

Monkeys Can Own Copyrights, Primate Expert Tells 9th Circ.

By **Bill Donahue**

Law360, New York (August 8, 2016, 7:50 PM ET) -- People for the Ethical Treatment of Animals and its attorneys at Irell & Manella have recruited a renowned primatologist in their efforts to convince the Ninth Circuit that monkeys can own copyrights.

PETA is suing photographer David Slater on behalf of “Naruto” – a macaque who snagged Slater’s camera and snapped the now-famous image known as the “monkey selfie.” The lawsuit, widely viewed as a publicity stunt, claimed Slater infringed the copyright by featuring the image in a book, but it was dismissed in January when a judge said a monkey cannot be an “author” of a copyrighted work.

With PETA appealing that ruling to the Ninth Circuit, the group received a supporting amicus brief Monday from Agustín Fuentes, a professor at the University of Notre Dame and an expert in human-primate interactions who has spent time studying macaques.

The point of the brief? To show scientific evidence that Naruto was smart enough to intentionally snap the photo, making him the author under the law.

“The existing scientific data regarding macaques compels the conclusion that Naruto is the party who created the work of art in question,” Fuentes wrote. “He has the mental and physical capacity to undertake the series of actions that resulted in the creation of an original work.”

He added, “Whether or not the image produced was the goal, all of the actions needed to produce that image were undertaken by Naruto, were likely intentional and focused, and are well within the range of macaque capabilities.”

PETA sued in September 2015, claiming Naruto had the same authorship rights in the photo as any human would, and that Slater had infringed them by publishing a book centered on the now-famous image. The complaint also named his publisher, Blurb Inc., as a defendant.

Slater quickly moved to toss the case, calling it “a farcical journey Dr. Seuss might have written.” In January, U.S. District Judge William H. Orrick obliged.

“[The plaintiffs] argue that this result is antithetical to the tremendous public interest in animal art,” the judge wrote, dismissing the case. “Perhaps. But that is an argument that should be made to Congress and the president, not to me.”

PETA appealed to the Ninth Circuit in March, and filed its opening brief on July 28. Slater's appellee brief is due on Aug 28.

PETA and Naruto are represented by David Schwarz of Irell & Manella LLP and by PETA's in-house counsel.

Slater is represented by Andrew John Dhuey.

Blurb is represented by Jessica Valenzuela Santamaria, Angela Lucille Dunning and Jacqueline Kort of Cooley LLP.

The case is Naruto v. Slater et al., case number 16-15469, at the U.S. Court of Appeals for the Ninth Circuit.

--Editing by Joe Phalon.

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