tattoos, skin gaps were intentionally left ‘blank’ in the tattoo design for the artist’s name to be tattooed, in the same way that print artists often sign their work, or filmmakers include their names in the credits. This practice clearly signals the authorship of the specific tattooist, and speaks to a connection between the tattooist and the tattoo, and also that this is a connection that is intended to be seen and decoded by others. In other words, the role of the tattooist is prominent, and integral to the work. The authorial role of the tattooist in traditional Japanese tattooing may well derive from the interrelation between these tattooing practices and other artforms. “Hori” means “to carve” in Japanese, and is an honorific given to tattoo artists; and this derives from Edo period Ukiyo-e wood block carving, and it is very interesting to understand that “a lot of wood block carvers were also tattooers”.⁵² In this sense, these artforms can be understood in parallel terms, meaning that the tattooist always established and imprinted their authorship in the art form.

There are contemporary tattooing practices that diverge from this tattooist-led approach. Particularly within Western tattooing, we see that this is often a highly collaborative artistic process, involving both the tattooist carrying out the tattoo and the person being tattooed. Instagram has become a key space for tattooists to share and promote their work, and for tattoo seekers to find tattooists whose styles they admire. The ability to share photos of tattoos with a worldwide audience has enabled a “variety of esthetic approaches to tattooing [to] flourish alongside one another”, and some of these tattooing styles have developed largely through these online social platforms.⁵³ Tattooed people approach tattoo artists on these social platforms with clear ideas of the motifs or styles that they wish to be tattooed with, and work together to achieve the desired tattoo. This process calls into question what the authorial input is of both parties to the creation of the tattoo, which bares directly on subsequent copyright protection.

Footnote 51 (continued)

a core set of more simple designs made this easier for the artists; and also that tattoo designs were often “used to signal and reinforce group allegiances and thus designs were shared amongst groups and copied onto multiple bodies”.

⁵² HG “Interview with Horisumi regarding getting his name in Japan” Inked AU/NZ Interview, July 18th, 2015. Available at: <https://www.authentink.com/interview-horisumi-regarding-getting-name-japan/>.

⁵³ Force, W. F. (2022) “Tattooing in the Age of Instagram”, *Deviant Behavior*, 43:4, 415–431, <https://doi.org/10.1080/01639625.2020.1801176>.

McDade is a professional tattooist and academic, whose research discusses the “authorial input” of the tattooist, considering it from several points of view: as a craftsperson; as a visual artist; and as a designer. He argues that when operating as a designer, the tattoo is “collaboratively produced” between the tattooist and the tattooed person. This is due to the fact that the tattooist has a “peripheral degree of authorial impact” into the design, but is drawing a tattoo design to meet the brief of the motif, tattoo style, size, and colours used in the tattoo, given by the person wishing to be tattooed.⁵⁴

Conversely, he regards tattooists when operating as visual artists as having high “authorial input”, as “the specific tattooist is essential for the client to obtain the desired outcome”.⁵⁵ In these cases, clients go to a specific tattoo artist because the client has seen other tattoos that this particular tattooist does in their style, and approach the tattoo artist to have a tattoo made in a similar style, akin to buying paintings from an artist whose work you strongly admire. This is the way in which many Western tattoos are carried out. Indeed, the practice of “tattoo collecting”⁵⁶ involves tattooed people intentionally seeking out tattoos from individual tattoo artists whose work they admire, often building an unique “collection” of tattoos from artists whose work they love. This practice of tattoo collecting is explored further below.

The interrelated, collaborative process by which many tattoos are created leads to strong argument for viewing the authorship of the tattoo as joint, and to move away from ascribing authorship -at least in the copyright context- solely to the tattooist. Lodder argues passionately for a conceptualisation of tattooing authorship that is “inter-subjective”, noting:

While cultural theorists are keen to pin authorship on the tattooed individual, and while certain tattoo artists boldly proclaim their artistic legitimacy, the key point here is that the work of the tattoo is always already inter-subjective. Any attempt to tie down authorship to either the client or the tattooer is futile.⁵⁷

Megan Massacre, a prominent tattooist in the US who has appeared on a number of tattoo TV programmes, has likewise commented that when tattooists and their clients work together on a tattoo design and the tattooist is allowed creative freedom, this results in the best tattoos.⁵⁸ She comments specifically on clients wishing to make numerous alternations to the design: “It’s often that the very first way they [the

⁵⁴ McDade, A “Contemporary Western Tattooing as an Inherently Collaborative Practice: The Contingent Authorial Input and Operational Mode of the Tattooist” In: *Tattooed Bodies: Theorizing Body Inscription Across Disciplines and Cultures*. Palgrave Studies in Fashion and the Body book series (PSFB). Palgrave Macmillan, London, pp. 43–65, 58.

⁵⁵ McDade (n. 55) 54.

⁵⁶ McDade (n. 55) 54.

⁵⁷ Lodder (n. 9) 30.

⁵⁸ She says that: “In my personal experience, when a client comes to me with a request that I’m not entirely excited about, I try to talk them into getting something more in my own style, and most of the time they are happy to. If not, I usually refer them to another artist who better fits what they’re looking for”, see Massacre, M. *The Art of Tattoo* (Ten Speed Press, 2019), 134.

tattooist] drew it was the best way, because it's coming straight from the heart.”⁵⁹ We can clearly see that an open, collaborative approach is thought to lead to the best tattoos, with the best tattoos being opens that come “straight from the heart”.

