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'Monkey Selfie' Judge Details Decision To Toss Copyright Suit

By **Bill Donahue**

Law360, New York (January 29, 2016, 4:24 PM ET) -- A California federal judge issued a written ruling Friday explaining his decision to toss a lawsuit engineered by People for the Ethical Treatment of Animals that claimed an ape could sue for copyright infringement over a famed "monkey selfie."

A California judge ruled to toss a suit claiming a macaque named Naruto could sue for copyright infringement over his famed "monkey selfie." (Credit: AP)

Fleshing out a Jan. 6 bench ruling that came down against a macaque named Naruto who used a nature photographer's camera to take a photo, U.S. District Judge William H. Orrick III said there was no indication that Congress believed nonhuman animals could be "authors" that have standing to sue under the Copyright Act.

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

Previous Ninth Circuit case law said standing could only be extended to animals if lawmakers had "plainly" intended to do so, the judge wrote. Not only is there "no mention of animals anywhere in the act," but the Copyright Office has openly and repeatedly counseled that copyrights do not extend to animals.

"The Copyright Office agrees that works created by animals are not entitled to copyright protection," Judge Orrick wrote. "It directly addressed the issue of human authorship in the Compendium of U.S.

Copyright Office Practices issued in December 2014."

The compendium referenced by Judge Orrick didn't just say authors couldn't be animals — it specifically cited a "photograph taken by a monkey" as an example of a work that the office would refuse to register.

To close out the decision, the judge acknowledged PETA's arguments about broader interest in animal art, but said the only thing he was able to consider was whether the group had shown that "the Copyright Act confers standing upon Naruto."

"In light of the plain language of the Copyright Act, past judicial interpretations of the act's authorship requirement, and guidance from the Copyright Office, they have not," the judge wrote.

PETA, with the help of prominent intellectual property firm Irell & Manella LLP, filed suit back in September against David Slater, a nature photographer whose camera was grabbed by a curious macaque and used to snap what later became known as the "monkey selfie."

The group claimed Naruto had the same authorship rights in the photo as any human would, meaning that Slater infringed those copyrights by republishing it in a book about the infamous photo.

The lawsuit was widely derided in the world of copyright law as a publicity stunt, and both Slater and his publisher quickly moved to toss the case. In his motion to dismiss on the pleadings, Slater called the case "a farcical journey Dr. Seuss might have written" and something that "should not be happening."

Judge Orrick agreed, tossing the case out on Jan. 6 with a bench ruling that said Naruto lacked standing to sue under the Copyright Act.

Jeff Kerr, PETA's general counsel, said the group would "continue to fight for Naruto and his community, who are in grave danger of being killed for bush meat or for foraging for food in a nearby village while their habitat disappears because of human encroachment."

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

Slater is represented by Andrew John Dhuey.

Blurb Inc., Slater's publisher, is represented by Jessica Valenzuela Santamaria, Angela Dunning and Jacqueline Kort of Cooley LLP.

The case is Naruto v. Slater et al., case number 3:15-cv-04324, in the U.S. District Court for the Northern District of California.

--Editing by Katherine Rautenberg.