

ISSN :2582-6433



# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary  
Peer Reviewed 6th Edition

VOLUME 2 ISSUE 6

[www.ijlra.com](http://www.ijlra.com)

## **DISCLAIMER**

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 6 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

# EDITORIAL TEAM

## EDITORS

### **Megha Middha**



*Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar*

*Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society*

### **Dr. Samrat Datta**

*Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board*



## **Dr. Namita Jain**



**Head & Associate Professor**

*School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.*

*Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019*

## **Mrs.S.Kalpana**

**Assistant professor of Law**

*Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr. Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.*



## **Avinash Kumar**



*Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.*

## **ABOUT US**

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench.

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

# **GOING BANANAS OVER A “MONKEY SELFIE”: A CRITICAL ANALYSIS ON A CASE OF COPYRIGHT INFRINGEMENT**

**Authored by- Pritha Ghosh**

## **Abstract**

*“An idea that is not dangerous is unworthy of being called an idea at all”*

- *Oscar Wilde*

How worthy then is an idea to photograph monkeys which results in an enormous legal battle that will serve as a landmark judgment in the legal history of the United States?

David Slater, a wildlife photographer had let the monkeys take over his camera equipment for a while. Little did he know that it will result in a lawsuit which will be called “curious” and absurd”, will question the scope of the statutory provisions itself.

In 2011 in Indonesia, a crested macaque took a series of photographs (selfies) using David Slater’s camera. Slater is a wildlife photographer who had gone to Indonesia for his work. Later, he published a book containing the selfie which went viral on the internet. Consequently, PETA (People for the Ethical Treatment of Animals) filed a suit against Slater, on behalf of Naruto alleging that Slater had committed copyright infringement by publishing the “Monkey Selfies”. Slater filed a motion to dismiss on the grounds that the plaintiffs lacked standing.

This case posed quite a lot of intriguing legal questions. The case dealt with the question of ownership of the “Monkey Selfie” and expanded itself to question the legal standing of non-human entities. It also questioned authorship under the Copyright Act and how protection is given to intellectual property in the United States.

The Ninth Circuit Court of Appeals (where the case was finally settled) did not clearly state its opinions regarding the establishment of ownership and the issue of Copyright pertaining to the case since the establishment of constitutional and statutory standing was one of the main arguments made by the defendants.

Part I of this paper would expand on the need for copyright protection and argue for the rightful ownership rights of the defendant keeping at hand the various legal precedents set before us through the deliverance of justice by the honorable courts. The chapter starts with a brief introduction for the readers to the topics that are being dealt with in this paper following the

analysis of the Copyright on the “Monkey Selfies”.

Part II of this paper would involve the interpretation of the doctrine of ‘misuse of copyright’ and study the various aspects that relate to it closely. It will develop an understanding on what constitutes copyright infringement and doctrine of fair use and differentiate them on the basis of the legal procedures and outcomes pertaining to them.

## **Limitations**

This paper deals with a case which was adjudicated in the United States. The plaintiff was filed in the district Court and it went on to the Ninth Circuit Court of Appeals. Therefore, it is limited to the Copyright Act, 1976 of the United States. The author recognizes that the case falls under the internet jurisdiction which involves the enormous complexity of falling under an international nature of network. Thus, this paper proceeds with strict adherence to the fact that copyright law is national in nature and does not dive into the jurisdictional issue. Part I uses the judgment given in a European Court and extracts what is needed to justify the relevant issue.

## **Statement Of Purpose**

The aim of this research paper is to study the need for copyright laws under intellectual property and establish the case of *Naruto v. Slater*<sup>1</sup>, giving a detailed analysis of the copyright ownership issue. This paper will also study the legal doctrines of ‘misuse of copyright’ and analyze the key challenges that its use involves for a common man.

## **Research Questions**

- I. Why do the ‘Monkey Selfies’ need copyright protection? If so, who will be the rightful owner of it?
- II. What are the challenges involving the doctrine of ‘misuse of copyright’?