Where tattoo authorship is particularly challenged is in relation to cover-up and blast over tattoos. “Cover-up tattoos” involve a second tattoo artist altering or completely covering a tattoo carried out by a previous tattoo artist. They are normally covered up because the tattooed person no longer likes the design, they feel the tattoo has faded or blown out, or it is a small tattoo in a larger space on the body, and the tattooed person wants a larger tattoo there now. Blastover tattoos involve tattooing a new design directly over an existing tattoo, with parts of the underlying tattoo design “poking through” the new tattoo. Perzanowski comments, in relation to interviews he carried out with US tattooists, that “[n]one of the tattooers with whom I spoke expressed any reservation about these widespread practices.”⁶⁰ Cover up and blastover tattoos involve what would be viewed as defacing the first or original tattoo, if we were to think in terms of fine art such as paintings. This highlights the difference that this art form takes, in being highly collaborative, and it being normal and accepted within the tattoo community that tattooists can alter and cover the work of other tattooists. This leads us to a more collaborative, community-based view of authorship of these artworks on the body, which will be explored in Part 4 in relation to tattoo collecting.

5 Part 4: Authorship in Tattoo Collecting

Tattoo collectors⁶¹ are individuals within the tattoo community who intentionally get tattooed by a variety of specific tattooists whose work they especially admire, and this often means travelling to other countries or to tattoo conventions to be tattooed by a specific tattooist in their style. This usually takes place over many years, sometimes decades. Tattoo collecting is, to my mind, a lifelong passion for collecting artworks that you can wear every day.⁶²

As a tattooed person with many tattoos, I have sought out specific tattoo artists, finding them either through photos of their work in tattoo magazines,⁶³ photos shared online, and at tattoo conventions. I have travelled across the country to be tattooed by a specific tattoo artist, and have been happy to wait considerable months for a tattoo appointment with a specific tattoo artist. I view this as collecting my favourite artworks. I enjoy having tattoos in different styles by different tattoo artists,

⁵⁹ Massacre, M. *The Art of Tattoo* (Ten Speed Press, 2019), 136.

⁶⁰ Perzanowski (n. 47) 537.

⁶¹ Inked, “What Is A Tattoo Collector?” 10th Oct 2018, Available at: <https://www.inkedmag.com/culture/tattoo-collector> See for a video about Victor, a tattoo collector: Sullen TV “Tattoo Collector – Victor” 7th Feb 2015, YouTube. Available at: <https://www.youtube.com/watch?v=G4UK7ILJxsE>.

⁶² Qcknd is particularly passionate within the tattoo community about this. See Qcknd, “What is a Tattoo Collector? Tattoo Talk Tuesday” 27th December 2016, YouTube. Available at: https://www.youtube.com/watch?v=YMC_OKqL_Bg.

⁶³ Mostly through the now closed *Skin Deep* UK tattoo magazine.

and it is a genuine joy when either a fellow tattooed person or tattooist sees one of my tattoos and asks if that is the work of the specific tattoo artist. Being tattooed has always been a deeply intimate experience for me, and I always connect my tattoos with the tattooist who created them, and the time and place in which I got the tattoo.

Some tattoo collectors create ongoing body projects to get a tattoo done by as many of their favourite tattooists as possible, such as Martin Dobson,⁶⁴ who is famous within the tattoo community for his collection. His “hexagon tattoo project” comprises of small hexagons in a grid on his body, and each one is filled by a different tattoo artist who he has intentionally sought out. The overall effect is truly beautiful, with a mix of motifs, colours, and styles. In looking at his tattoos, fellow tattoo fans and collectors can immediately identify some of the tattooists from their distinctive styles. The overall sum of the artwork created, by bringing together so many wonderful artworks from different parts of the world over a period of time, culminates to be something that could not have been created by an individual tattooist. It is a community-created artwork, intentionally added to in a chain of creativity. Tattoo artists often comment that they feel “honoured” to have been included in the project, seeing the collection as a visual art archive of the most celebrated tattooists today.

Considering authorship within this form of tattoo collecting, it is evident in Martin’s case that he wanted to leave full creativity and design decisions to the tattooist, saying:

The idea from the beginning was to allow the artists to choose the style and designs themselves. Of course, I select the artists whose styles I love but not knowing what I will leave the studio with and the collective diversity is what I enjoy so much about the project...Sometimes an artist will ask for some direction as to what I like. I really try to avoid this, as I want it to be totally up to the artist but if pushed I usually tell them about the tattoos of theirs that I love and we go from there. As the tattoo community is so supportive, artists will often recommend each other and so I get a lot of inspiration that way.”⁶⁵

This approach directly corresponds to McDade’s concept of the tattooist as a visual artist, with full creative control and autonomy within the tattoo design. Tattoo collectors therefore see the tattooist as having high authorial input. The role of the tattooed person is akin to a curator in this context, selecting the artworks that come together and choosing where to place them on the body, in ways that can juxtapose or compliment the surrounding tattoos.

⁶⁴ Preston, D. “This Man Has The Most Unique Tattoo Collection On The Planet” June 5th, 2020., Inked. Available at: <https://www.inkedmag.com/original-news/martindobson> Martin’s Instagram catalogues his ongoing tattoo collection: martindninja.

⁶⁵ Preston (n. 65).

Mendis' research,⁶⁶ drawing from the concept of an inclusive property right proposed by Dusollier proposes a public open collaborative creation (POCC) model of authorship within copyright law, to address "Wiki authorship—an emerging model of collaborative creation in the digital humanities—[which] challenges this individualistic conception of authorship and consequently the dominant exclusivity-based narrative of copyright law."⁶⁷ This would create an "inclusive" copyright of collective ownership by a community of rightsholders, culminating in ownership that is 'mine *and* yours'. I fully support their suggestion for this reform to copyright law.

