

TATTOOS, AVATARS AND COPYRIGHTS - A WHOLE NEW WORLD

By: Jack Greiner on January 4, 2019 on graydon.law

Among the things I never really thought much about before is the question of how copyright law intersects with the virtual gaming business. But [a recent New York Times article](#) brought it to my attention.

Here's the issue in a nutshell. Many (most?) NBA players have tattoos. And those that adorn the superstars are well known in their own right. So, if a virtual basketball game wants to faithfully recreate LeBron James, the game maker no doubt wants to copy the tattoos.

All of which makes perfect sense, except that the players don't own the copyright to the tattoo. The artist does. And because the game maker creates the avatar, the game maker is indeed making a copy of the tattoo. Even if the player consents to the use of his image in the game, the player can't consent to a copy of the tattoo.

There are several cases pending against Take-Two Interactive, and a court recently denied a motion to dismiss the complaints. Given the revenue generated by the games, this is a high stakes issue. And there are any number of solutions. The game companies can continue to fight, and convince a court to find the use is fair, or at least incidental, thereby tacitly permitting it.

The game companies can strip the tattoos off the players, or use designs available from the public domain. But it appears at least some players don't like this option - the tattoos are part of who they are.

The ultimate solution may be for the players to insist that the tattoo artist provide a license that allows the player to consent to a copy of the tattoo in a video game. As in most situations, the true superstars will no doubt get the tattoo artist to go along. The lesser lights, maybe not so much.