

MONKEYING AROUND IP: ANIMAL RIGHTS TO INTELLECTUAL PROPERTY

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BRIEF BIO

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OUTLINE

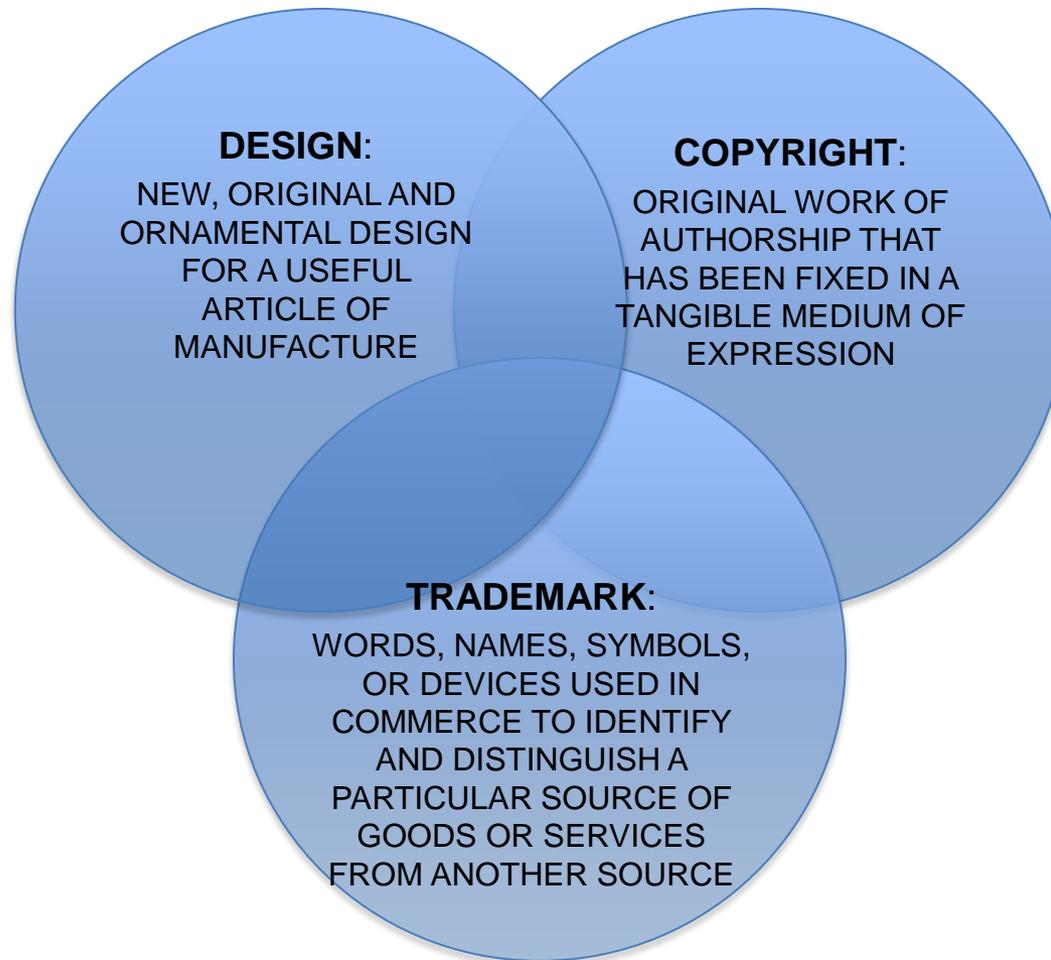
- IP BASICS
- ANIMAL IP RIGHTS
- NARUTO SELFIE
- MADDIE HYPOTHETICALS
- PET OWNERS – TECHNIQUES FOR MONETIZING CUTENESS
- SUMMARY OF COPYRIGHT AND TRADEMARK PROS AND CONS

WHAT IS INTELLECTUAL PROPERTY?

- Intellectual property refers to those legally recognized rights to creations of the mind.
 - These rights are intangible assets like inventions and discoveries; literary, musical, and artistic works; symbols, names, and images used in commerce.

WHAT IS INTELLECTUAL PROPERTY?

- **Copyrights** - original work of authorship that has been fixed in a tangible medium of expression
- **Trademarks** - words, names, symbols, or devices used in commerce to identify and distinguish a particular source of goods or services from another source
- **Trade dress** - protection for packaging or appearance of products
- **Patents**
 - **Design Patents** - new, original and ornamental design for a useful article of manufacture
 - **Utility Patents** – new and useful process, machine, manufacture, or composition of matter, or a new and useful improvement thereof,
- **Trade Secrets** - a formula, practice, process, design, instrument, pattern, commercial method, or compilation of information which is not generally known or reasonably ascertainable by others, and by which a business can obtain an economic advantage over competitors or customers



INTELLECTUAL PROPERTY RIGHTS ARE NOT CURRENTLY BESTOWED UPON ANIMALS

- **PATENTS** are issued to inventors, which have to be people.
 - 35 USC 101 - Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.
 - The decision of the Supreme Court in *Diamond v. Chakrabarty*, 447 U.S. 303, 206 USPQ 193 (1980), held that microorganisms produced by genetic engineering are not excluded from patent protection by 35 U.S.C. 101. It is clear from *Chakrabarty* and subsequent judicial decisions that the question of **whether or not an invention embraces living matter is irrelevant to the issue of patentability**. Note, however, that Congress has excluded claims directed to or encompassing a human organism from patentability. See The Leahy-Smith America Invents Act (AIA), Pub. L. 112-29, sec. 33(a), 125 Stat. 284 (September 16, 2011).
- Trademarks
- Copyrights