There are certainly differences between collaborative projects such as Wikipedia pages being collaborated on and written together by people across the world, and the practice of being tattooed in a collaborative body project by tattooists from across the world; namely medium, and an intention for the Wikipedia page to be public and the fact that the tattooed body is private. Despite these differences, Mendis' and Dusollier's strong suggestions of an inclusive community property right to be recognised within copyright law where existing forms of authorship do not align well to the cultural practice connects to the idea of a similar form of an open collaborative, creative form of copyright authorship applying to tattooing collecting.

Mendis' POCC model has four key characteristics, "openness, chain of sequential creation, creative autonomy and ideology."⁶⁸ These characteristics can be mapped onto the practice of tattoo collecting, particularly in the chain of sequential creation and the ideology. Mendis proposes this new POCC model due to the fact that copyright law as it is views works once created as remaining "static and unchanging... Therefore, the current individualistic notion of authorship in copyright is constructed in relation to a product (i.e. the 'work') rather than in relation to the process of creation."⁶⁹ It is this process of creating, carried out openly and collaboratively by a community, that she argues would be better suited to a new POCC model of copyright ownership.

I propose here that body art projects such as tattoo collecting would also be better suited to this form of POCC copyright model and conceptions of authorship and ownership.

⁶⁶ Which she states draws from the concept of an inclusive property right proposed by Dusollier: Dusollier, S. and Rochfeld, J. 'Propriété Inclusive ou Inclusivité', in M. Cornu, F. Orsi et J. Rochfeld (eds.), *Le Dictionnaire des Biens Communs* (PUF, 2017) 983. See also, Dusollier, S. 'Intellectual property and the bundle-of-rights metaphor' in P. Drahos, G. Ghidini & H. Ullrich (eds.) *Kritika: Essays in Intellectual Property* (Edward Elgar 2020)146; Dusollier, S. *Inclusive properties* (Cambridge University Press, forthcoming). I.

⁶⁷ Mendis, M. Wiki (POCC) authorship: The case for an inclusive copyright, 13 (2022) *JIPITEC* 267 para 3.

⁶⁸ Mendis (n. 68) para 14.

⁶⁹ Mendis (n. 68) para 25.

6 Part 5: AI-Generated Tattoos—Perspectives from the Tattoo Community

Moving away from collaborative human tattooing projects, we come to the new practice within tattooing of using AI-generated artworks as tattoo designs. AI has become able to create and invent without human interference or direction. This poses both legal and cultural questions about ownership, authorship, and what it means to engage with non-human culture and artworks. There is concern from both the tattoo community and academics regarding the meaning of creativity and originality of artworks, and even of the “soul” or “essence” of the person tattooing you being carried into the tattoo process. IP law, specifically copyright law, has lapsed behind in the UK in clearly addressing tattooing; and this legislative gap is further widened by AI being able to create artworks, including tattoo designs.

A very recent phenomena causing both interest and concern with the tattoo community is that of AI-generated tattoos.⁷⁰ Issues of (both moral and legal) ownership, artist consent, creativity, and the “soul” or meaning of tattoo art are all called into question as AI is able to create unique tattoo designs, as well as use photographs of existing tattoos to create new artwork and new tattoo designs. Artists have raised concerns that AI is undermining the cultural and commercial value of their artwork, and could impact on them financially. This has become an urgent matter for the tattoo community that needs to be addressed.

There are a number of YouTubers who create tattoo-specific content, who have created videos exploring AI-generated tattoos, and exploring how people feel about these tattoos.⁷¹ I carried out empirical research into viewer responses to these videos (along with the videos themselves) to address the existing gap in the literature of considering AI-generated art within tattooing, and especially the tattoo community views on this new practice. This research is a pilot study, and does not intend to represent the views of the whole tattoo community. Rather, it is a starting point in exploring these views, and to go on in further research to expand these.

I carried out a thematic discourse analysis of these comments, by coding the themes present in the comments section of the videos. I chose 6 videos on YouTube, picking them based on the videos that have been more popular with the tattooing community, as this led to more user comments on these videos that I could analyse. YouTube videos were chosen as the site for analysis for several reasons: the videos and comments are publicly available, and free for others to view and comment on; the size of the YouTube tattoo community who engage with the videos results in lots of user comments, which is desirable for coding; and finally as a member of the tattooing community, this is where I myself engage with conversations and debates on tattooing. This is a limitation due to my bias in selecting these videos, but I believe

⁷⁰ See for example tattoos that have been designed by AI systems, <https://twitter.com/EverettRandle/status/1512972660824690697>; and <https://www.youtube.com/watch?v=nTBmGzQqDbY> and <https://www.youtube.com/watch?v=mTMstCYEDVA>.

⁷¹ <https://www.tattoosai.com/> and <https://aitattoo.net/>.

is justified through the autoethnographic⁷² nature of being part of the tattoo community, and therefore being aware of the key places in which debate is held. I did not comment on any of these videos myself, to prevent leading the conversation.

Discourse analysis involves coding the texts, to identify emergent themes. There are several types of thematic discourse analysis that could have been used for this pilot study. The analysis employed was critical discourse analysis. Fairclough's work on this form of analysis is very influential. He notes that the purpose of this form of analysis is to:

systematically explore often opaque relationships of causality and determination between (a) discursive practices, events and texts, and (b) wider social and cultural structures, relations and processes; to investigate how such practices, events and texts arise out of and are ideologically shaped by relations of power and struggles over power.⁷³

Video 1: celle is a YouTuber with more than 36,000 subscribers who creates videos about tattoos, and about her apprenticeship to become a tattoo artist. She therefore comments from the point of view as both a tattooed person and a tattooist. celle posted a video⁷⁴ about Dall-E 2, an AI system that uses neural pathways, which was used by a person to create a tattoo using the AI. In the video she comments "Just when you thought artists were safe... AI is now generating art and tattoo designs, so really no one is safe".

