

Does Monkey Own Copyright in Selfie?

While the monkey who shot a selfie that created an interesting copyright question can't sell her image, the photographer whose camera was used is giving away an 8 x 12 canvas of the image to each person who requests one and donating £1 per canvas to the Sulawesi crested black macaques Conservation Programme in Indonesia.

The monkey's image has drawn a lot of attention since Wikipedia refused to take down a copy of the selfie after British photographer David J. Slater sent a takedown notice. Wikipedia denied the request stating that the image was not copyrightable under the United States Copyright Act.



According to a press release posted on Slater's website, the photograph was taken in 2011 when he was on a photography tour of the tropical forest north of Sulawesi, Indonesia. Slater said he initially set up a camera with a self-timer, but a monkey ran off with the camera.

“So I put my camera on a tripod with a very wide angle lens, settings configured such as a predictive autofocus, motorwind, even a flashgun, to give me a chance of a facial close up if they were to approach again for a play,” Slater says in his release. “I duly moved away and bingo, they moved in, fingering the toy, pressing the buttons and fingering the lens. I was then to witness one of the funniest things ever as they grinned, grimaced and bared teeth at themselves in the reflection of the large glassy lens.”

In an attempt to combat Wikipedia's ruling, Slater wants people to get from his newly formed company a free 8 x 12 canvas print of the selfie (shipping is extra, as are larger sizes). He indicates he may seek legal action against Wikipedia.

The legal question is whether the image can be copyrighted. Wikipedia has taken the position that under the U.S. Copyright Act animals cannot own copyrights.

Slater argues that, while the monkey pressed the button, he set up the camera and should be the author for copyright purposes.

“Because our common law does not grant nonhumans legal rights, the only possible author – if there is one – seems to be Slater,” states Cheryl Dancy Balough, adjunct faculty of Copyright Law at Chicago-Kent College of Law and member of Balough Law Offices, LLC. “While the Copyright Act does not define the term ‘author,’ the U.S. Supreme Court has defined an author for copyright purposes as ‘one to whom anything owes its origin.’ Case law also indicates, however, that authorship requires more than simply making a valuable contribution to a work and more than ‘mere direction or ideas.’” Whether Slater's contributions to creation of the selfie are sufficient to make him an author is the question a court would need to answer should Slater file a lawsuit.