---

<sup>1</sup>Naruto v Slater, 16-15469 (9<sup>th</sup> Circ.:2018)

## Literature Review

### **The Monkey Selfie: Copyright Lessons for Originality in Photographs and Internet Jurisdiction by Andres Guadamuz**

The author dismantles the inaccuracies regarding the monkey selfie case and makes an argument for the subsistence of copyright in the monkey selfie picture drawn in the favor of the defendant. He further states that the mere facts of the case should make a strong case against the allegations made against the defendant. This paper gives a detailed analysis of the case going into topics like jurisdiction issues, originality and goes onto answer and establish the questions of copyright that have been raised by the courts. The author goes beyond the copyright law perspective and analyzes the internet policy issues and further talks about the prevalence of American-centric legal interpretation of online conflicts.

### ***Naruto V. Slater*<sup>2</sup>: One Small Snap for a Monkey, One Giant Lawsuit for Animal-Kind by Matthew P. Hooker**

The author focuses on the issues of jurisdictional standing and the question of copyright ownership of animals and establishes the question of legal standing for non-human-entities. It covers the entirety of the opinions given in courts by the honorable judges during the Court proceedings and subsequently analyses the consequences and implications of the case on other non-human entities.

### **Dr. Ashok K. Jain, Intellectual Property Law – I, Ascent Publications, 2019**

The author explains the meaning, scope and nature of intellectual property. The book gives an introduction to IPR and describes its evolution and importance in contemporary contexts. It expands on Copyright and gives a brief description of its importance under TRIPS (Trade Related Intellectual Property Rights) which introduces the reader to the ‘fair use’ doctrine.

---

<sup>2</sup>Id.,

# **I. WHY DO THE “MONKEY SELFIES” NEED COPYRIGHT PROTECTION?**

## **IF SO, WHO WILL BE THE RIGHTFUL OWNER OF IT?**

### **The need for Intellectual Property Rights**

Wipo (World Intellectual Property Organization, 1967) Defines ‘Intellectual Property’ As “Literary, Artistic And Scientific Works, Performances Of Performing Artists, Phonograms And Broadcasts, Inventions In All Fields Of Human Endeavor, Trademarks...; Protection Against Unfair Competition And All Other Rights Resulting From Intellectual Activity In The Industrial, Scientific, Literary And Artistic Fields.”

It Allows Individuals To Assert Ownership Rights On The Outcomes Of Their Creativity And Innovative Activity In The Same Way As Physical Property.<sup>3</sup>

The Progress Of Humanity Relies On The Advancement Of Thought And Expression Of Individuals To Creation Of New Forms Of Art And Technology. Intellectual Property Rights Encourage Investment In Creativity And Innovation. It Gives The Creator The Requisite Incentives For His Creativity. The Promotion And Protection Of Such Property Thus Encourages Socio-Economic Growth And Enhances The Quality Of Life. Nations Give Statutory Expression To The Economic Rights Of Creators In Their Creations And To The Rights Of Public In Accessing Those Creations. Copyright Is Granted In Respect Of Original Literary, Musical Artistic Or Audio-Visual Works. The Rights Include The Right Of Reproduction And Communication To The Public Which Are Pertinent To This Paper.

### **COPYRIGHT PROTECTION FOR THE “MONKEY SELFIES”**

The question of copyright protection for the “Monkey Selfies” arises when we look into the sequence of events in the case. Slater has maintained that he had intentionally set up the camera equipment for the monkeys to interact with it.<sup>4</sup>In the original account of the incident, what happened was not only an isolated act of a monkey taking a picture, it took hundreds.

The question of originality can be asserted by the subsequent judgement in Painer v. Standard Verlags GmbH<sup>5</sup>, in the European court.

---

<sup>3</sup>Dr. Ashok Jain, Intellectual Property Law- I (3<sup>rd</sup> ed. 2011)

<sup>4</sup>id.

<sup>5</sup>Painer v. Standard Verlags GmbH, C- 145/10 (the Court of Justice of European Union, 2011)

The Court restated that copyright is available only in relation to a subject-matter, such as a [portrait] photograph where

"... the photographer can choose the background, the subject's pose and the lighting. When taking a portrait photograph, he can choose the framing, the angle of view and the atmosphere created.