The video focused on Everett Randle, who asked the creators of Dall-E 2 to use the AI to design a "tattoo" for him without any further textual prompt, and it generated an image that looks "like an 'A' design with an arrow". Everett then took this image to a tattooist and had it tattooed onto him, and this tattoo is thought to be the first AI-generated tattoo. He asked the tattooist to add a small cross next to the tattoo to "nullify any unholy [effect]",⁷⁵ as the Church of Lucifer responded to the tweet of Dall-E2's creators with the original image, saying that the design was a "demonic sigil".

This strange series of events emphasises the importance of the symbolism that tattoos imbue, and the ways that meanings are encoded and decoded in tattoos. It is an unusual situation, bringing together deeply symbolic encoded meanings of

⁷² See for more in relation ethnography as a methodology: Choongh, S. "Doing Ethnographic Research: Lessons from a Case Study" in Mike McConville (ed.) *Research Methods for Law* (Edinburgh University Press, 2017; and within IP law specifically, Silbey, J. M. "IP and Ethnography: A Qualitative Research Approach" in Calboli, I. and Montagnani, L. (eds.) *Oxford Handbook on Intellectual Property Research* (Oxford University Press, 2019).

⁷³ Norman Fairclough *Critical Discourse Analysis* (Longman, 1995), 132.

⁷⁴ Celle, "The World's First AI Tattoo Is A Demonic Sigil??" 16th August 2022, Available at: <https://www.youtube.com/watch?v=nTBmGzQqDbY>.

⁷⁵ A racial slur was used in the original Tweet, which I have removed, as the essence of the Tweet was about warding off any potential evil or bad luck, and this message can be conveyed without repeating the term.

“demonic sigils” and evil, with ultra-modern AI-generated art, into a cultural art-form that has existed for thousands of years.

There were 78 comments on this video.

Video 2: Film Cooper is a YouTuber who shared a video in which he uses an AI, which is unnamed but thought to be Midjourney, to design his tattoo of the fall of Icarus, which he had then tattooed onto his arm.⁷⁶ What is particularly interesting in the video as he gets the AI to refine the designs by trying a variety of search terms, and comments that the designs are “way too detailed” for a tattoo “or will not translate well as a tattoo”. The AI is capable of creating beautiful 2D designs, but it could not factor in the intended use of the image: being tattooed onto the body. As bodies are 3D and are made up of unique shapes, 2D designs can often translate poorly onto the body, or the very fine details could blur over time in a tattoo, and lose the overall intended impact. This issue of line blurring over time in tattoo is something that McDade has commented on this issue, saying that: “[I]ines in tattoo designs are created with an awareness of how the tattoo will appear over time, and are a suitable distance away from each other to avoid appearing “blurry” as they thicken as part of the tattoo aging process.”⁷⁷ In this sense, the AI-generator could not consider the way the image could perform and age on the body, and a human tattooist was needed to ‘translate’ this into a tattoo.

Film Cooper also comments on the “tone” or “feeling” of the designs, and that this took quite a lot of tweaking through the AI to get the tone he was intending. For Film Cooper, the AI was a very useful tool in creating reference images or “concept art” for the tattoo artist, especially as he commented that the AI was able to convey what he wanted to the artist more clearly than he could in words. He stresses that it was the tattoo artist’s skill, creativity, and experience that was able to take this concept image created by the AI and translate this into a design that would suit his body and would last well as a tattoo. Thus, in this instance the AI is a useful tool that assists the tattooist, but the AI is not viewed as the *creator* of the tattoo.

There were 89 comments on the video when I accessed it last, but it is currently in “Private” mode and not viewable.

Video 3: Tattooing 101 is a YouTuber and tattooist who creates tattoo related content.⁷⁸ In a video they created about this, they talk about how it will likely become difficult for new tattoo artists to have successful careers *without* using AI. He commented in the video that “[t]his could be the turning point for the tattoo industry”, as

⁷⁶ Film Cooper “I got a Tattoo using AI (Artificial Intelligence)” 16th October 2022. Available at: <https://www.youtube.com/watch?v=mTMstCYEDVA>.

⁷⁷ McDade (n. 55) 46.

⁷⁸ Tattooing 101 “A.i And What It Means For The Future Of Tattooing” 21st December 2022. Available at: https://www.google.com/search?q=%22A.i+And+What+It+Means+For+The+Future+Of+Tattooing&rlz=1C1GCEV_enGB944GB944&oq=%22A.i+And+What+It+Means+For+The+Future+Of+Tattooing&aqs=chrome..69i57j33i160l3.333j0j7&sourceid=chrome&ie=UTF-8#fpstate=ive&vld=cid:d39fde50,vid:jxLORLFQqSg.

was the case for other significant innovations in the past such as the move in Western tattooing to rotary tattoo machines.

He also went on to explain that as a tattoo artist, he believes AI (and especially AI-generated tattoos) will considerably free up time for fellow tattoo artists, as drawing the designs takes a long time for tattoo artists. AI can speed this up by generating the designs for the artists, as well as creating a multitude of tattoo reference images for inspiration for the tattoo artist. His view towards AI-generated artworks was positive overall, and he saw this as a tool for tattooists to utilise in their art form.

There are 46 comments on this video.

Videos 4 and 5: Lauren, known as “treacle tats” posted a video called “A.I Designs My Next Tattoo?!”.⁷⁹ In this, she experiments with designing a tattoo using open-source Dall-E. She stresses that this is purely for fun, and that she has no intention of getting it tattooed on her, saying in the video “I fully support independent artists, I wouldn’t recommend using artificial intelligence to get a tattoo, please, please support independent artists.” She tries to use the AI to generate traditional tattoo designs including a traditional rose, a ship, and a tiger tattoo. She also tried a variety of tattoo styles, including black and grey, neo-traditional, traditional and micro-tattoos. She comments at the end of the video that this can be a source of tattoo inspiration, “but that I will be using people for my tattoos”.

