

## 'Monkey Selfie' Judge Says Animals Can't Sue Over Copyright

By **Beth Winegarner**

*Law360, San Francisco (January 6, 2016, 8:18 PM ET)* -- The California federal judge overseeing the People for the Ethical Treatment of Animals' lawsuit accusing a nature photographer of violating a monkey's copyright on the primate's selfie said Wednesday that he doesn't see any protections for animals in the Copyright Act.

U.S. District Judge William H. Orrick III said he would dismiss PETA's suit on behalf of Naruto, the crested macaque whose popular self-portrait was included in a book photographer David Slater self-published through Blurb Inc. At the start of Wednesday's hearing in San Francisco, Judge Orrick said he doesn't see any indication that animals have standing under the Copyright Act.

"There are lots of statutes that protect animals' rights" and give humans the ability to sue for that protection, Judge Orrick said. "The issue here is whether [lawmakers] did so in the Copyright Act. ... If they intended to give animals standing they would do so plainly."

PETA attorney David Schwarz of Irell & Manella LLP argued that the Copyright Act should be no different from the Endangered Species Act when it comes to determining who can sue on behalf of an animal. Corporations are considered "authors" under the Copyright Act, which anticipated "a vast array of publishing methods that hadn't been invented yet," he said.

Before the adoption of the Fourteenth Amendment, slaves couldn't own the rights to patents, Schwarz argued, comparing Naruto's alleged copyright to the advancement of those earlier intellectual property rights.

Schwarz said it's also important to note that Slater has declared himself the author, even though Naruto allegedly took the photo of himself.

"The dispute isn't over whether there is authorship — the question is who is the author. If there is an author, it must follow that there is a copyright," Schwarz argued.

But Judge Orrick didn't buy it.

"This is an issue for Congress and the president," the judge said. "If they think an animal should be able to have copyright, they are free to do so. But you haven't told me anything to convince me they've done it already."

Slater's attorney, Andrew Dhuey, argued that monkeys simply don't have statutory standing to sue and that Slater shouldn't have to continue defending himself in the case. "We're engaging in something of a Socratic debate here, and that's inappropriate," he said.

PETA claims in its lawsuit, filed in September, that Naruto has the same authorship rights in the photo as any human would, meaning that Slater infringed Naruto's copyright by publishing the famous photo in a book.

The suit seeks an order declaring that Naruto owns the copyright, and that all proceeds from Slater's book and other commercial uses of the photograph go toward helping macaques and preserving their habitats.

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 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 3:15-cv-04324, in the U.S. District Court for the Northern District of California.

--Additional reporting by Bill Donahue. Editing by Brian Baresch.

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