Finally, when selecting the snapshot, the photographer may choose from a variety of developing techniques the one he wishes to adopt or, where appropriate, use computer software. By making those various choices, the author of a portrait photograph can stamp the work created with his "personal touch".<sup>6</sup>

Thus, when it comes to photographs, it is important to take into consideration the efforts and thought process involved as well as the production phase. The details in the photograph like the framing, angle of view and lighting, etc. are subjective to each photographer and indicate the creation of a "personal touch". Selection is another important element. The macaque monkey had taken several photographs from the camera however, the process of selection of the particular "monkey selfie" from among those was done by Slater. Duchamp's Fountain is one instance of "found objects" in which an artist selects an everyday object and turns it into an important expression of creativity. Hence, purpose and selection are important. In the case of *Temple Islands Collections v. New English Teas*<sup>7</sup>, the Court held that for photographs "the composition is important...the bringing together of different elements at the right place and the right time are enough to prove intellectual creation" and therefore should have copyright.<sup>8</sup>

Therefore, given that all the elements have been satisfied for the originality of the photograph, it can be strongly argued that Slater would be the copyright owner of the "monkey selfie".

## **I. WHAT ARE THE CHALLENGES INVOLVING THE DOCTRINE OF 'MISUSE OF COPYRIGHTS'?**

"Take Not From Others To Such An Extent In Such A Manner That You Would Be Resentful If They So Took From You." Is The Golden Rule In Copyright Law That Was Established In The Case Of Harper & Row V. Nation Enterprises<sup>9</sup>.

The Creative Work Of An Artist Entitles Him To A "Right To Property". The Exclusive Rights That He Gains From The Mere Creation Of The Work Need Not Always Be Registered With The Copyright Office. Any Invasion In This Right Results In Copyright Infringement And Entails Strict Legal Action. The Particular Case Of Naruto Was Filed Under Copyright Infringement. On The

---

<sup>6</sup>LTC Harms, "Originality" and "Reproduction" in *Copyright Law with Special Reference to Photographs*, Vol 6 No 5 (2013)

<sup>7</sup>*Temple Islands Collections v. New English Teas* PCC 1 (2012)

<sup>8</sup>Andres Guadamuz, *The monkey selfie: copyright lessons for originality in photographs and internet jurisdiction*, Vol 5 No 1 (2016)

<sup>9</sup>*Harper & Row v. Nation Enterprises*, 471 U.S. 539 (1985)

Other Hand, The Doctrine Of ‘Misuse Of Copyright’ Is An Affirmative Defence Which Is Derived From The Doctrine Of “Unclean Hands”. The Supreme Court of United States Has On Several Occasions Referred To The Possibility Of Raising A Copyright Misuse Defence To An Infringement Action.

Why Then Was This Doctrine Not Used By The Defendants As A Defence Against The Allegations In Court?

The Supreme Court, Despite Referring To This Doctrine Has Never Applied Or Explicitly Validated This Defence. As A Consequence Of This, The Doctrine Has Presumptive Legitimacy.<sup>10</sup> The Doctrine Of ‘Misuse Of Copyright’ Can Be Best Understood Along With The Explanation Of The Doctrine Of “Unclean Hands”. According To The “Unclean Hands” Doctrine, A Plaintiff Seeking Equitable Relief Should Be Denied Such Relief If He Does Not Come Into The Court With “Clean Hands”. The Unclean Hands Defence Consists Of Two Requirements: First, That The Plaintiff’s Misconduct Directly And Immediately Relates To The Litigated Transaction; Second, That The Plaintiff’s Misconduct Has Harmed The Defendant. It Is Important To Note Here That The Doctrine Of Misuse Does Not Provide Affirmative Relief But Only Acts As A Defence. This Doctrine Extends To Unfair Competition As Well As Violations Of Public Policy. Largely, The Doctrine Has Been Used In Cases Involving Patent Law But It Has Also Been Recognised In The Field Of Copyright Law.

In The Case Of *Naruto V. Slater*<sup>11</sup>, The Defendant I.E., Slater Could Have Clearly Negated The Doctrine Of “Unclean Hands” Since The Lawsuit Filed By The Plaintiff Had Harmed The Defendant. Slater Had To Not Only Bear The Cost Of Litigation In An American Court (Being A Britisher Himself), But Also The Cost Of Strenuous Amounts Of Pressure On His Photography Career. The Ninth Circuit Had Held That There Was No Copyright Infringement Case That Can Be Made Due To The Lack Of Statutory Standing Of The Monkey. This Piece Of Legislation Highlighted The Underlying Issue – That Of Peta Filing A Lawsuit In The Court Of Law With The Excuse Of Having A “Next Friend” Standing On Behalf Of Naruto. The Court Held That Peta Had Failed To Establish A Significant Relationship With Naruto And Therefore Did Not Have Any Standing As A ‘Next Friend’.