There are 114 comments on this video. There were a number of negative user comments on the video, criticising the video for promoting AI-generated art that some users viewed as harming the commercial revenue streams of human artists, as well as “stealing” people’s unique artworks. As an example:

AI art is not good or ethical. Most of it is trained on databases FULL of art and images that were not consented to be used, plus one of the largest databases has scraped so many images from all over the internet that it contains hundreds of MEDICAL FILES. Sad to see you using AI art.

I love you Lauren, and I love your videos. But please, AI is really ruining the life of my artists friends. they are not only taking tiny pieces, or taking inspiration - they are using real life artist’s hard work to be “trained” to recreate the work without their permission. I saw someone who had a memorial piece they made for their father be taken and used in an AI - and their style is quite recognizable, so she felt distraught [sic] about it. (kinda like when someone copies a tattoo of ours that means a lot, it doesn’t need to be a 100% copy to feel all kinds of miserable).

Lauren has done a number of videos in the past about “tattoo copying” or “tattoo copycats”, and her view is that tattoo copying is morally wrong, and seen as copy-right theft. This may well be the reason her video received more negative comments

⁷⁹ Treacle Tats, ““A.I Designs My Next Tattoo?!”” 8th December 2022. Available at: <https://www.youtube.com/watch?v=1Gnr-ZYfs7w>.

than for other YouTubers, as some of her viewers are more wary of tattoo copyright infringement.

Video 5 was posted later the same day by Lauren in response to her first video,⁸⁰ in which she addressed the viewers who were upset by what they perceived as her promoting AI-generated art and AI-generated tattoos. She reiterated that she does not recommend using AI-generators to replace artists or tattooists, and that the video was purely for entertainment, and at most AI-generators should be used as reference point to share with tattooists, to better capture time imagery you are looking for.

There were 119 comments on this video.

Video 6: That Tattoo Show, which is a YouTube channel run by several tattooists, uploaded a video “Or will AI Art make TATTOOING Better?”.⁸¹ In this video, two tattooists (Paul and Mike) discussed AI-generated artworks being tattooed. Mike spoke about how he uses AI generators in preparing his tattoo designs for his clients, commenting that “it helps you visualise ideas”, and that the AI generator can quickly get the image close to where he wants it to be, and then he can refine it. They were both positive about the benefits of AI-generated art within tattooing, saying in the video description that:

It is unlikely that AI will completely destroy human art. While AI can be used to create art, it is still created by humans and ultimately reflects human perspectives and values. Additionally, there will always be a market for authentic, human-made art. However, AI may change the way art is created and consumed, and may make it more accessible to a wider audience. It could also potentially lead to new forms of art that are not possible without AI.

They discussed the copyright implications of AI-generated art in tattooing, commenting:

...what I'm concerned about is the copyright issues in AI art, like, who owns the copyright in AI art? Is it the person who inputted the writing?" They agreed that the copyright situation for AI-generated art is currently very complicated, and one of them commented that it is a “a f*cking minefield.

There were 42 comments on this video.

Discourses emerged from the viewer comments on these six videos that I coded into the following categories:

The “Soul” of the Tattoo Artist and of the Tattoo

Example - "Ai art is the furthest thing from art. I would never want someone to tattoo me using it. It's like lab grown meat, fake af".

⁸⁰ Treacle Tatts “R.E: A.I Designs My Next Tattoo ?!” 8th December 2022. Available at: <https://www.youtube.com/watch?v=GsaZp4YJsI&t=25s>.

⁸¹ That Tattoo Show “Or will AI Art make TATTOOING Better?” 4th December 2022. Available at: <https://www.youtube.com/watch?v=ykEOGmlLRw>.

Example - “To each their own, but personally, I would never get an AI tat, even if someone paid me. My tats all have a deep meaning for me and I respect my artist for understanding what I want to express with the designs”.

Commercialisation Concerns for Humans;

Example - “this is one of those topics where emotions are (very rightly) running high and people will react emotionally. Unfortunately some people will cross a line into abuse even if the underlying feels are valid. I can’t blame people for finding art generators fun, if your not a trained artist the ability to generate almost anything you want is fun and people are loving the portrait app. But the model can’t do what it does without data, and that data has been scraped from many artists living and dead. People are rightly upset at something that has used their own work to replace them”.

Example - “...AI as a concept is fun yes, AI have it’s purposes yes—but until the companies and the creators of them own up to their blatant art theft and using images without permission—then I don’t think we should give them any of our time. (as they earn cash on clicks and revenue). Something that artists can opt into would be great—but as is, AI is a no go”.

Copyright and Ownership/Theft Concerns;

Example - “You don’t have to put yourself down for this tbh, the techbros that make those AIs are definitely trying to cultivate the image of "the AI is just collaging like a human would!!" to cover their asses in regards to copyright (since nearly all AIs scrape platforms like Artstation etc. for images to "train on" without the artists’ permission)...

Example - “...While there are legitimate concerns regarding AI, it is one of many technologies (e.g. deep fakes) that could be alarming if used in the wrong hands (namely corporations). The question will come down to how transformative it is. Personal usage is okay (in the US). US copyright laws were originally intended to LIMIT copyright, in order to benefit the public. Modern laws are a far cry from this. Many, many artists are inspired by others. People are afraid of this new technology in the same way people were afraid of Xerox and the printing press and Photoshop and digital photos and NFTs. AI is a tool. Like all tools, it has its purpose. And like all tools, it can be used for good or nefarious purposes...”.