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- Patents
- **TRADEMARKS** – governed by the Lanham Act
 - 15 USC 1051 –
 - a (1) The owner of a trademark used in commerce may request registration of its trademark ... by paying the prescribed fee and filing in the Patent and Trademark Office an application and a verified statement...
 - (2) The application shall include specification of the applicant's domicile and citizenship, the date of the applicant's first use of the mark, the date of the applicant's first use of the mark in commerce, the goods in connection with which the mark is used, and a drawing of the mark.
 - (3) The statement shall be verified by the applicant and specify that—
 - (A) *the person making the verification believes* that he or she, or the juristic person in whose behalf he or she makes the verification, to be the owner of the mark sought to be registered
- Copyrights



INTELLECTUAL PROPERTY RIGHTS ARE NOT CURRENTLY BESTOWED UPON ANIMALS

- Patents
- Trademarks
- **COPYRIGHTS**
 - 17 USC 201 (a) INITIAL OWNERSHIP. — Copyright in a work protected under this title vests initially in the author or authors of the work.
 - Fringe of legal landscape – future potential for animal ownership?
 - 201(d)(1) The ownership of a copyright may be transferred in whole or in part by any means of conveyance or by operation of law, and may be bequeathed by will or pass as personal property by the applicable laws of intestate succession.

NARUTO V. SLATER

- Patents
- Trademarks
- **COPYRIGHTS**

- Wikipedia used the photo in Wikimedia Commons because they said there wasn't a person who created the original work and therefore no one owns the copyright to it
- PETA is going to the 9th circuit arguing that Naruto has the rights and that "author" is not limited to human author. District court ruled against PETA in January 2016.



Naruto's selfie in 2011 Using David Slater's camera has resulted in several IP contentions

NARUTO V. SLATER

PETA sued Slater on
behalf of Naruto

January 2016, Judge
granted motion to
dismiss complaint



Naruto is not an “author” within the meaning of the Copyright Act. Next Friends argue that this result is “antithetical” to the “tremendous [public] interest in animal art.” Opp. at 12. Perhaps. But that is an argument that should be made to Congress and the President, not to me. The issue for me is whether Next Friends have demonstrated 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.

NARUTO V. SLATER

PETA appealed in July
2016

9th circuit accepted the
case



Plaintiff's Appeal Brief – Copyright Act does not define/limit “author” and the courts have said that the Act should be construed liberally for the benefit of the public; employers can be an author, so provisions for “no natural person” can include animals

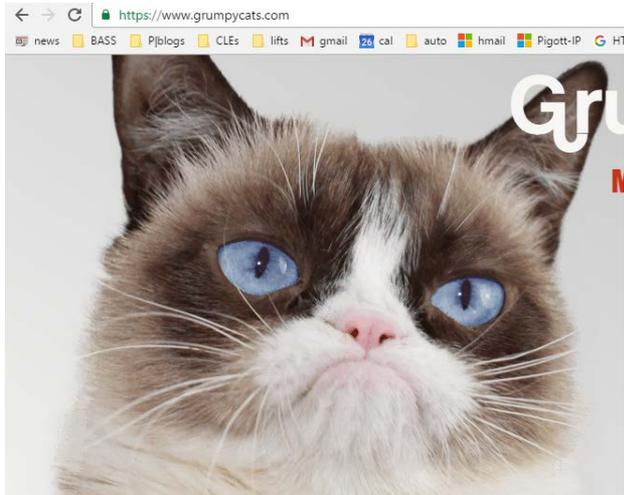
Defendant's Brief - Congress did not plainly say that non-human animals can have standing to sue for copyright infringement. 9th circuit citation “[I]f Congress and the President intended to take the extraordinary step of authorizing animals as well as people and legal entities to sue, they could, and should, have said so plainly.” [*Cetacean Community v. Bush*, 386 F.3d 1169, 1179 \(9th Cir. 2004\)](#) (quoting [*Citizens to End Animal Suffering & Exploitation, Inc. v. New England Aquarium*, 836 F. Supp. 45, 49 \(D. Mass. 1993\)](#)).

PET IP: MADDIE THE COON HOUND

- What can be done to protect IP around pets? Use copyright and trademarks to monetize cuteness



PET IP



- Copyright: Photos, videos, merchandise so that you can stop unauthorized use.
- Apply for trademark of image and/or name; get marked goods into commerce

PROS AND CONS OF COPYRIGHT?

- EASY TO OBTAIN – GET RIGHTS IMMEDIATELY
- NEED TO FILE WITH COPYRIGHT OFFICE
- COSTS ~\$55 IF YOU DO IT YOURSELF

- FAIR USE DEFENSE
- INDEPENDENT CREATION
- NO NOTICE (INNOCENT INFRINGEMENT)

PROS AND CONS OF TRADEMARK/TRADE DRESS?

- MARK WITH TM AS SOON AS YOU START USING THE MARK
- NEED TO FILE WITH US PATENT AND TRADEMARK OFFICE
- COSTS ~\$375 PER CLASS IF YOU DO IT YOURSELF

- NEED TO USE IT IN COMMERCE AND SHOW EVIDENCE OF USE

- SIDE NOTE – YOU SHOULD LOOK AROUND TO SEE IF THE NAME YOU WANT TO USE IS ALREADY IN USE
- <http://tess2.uspto.gov/bin/gate.exe?f=searchss&state=4810:j55v1a.1.1>

CONCLUSION AND Q & A

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