As A Consequence Of The Lack Of Any Statutory Standing By Peta, It Was Largely Written That Peta Had Only Filed For A Lawsuit With The Intention Of Personal Gains For Its Corporation Rather Than For The Benefit Of Naruto, A Macaque Monkey In The Reserve In Indonesia.

Naruto (Peta) Had Lacked Statutory And Constitutional Standing. In Case Any One Of These Standings Could Have Been Established, Slater Would Have Been Free To Use The Doctrine Of ‘Misuse Of Copyright’ Against The Copyright Infringement Claim. The Success Of The Same However, Is Put Into Question Looking Into The Fact That The Supreme Court Has Not Yet Validated The Same. Thus, We Conclude That Regardless Of The Fact That It Was Not Used In This Particular Case, The Doctrine Of ‘Misuse Of Copyright’ Is A Fair And Essential Defence Against The Claims Of Copyright Infringement.

---

<sup>10</sup>Meg Dolan, *Misusing Misuse: Why Copyright Misuse Is Unnecessary*, Vol 17 No 2(2007)

<sup>11</sup>*Naruto v Slater*, 16-15469 (9<sup>th</sup> Circ.:2018)

## **Suggestions**

The Present Case Was Dismissed In The Court Of Law On The Grounds Of Lack Of Statutory Standing Of Naruto. In The Process Of Research For The Current Paper, The Author Has Recognised The Lack Of Research On The Topic Of “Statutory Standing In Copyright Laws For A Non-Human Entity” And Would Thus Like To Propose The Same As A Suggestion For Future Research. This May Eventually Lead To The Expansion Of The Owners Of Copyright And Thus Grant Non-Human Entities Like Animals The Same Grounds Of Ownership As Humans.

## **Conclusion**

The Author Hopes That The Analysis Provided Will Point To The Inaccuracies In The Monkey Selfie Case And Establish The Arguments An A Legally Sound Manner. It Is Hoped That Based On The Facts Of The Case And The Relevant Rulings In The United States And The European Courts, We Can Come To A Conclusion About The Ownership Of The Selfies. It Is Extremely Important For The Survival And Service Of Independent Photographers To Be Have A Universal Recognition Of The Art Of Photography. Leo Tolstoy Remarkd That “An Artist Creates As A Way Of Communicating Feelings To Other People- Oftentimes, Feelings That Can’t Be Expressed In Mere Words”. Such Expression Is True For All Forms Of Art Including That Of Photography. It Has Been Said By Cicero That The “Safety Of The People Shall Be The Highest Law”. Thus, The Law Shall Protect Everyone From Unnecessary Litigation Which Is Motivated By Ill Intentions.

# **Bibliography**

## **Primary Sources**

### **Cases**

Naruto V. Slater, 16-15469 (9th Circ.:2018)

Painer V. Standard Verlags Gmbh, C- 145/10 (The Court Of Justice Of European Union, 2011)

Temple Islands Collections V. New English Teas Pcc 1 (2012)

Harper & Row V. Nation Enterprises, 471 U.S. 539 (1985)

## **Secondary Sources**

### **Books**

Dr. Ashok Jain, Intellectual Property Law- I, Ed. Iii (2011) P.1-2

### **Articles**

The Monkey Selfie: Copyright Lessons For Originality In Photographs And Internet Jurisdiction, Author : Andres Guadamuz, Source: Internet Policy Review, Vol. 5, Issue 1

Naruto V. Slater: One Small Step For A Monkey, One Giant Lawsuit For Animal Kind, Author: Matthew P. Hooker, Source: Wake Forest Law Review

Why A Monkey's Action Of Taking A Selfie Should Expand The Definition Of An Author In The Copyright Act, Author: David Scheider, Source: Touro Law Review, Vol. 34 No. 20

Misusing Misuse : Why Copyright Misuse Is Unnecessary, Author: Meg Dolan, Source: DePaul Journal Of Art, Technology & Intellectual Property Law, Vol. 17, Article 2.