

Of Monkey Selfies and Suits Without Human Plaintiffs

By John Platt, partner at Snell & Wilmer.

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You may recall the original Monkey Selfie story, where nature photographer David Slater arranged a trip to Indonesia for the purpose of photographing monkeys. While taking pictures, a crested black macaque monkey took hundreds of photos with David's camera, including a toothy selfie. The photographer posted the monkey selfie on-line, and it went viral. David said that he earned about \$3000 the first year off that photo. But, when Wikimedia put it in their archive of "free" photos, the market for the monkey selfie tanked, he said. David argued that Wikimedia was infringing his copyright and that they should take down the photo or pay him.

Wikimedia argued that David didn't own the photo – that no one does, because the monkey was the author of the photograph. Not only did Wikimedia not take down the monkey selfie, on Dec 22, 2014, the US Copyright Office explicitly stated in a public draft of their "Third Edition of the Compendium of US Copyright Office Practices," what most everyone had always understood - that works created by a non-human are not subject to copyright. The Copyright Office gave as an example, "a photograph taken by a monkey."

The story inspired some debate among academics, with most agreeing that David could not own the copyright and a few arguing that if David did enough of the framing, camera settings, and other creative aspects, with the monkey only providing the push of the button, that David might be the author of the photograph and own it. But everyone figured that was the end of the story. Not so.

On September 22, 2015, People for the Ethical Treatment of Animals (PETA) filed a lawsuit against David Slater accusing him of violating the copyright of the monkey (who they took the liberty of naming "Naruto"). PETA claims to be filing as a "friend of the monkey," since, obviously, the monkey couldn't sue on its own behalf.

In the lawsuit, PETA claims that "Naruto has the right to own and benefit from the copyright in the Monkey Selfies in the same manner and to the same extent as any other author." There is some irony in that PETA is suing a self-proclaimed advocate of animal rights. Mr. Slater will either have to hire an attorney, or risk a default judgment if the Federal Court doesn't throw out this suit on its own initiative.

Bear in mind that even if PETA were to win this lawsuit, the damages would undoubtedly be less than \$4000-\$5000. Now that could buy a lot of bananas, but it is hardly worth the effort spent by PETA bringing the lawsuit. So why is PETA going through the trouble?

It might be easy to say that PETA is just looking for the shock value and publicity. They do that well. But, there is much more significance in PETA's filing of this lawsuit.

The Constitution of the United States, Article I, Section 8, grants the power to the Federal government to grant copyrights to authors. The copyright statute also states that copyright exists in "original works of authorship." The Copyright Act refers to authors as "persons." A person is defined as "a human being, whether an adult or child." Moreover, it has long been held by our U.S. courts that authors are humans.

PETA is attempting by this lawsuit to get a U.S. Federal Court to bestow personhood on the monkey. PETA wants to have the Court declare the monkey an owner of property, and to extend human rights to the monkey. PETA will likely fail in its lawsuit, but if the Federal Court named the monkey an author, with all the ownership rights of an author, then PETA will have used copyright law to give human rights to a monkey. This is a backdoor effort to use laws intended to encourage the progress of the arts and sciences to obtain protective rights for animals. And the attempt has been met with derision.

Hundreds of creative, humorous questions have been raised. Just to name a few:

- How would the monkey get a trial by a jury of its peers?
 - How would PETA get the proceeds to Naruto specifically?
 - Why PETA and not some other organization?
 - Will there be a rush to be first to file “friend of the animal” suits every time an elephant or other animal creates art?
- If animals can own copyrights, can animals infringe copyrights?
 - How would a monkey register his copyright in the U.S. or elsewhere?

PETA’s own website states that “Animals are NOT ours to eat, wear, experiment on, use for entertainment, or abuse in any other way.” One must question whether PETA’s filing of this Federal lawsuit violates its own principles by arguably bringing a circus to a California Federal Court.



John Platt

602.382.6367

jplatt@swlaw.com

John Platt advises and represents clients in intellectual property matters, IP strategies, patent and trademark prosecutions, IP audits, IP due diligence, licensing agreements, contracts and intellectual property litigation.