

# THE DAILY RECORD

Tuesday, October 17, 2017 / Volume 109 / Number 200 / \$2.00 • Western New York's trusted source for legal and real estate news

## IP FRONTIERS

### “Monkey selfie” copyright case settles

Last month, David Slater and the People for the Ethical Treatment of Animals (PETA) finally settled their two-year legal battle over the intellectual property rights of a rare Indonesian crested macaque monkey named Naruto, who took pictures of himself in the wild with Slater's camera.

The story began in 2011, when Slater traveled to the Tangkoko reserve on the Indonesian island of Sulawesi, and spent several days following and photographing a troop of macaque monkeys. Slater has maintained that he coaxed the monkeys into pressing the shutter while looking into the lens, after he struggled to get them to keep their eyes open for a wide-angle close-up. Slater compiled Naruto's famous toothy grin selfie shown here, which went viral back in 2011, and several other selfies in a book called *Wildlife Personalities*.

After the original monkey selfies went viral, a takedown request was sent on Slater's behalf to a publication that shared the images. The takedown request was made public and sparked a debate on whether or not Slater even owned the copyrights to the photos, since technically the monkey was the one who shot the images.

PETA took the debate a step further and sued Slater and his publisher on behalf of Naruto in 2015 for copyright infringement in the U.S. District Court for the Northern District of California. PETA claimed that Naruto was the rightful copyright owner because, under U.S. copyright law, intellectual property rights are granted to the one who took the picture. PETA sought copyright infringement damages and financial control of the photographs, for the benefit of Naruto of course. If “Naruto” would have won, PETA said it would have donated all the proceeds gener-



By **KRISTIAN E. ZIEGLER**  
Daily Record  
Columnist

ated from the photos to protect the animal's habitat in Indonesia.

U.S. District Judge William Orrick III, who heard the copyright infringement case last year, ruled that although Naruto “took” the photographs, animals cannot own intellectual property. When dismissing the case Judge Orrick stated that the

only thing preventing that, however, is Congress — “This is an issue for Congress and the president.” “If they think animals should have the right of copyright, they're free, I think, under the Constitution, to do that. [W]hile Congress and the president can extend the protection of law to animals as well as humans, there is no indication that they did so in the Copyright Act.”

PETA was bound to face an uphill battle. Even before Judge Orrick's ruling, The Copyright Office made clear its policy of refusing copyright registrations to animals. In its 1,222-page Third Edition of the Compendium of U.S. Copyright Office Practices released in late 2014, the Office specified its refusal policies that are dictated by federal copyright law. The first listed example of works that it will refuse registration is now “A photograph taken by a monkey.” The Copyright Office has stated that works “produced by nature, animals, or plants” cannot be granted copyright protection because, under U.S. law, copyrights to photographs belong to the “person” who took fixed the images in tangible form (i.e., the person who pressed the shutter or photo button on the camera and thereby caused



**NARUTO**

the images to be stored in memory or on film). The Copyright Office thereby views Naruto's images as non-copyrightable subject matter because Naruto is not a “person” under the law, and thus is not entitled to own copyrights.

PETA filed an appeal against the Judge Orrick's ruling before a three-judge panel of the U.S. Court of Appeals for the 9th Circuit, but it was recently dismissed before a ruling as the parties have reached a settlement. At least for now, the threat of animals accumulating new intellectual property rights and wielding them against us humans has dissipated.

While Naruto didn't win the exclusive legal right to own his famous selfies, he can thump his chest in securing a portion of the revenue stream generated by the photographs. Under the terms of the settlement, Slater has agreed to donate to Naruto's habitat one-fourth of any proceeds from the sale of the selfies. Lawyers for PETA announced that Mr. Slater has agreed to donate one quarter of any future revenue from Naruto's photographs. The funds will go to registered charities “dedicated to protecting the welfare or habitat of Naruto,” said PETA and Mr. Slater in a joint statement. PETA also said it would continue to seek legal rights for animals. “Everyone deserves the rights we hold dear: to live as they choose, to be with their families, to be

*Continued on next page*

*Continued from previous page*

free from abuse and suffering, and to benefit from their own creations.”

While the dispute didn't result in a controversial ruling or even dicta that urges a higher court review or Congress to step in, it does serve as a reminder that intellectual property ownership isn't always easy to determine, especially in such a technologically advanced era. PETA and Mr. David Slater agreed that their case raises important, cutting-edge issues about expanding legal rights for non-hu-

man animals. In their joint statement, PETA and Mr. David Slater have stated that “As we learn more about Naruto, his community of macaques, and all other animals, we must recognize appropriate fundamental legal rights for them as our fellow global occupants and members of their own nations who want only to live their lives and be with their families.”

One question remains is how much are Naruto's selfies even worth? While Slater is free to use and sell them (giving 25% of any

revenue to PETA), so is everyone else. As the U.S. Copyright Office has made clear, the once-viral pictures are in the public domain and cannot be copyrighted. Unfortunately for Naruto, the selfies therefore have little commercial value.

*Kristian E. Ziegler is an associate with the law firm of Heslin Rothenberg Farley & Mesiti P.C. He can be reached via email at kez@hrfmlaw.com, or at (518) 452-5600.*