Example - “This should be illegal cause they are basically copying photographers and different artists”.

The Collaborative Tattooist-Tattooed Relationship; and

Example - “The Pros of AI art: It can be used for concepts/inspiration. It can help artists figure out how to set up composition of their art. It can help commissioners have a reference that is more accurate to what they see in their head to show an artist they’re commissioning so the artist has a better idea what they want. ...I do believe AI art programs CAN be beneficial, but right now

it's highly unregulated and because it's the "new thing" a lot of companies or websites are just jumping on the bandwagon without actually researching the current issues with them. AI art is meant to be a REFERENCE TOOL and right now a lot of people aren't understanding that."

Example - "My take on the whole AI thing is I feel like it takes the creation and the soul out of that special connection that an artist builds with their clients. When it becomes more of a "press button > art is given" type of deal even if you end up changing it a little it's still a soulless creation with only a hint of your touch on it."

Excitement of the AI Possibilities.

Example - "I started tattooing back in the 80's before the internet. I got to see what the personal computer did for the Industry and is still doing. I agree that it is coming so might as well get on board. I resisted the Ipad phase and now I am getting one for Christmas just to learn Procreate a few years late. AI comes I will be on board this time...."

Example - "I've always thought the creative sector would be the last place that AI would start making huge advancements, but recently AI art has been blowing me away with how good it is. We live in weird times, that's for sure".

Not every comment or statement fitted within these coded themes, but these discourses applied to the majority who were engaging with the concept of AI-generated artwork being used in tattooing. Some comments shared by users contained multiple discourses at once, and showed both hesitation and intrigue at the concept of AI-generated tattoo art, for example:

what a cool video: (i am kind of torn since i work with AI myself & don't have issues with getting AI designed stuff. But at the same time i don't like that they probably used thousands of images from tattoos without asking the original artist. So it kind of does violate copyright issues? I think i would be okay with it if they just used the images for training but the AI is creating the actual new "tattoo" based on random noise (which is a common technique). This means that the AI does not simply mix up different existing tattoos but learns the structure of them and recreates it from nonsense.

The discourses of "The "Soul" of the Tattoo Artist and of the Tattoo"; Commercialisation Concerns for Humans; and Copyright and Ownership/Theft Concerns were most common in the viewer comments. Evident in the discourses that emerged is a strong sense of the tattooist as the author, and of the fundamental meaning and value to tattooed people of their artwork having been made by a human. There is fear that comes through in the discourses towards AI-generated art, particularly from viewers who identified as artists or tattoo apprentices, citing fears for their livelihoods and future artistic careers.

Tattooists who said they had been tattooing for a longer period of time appeared to be more open towards viewing AI generators as a tool at their disposal in tattooing. This correlates to the comments made in Videos 3 and 6, which were created by established tattooists, who expressed positive views towards the potential benefit to tattooists. Video 1 was made by a tattoo apprentice, and she expressed more wary views towards AI-generated art and its possible impact on the tattoo community.

I observed that a number of comments either directly or indirectly referred to copyright law or to “theft” or “stealing” of art from human artists and tattooists; and some comments referred to transformative use, fair use, and the public domain. This suggests that there is a higher level of awareness of these concepts within the tattoo community. It also stresses the need for this pilot study and research, which has to date not been addressed in the literature, as members of the tattoo community were themselves identifying the tensions between these practices and the unclear position in copyright law regarding the potential authorship and ownership of these works.

I intend to take this research further, and explore whether there are other discourses present in the tattoo community relating to AI-generated works, and am particularly interested in whether this is experienced differently in countries with a much broader conception of copyright fair use than the UK’s fair dealing.

7 Part 6: Is Copyright Legal Reform the Solution for the Tattooing Community?

This article has discussed the current advances in tattooing that are challenging community-held views of authorship and ownership and the need to address this tension. Whether or not this tension is best addressed through copyright reform is less clear, given the extra-legal norms within the tattoo community.

The tattooing community has strong self-regulating mechanisms, which often sits outside—or departs from—formal legal regulation. Perzanowski interviewed a sample of US tattoo artists, and found that there are “core norms” which tattooists followed, which relate to respect for the client’s autonomy, as well as a general understandings between tattoo artists that designs on flash sheets (pre-drawn iconic tattoo imagery, such as a rose or tiger) may be copied and replicated, but that custom designs should not be.⁸² These customs are widely accepted amongst many tattoo communities, particularly in the West. These accepted norms within the tattoo community differ from copyright law in keyways (despite other areas of apparent alignment with copyright law). Adler and Fromer have explored these “extralegal norms within a tight-knit community”, including within tattooing. These extralegal norms exist to self-regulate accepted practices within the community, in the absence of traditional legal regulation and enforcements.⁸³ For instance, there is often significant

⁸² Perzanowski (n. 47) 515 Whilst this was a small sample, these findings of core norms within tattooing are borne out in other studies and research.

⁸³ Adler, A. and Fromer J. C., “Taking Intellectual Property into Their Own Hands” (2019) *California Law Review*, 107 (5), pp. 1455–1530, 1457.

respect between the tattoo artist and the client, and in particular the majority of tattoo artists refuse to tattoo custom designs onto other people, to protect the uniqueness of their client's tattoo.⁸⁴

It is noteworthy that there is broader acceptance of copyright norms and rules within the US for tattooing, than we see in the UK. Despite these extralegal norms being shared by many tattooists, the UK tattooing profession has not reached a unified consensus on this matter. For example, I have been tattooed by tattooists in the UK who say they would tattoo an image designed by another tattooist or artist, and do not view tattoos as eligible for legal regulation through copyright law. One tattooist has anecdotally likened this to me as “if you wanted a haircut and you brought an image of that haircut, I would give you that haircut—that’s my job. It’s the same for tattoos—if you bring me the design, I will tattoo it.” Another tattooist told me very recently that “I copied other people’s tattoos when I was an apprentice, and I needed the money. Now I have regular clients, I don’t need to do that anymore.” I have also spoken with tattooists who believe it is inherently immoral or professionally unacceptable “to copy someone else’s art”. To this end, there are multiple or parallel extralegal norms operational in the UK tattooing community, and groups of tattooists and tattooed people who adhere to one of these strands. This is a community that has often operated outside of the law or on societal margins, and there are thus thoughts that the community is best served by informal group self-regulation than by formal legal rule through copyright law.

