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Arian Jabbary

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Update on the “Monkey Selfie”

BY [ARIAN JABBARY](#) / ON APRIL 26, 2016

The iconic selfie has become synonymous with today’s generation of pop culture. From teens to moms—even teen moms—selfies have penetrated our society as the go-to method for documenting nearly everything with our pretty faces front and center. That’s why in 2011, when a playful monkey grabbed a photographer’s camera and snapped a selfie, it came as no surprise that the selfies’ next logical frontier was out into the animal kingdom. Who better to adopt the shameless form of photographic narcissism than our evolutionary relatives? The corresponding legal issue to follow, however, is whether copyright ownership and its subsequent protection would also make that leap.

It all began when photographer David Slater was out shooting in Indonesia and a Monkey unexpectedly grabbed his camera and snapped a few photos, some of which being selfies. The legal drama that ensued began just last year when PETA filed a lawsuit against Slater who had self-published the series of photos in a book. PETA contended that because the monkey, who apparently goes by the name of Naruto, took the photograph, he owns the copyright.^[1] Sure, copyright law vests ownership in the original author of a work, but can a monkey be an author? According to the US Copyright Office, only works created by humans can be registered for protection.^[2] Nevertheless, PETA decided to push the bounds of animal rights from basic rights to intellectual property rights.

The Copyright Office’s past treatment of animals and intellectual property didn’t stopped PETA from taking their battle to the courts though. PETA sternly argued that Naruto the photo-friendly monkey took the photograph autonomously without any assistance or direction from an outside party. This, they believe, indicates that Naruto was not facilitated in any way to take the image besides the mere access to a camera. Regardless of his status as a monkey, PETA argued that the photo’s copyright is nonetheless owned by the monkey because its natural rights in the photo’s IP ought to be treated the same as humans.

Slater had a much different angle on the whole matter. He primarily claimed that non-humans cannot be granted copyright protection as it falls outside the scope of the Constitution where copyright law is originally rooted. He then argued that because he provided the access to the camera gear, set the stage and location, and left his camera unattended, he indirectly facilitated or set in motion the photos that were subsequently taken by Naruto. Therefore, regardless of the fact that Naruto the monkey pressed the shutter release button on his camera, the amount of discretionary decisions he made before the photos were executed were sufficient to demonstrate Slater owned the image.

On January 6th, Judge Orrick of San Francisco ruled on the side of Slater, stating that Naruto was not able to receive copyright protection under current law. He then proceeded to explain

that the expansion of copyright protection to animals was an issue for the President and Congress, but not for the court. Simply, Naruto cannot own the copyright of his selfie regardless of the amount of control he had over the situation solely because he was not human. Not until the legislative and executive branches enact a law that extends copyright protection to animals will monkeys such as Naruto be able to defend their IP rights in court—with a human representative, of course.

So what happens to the infamous monkey selfie now? While Slater contends that his UK copyright registration ought to be enforced internationally in accordance with the Berne Convention, the monkey selfie is likely to remain in the public domain.^[3] This is because though the court ruled that the photo was not the monkey's copyright, it never explicitly stated that Slater owned the copyright either. Therefore, websites such as Wikipedia continue to offer the full resolution photograph for the public to openly download under the presumption that it belongs to the public domain. The selfie in question can be downloaded here: [https://upload.wikimedia.org/wikipedia/commons/4/4e/Macaca nigra self-portrait large.jpg](https://upload.wikimedia.org/wikipedia/commons/4/4e/Macaca_nigra_self-portrait_large.jpg).

[1] <http://artlawandmore.com/2016/01/05/will-prince-reign-supreme-once-again-over-us-copyright-law/>

[2] <http://copyright.gov/title17/>

[3] <http://www.npr.org/sections/thetwo-way/2016/01/07/462245189/federal-judge-says-monkey-cant-own-copyright-to-his-selfie>