Returning to the POCC model of copyright ownership suggested by Mendis, building on Dusollier’s inclusive property right, I proposed in Part 4 that body art projects such as tattoo collecting would be better suited to this form of POCC copyright model and conceptions of authorship and ownership. To enact this would mean bringing tattooing expressly within the scope of copyright works. There are aspects of tattooing that would not sit easily within a formalised copyright structure, and I see it as unlikely that copyright infringement proceedings would be brought by a tattooist against another for tattoo copying, unless the tattooists or clients concerned are well-known or celebrity figures. Conversely, legal clarity is sought by many tattooists, who view tattoo copying as undermining both their income and their artistic expression and practice.

At this moment in time, I believe that before we commit the tattoo community to copyright regulation, a reconceptualisation of copyright is needed in law. A POCC model of authorship within copyright law would fundamentally redefine boundaries within copyright law that have been staunchly drawn for centuries, and which we see are no longer adequate for a digital and globalised world, which is enabling globalised community led creation.

If we were to explicitly bring tattooing and the copying of a tattoo designed by a human within copyright law, this still leaves the issue of whether this will be extended to artworks generated by an AI. Similar to the parallel norms towards copying of tattoos within the tattooing community, the literature relating to

⁸⁴ Hsieh (n. 51) 161.

copyright and AI-generated art is split as to whether AI-generated works should be protected by copyright; and if so, what forms of protection this should take. For instance, Mezei favours an “AI-pessimistic approach” on the basis that the fundamental element of copyright law is “deeply connected to human authorship” and that there is not currently any convincing evidence to expand copyright protection to “algorithmic creativity.”⁸⁵ Similarly, Ginsburg has considered this matter of AI-generated and computer-generated works and authorship protection within copyright law. In considering the balancing of copyright’s natural rights protection of the author and the providing of legal incentives to promote innovation and creativity, she puts forward a highly persuasive argument that:

...acknowledging that Berne harbors incentive rationales for copyright is hardly the same thing as contending that Berne embraces a concept of copyright in which incentive/ investment rationales supply the *sole* justification for exclusive rights. The latter concept entertains the expulsion of human authors, and, given Berne’s humanist cast, that would purge copyright of its “soul”.⁸⁶

Furthermore, she goes on to explore the “incentives” and legal protections that are likely to already be applicable to the AI-generated or computer-generated work, such as through patent and copyright protection of software, copyright protection in the database the software interacts with, and patent protection of the mechanisms needed to create fine art.⁸⁷

There is naturally disagreement in this area, with other scholars commenting that copyright law’s insistence on a human author attempts to ‘flatten’ and ‘reshape’ the creative process to fit into human-centric “property-oriented paradigms”.⁸⁸ Škiljić has mused on this question of AI creativity, asking “if AI can produce different output with the same given input, can this be a sign of creativity?”⁸⁹ She concludes that AI-generated artworks involve both humans and AIs in the creation, and that consequently the creative process is “indisputedly different than what the copyright tradition acknowledges”. As a result, she argues that these AI-generated artworks “cannot be subsumed” under traditional art creation.⁹⁰

⁸⁵ Mezei, P. From Leonardo to the Next Rembrandt—The Need for AI-Pessimism in the Age of Algorithms (July 24, 2020). UFITA, Issue 2/2020, pp. 390–429. <https://doi.org/10.5771/2568-9185-2020-2-390>, Available at SSRN: <https://ssrn.com/abstract=3592187> or <https://doi.org/10.2139/ssrn.3592187>.

⁸⁶ Ginsburg, J. C. People Not Machines: Authorship and What It Means in the Berne Convention *IIC* (2018) 49:131–135, 134.

⁸⁷ Ginsburg (n. 87) 134.

⁸⁸ Zeilinger, M. *Tactical Entanglements. AI Art, Creative Agency, and the Limits of Intellectual Property* (Meson Press, 2021), 22.

⁸⁹ Škiljić, A. (2021) When Art Meets Technology or Vice Versa: Key Challenges at the Crossroads of AI-Generated Artworks and Copyright Law. *IIC* 52, 1338–1369, 1345 <https://doi.org/10.1007/s40319-021-01119-w>.

⁹⁰ Škiljić (n. 90).

Within the EU's copyright acquis, and within the *droit d'auteur* tradition, authorship (and by extension initial copyright protection) is attributed to "the person who held the pen and did the actual writing".⁹¹ From this, it seems that a key distinction between human-generated vs. AI/ computer generated works is that humans *choose* to "hold the pen" and create the work, whereas an AI or computer system is carrying out a function it has been instructed to do. The tattooist can draw from any number of cultural, textual, audiovisual and visual references in helping them create their tattoo designs, as well as drawing on cultural folklore, history and myth. Going further still, the tattooist can bring in personal stories and experiences that their client wishes to be carried in the tattoo. The level of creativity and intentional meaning-making within tattooing goes, in many cases, far beyond simply sketching out abstract motifs. Even within flash tattoos that are replicated again and again, the tattooist knows the meaning encoded culturally within these tattoo designs, and can choose to subvert or disrupt these meanings.

When either a tattooist or a person looking for tattoo inspiration uses AI tools to generate artworks and possible tattoo designs, they choose what imagery and styles they are looking for, and select key search terms to give to the AI. The AI artwork generators are producing beautiful and highly intriguing works, based on the search terms and the fact the AI has been *compelled* to do so. The AI will draw on a vast reference bank, but (at least as is understood to be the case in current AI systems) this reference bank is the one supplied to the AI by the human creators.

Of course, there is a clear criticism of this distinction between human autonomous creativity and AI human-dependence, in that tattooists are usually creating work in exchange for money from clients, and in this sense are arguably not creating in a fully free way, and are instead complying with client requests. Whilst this should be noted, overall human autonomous creation far exceeds AI-generated creation currently, as (i) a tattooist could choose not to draw up a design for a client, whereas AI systems are designed to comply with human requests; and (ii) human tattooists can choose from any references and inspirations that they realistically have access to, and importantly can alter which references are most appropriate for each individual tattoo design, and this goes beyond creating images based on a pre-set visual data set.

8 Concluding Thoughts

In UK law, it is not clear if tattooing is eligible for copyright protection; but it is widely regarded that a tattoo would warrant at least some form of copyright protection. In other jurisdictions, tattooing is beginning to be recognised as eligible for copyright protection. The question remains though who is granted this: the tattooist or the tattooed person? Subsequently, do the traditional copyright economic

⁹¹ Xiao, Y. Decoding Authorship: Is There Really no Place for an Algorithmic Author Under Copyright Law? *IIC* (2023) 54:5–25.

and moral rights follow with this copyright? This article has discussed the current advances in tattooing that are challenging community-held views of authorship and ownership and the need to address this tension. Issues of authorship are key within copyright law, and the challenge here is in navigating differences in how authorship is conceived, and also in the legal understanding of authorship keeping pace with contemporary cultural art practices.

This article has explored the importance of the authorial role and input of the tattooist in tattooing, especially when acting as visual artists and creating artworks with high or full degrees of creative autonomy, in a very similar way to a painter creating an artwork in response to an open brief from a client. Tattooing departs from copyright understandings of authorship and ownership in relation to cover up and blastover tattoos, as it is accepted practice to modify, alter, or even fully cover a first tattooists' work—in a way that would likely be seen as impacting on the moral right of integrity of the author in a traditional copyright context. From these challenges, it is clear that a traditional conception of copyright law does not apply well to tattooing.

The practice of tattoo collecting challenges the concept of a single, individual author completing works themselves, and rather supports an open, community-based form of shared copyright ownership and authorship that includes all of the individual tattooists and the tattooed person, as the collective archive or patchwork of tattoo artworks on the body would not be possible without all of the parties (as Mendis says, “me *and* you”). I argue here for the concept of authorship within tattooing to be viewed as shared collaboratively between the tattooist and the tattooed person, as both are essential for the tattoo to come about.

The practice of using AI-generated artworks either to tattoo directly onto someone as a tattoo design; to use these AI-generated artworks as reference images; or to adapt them before tattooing them onto the body—these practices are leading to considerable debate in the tattooing community. Evident from the pilot study I carried out of user comments on YouTube videos on this topic is that there is heavy scepticism of AI-generated art, with many people viewing this as clear theft and copyright infringement, and opposing them is the view that AI-generation is simply another tool for tattooists and artists to use in their work. A number of user comments linked tattooing to the idea of the “soul” or the integral essence of the tattooist being communicated in the tattoo, and were wary of this being removed in a non-human author. This echoes Romantic conceptions of the individual author creating artworks independently, and some essence of them being carried in the work.

This article has explored the way in which tattoos encode meanings, and how these meanings are decoded. As tattoos are so embedded in wider culture, specifically visual culture, there is a concern about AI-generation of artworks or motifs that can physically create these images, but does not know what they *mean* in the encoding. This is added to, in my view, due to the long heritage of tattooing and the deep meanings encoded in many tattoo designs, such as in Western traditional tattoos, in Japanese *irezumi* tattooing, and in indigenous tattoo practices. The question arises: are these meanings distorted or undermined if the tattoo design is generated by an AI? This leads back to whether it is the tattooed person, or the tattooist, who encodes meaning in the tattoos, or even if it is both parties collaboratively together.

This article argues that the debate within the tattoo community about AI-generated art as tattoos needs to be addressed within the community through agreed extra-legal norms, which may well depart from how copyright law decides to approach AI-generated art globally. From a copyright perspective, it does not seem wise to attribute authorship to AI entities, as copyright law is concerned with the human author and human creativity, as AI remains bound to only create in line with human-directed search terms, drawing from a human-selected range of reference materials.

As it currently stands, only the human tattooist can draw from a number of cultural, textual, audiovisual and visual, cultural folklore, history and mythical references in helping them create their tattoo designs, as well as drawing on the client's personal stories. AI-generated art is also usually too complex or unsuitable (due to many small, fine lines that will likely blur over time) to be tattooed onto the body. A human tattooist must always therefore 'translate' the image into a tattoo onto the body, and so as this technology currently stands, it seems to be an incredible source of reference material generation, but not a creative entity making tattoo artworks.

Acknowledgement With thanks to the reviewers, for their insightful comments and suggestions, which were gratefully received. With thanks also to Dr Amy Tatum for their kind suggestions of how to improve this article, and for their time in discussing it with me.

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Authors and Affiliations

Melanie Stockton-Brown^{1,2}

✉ Melanie Stockton-Brown
mstocktonbrown@bournemouth.ac.uk

¹ Bournemouth University, Poole, UK

² Centre for Intellectual Property Policy and Management, Poole, UK