



NARUTO V. SLATER

US Court of Appeals for the 9th Circuit

No. 16 – 15469

D.C. No.3:15-cv-04324- WHO

presented by Nele Carlotta Kopp



Outline

- Background
- Opinion of the US Court of Appeals for the 9th Circuit
 - Standing
 - Concurring opinion (Judge N.R Smith)
- German law
- Conclusion



Background

- **Naruto** = seven-year-old macaque (monkey)
- **David Slater** = wildlife photographer

Who owns the
copyright?

PETA = People for the Ethical
Treatment of Animals

Procedural Background

- **PETA's lawsuit (2015):** PETA and researcher Dr. Antje Engelhardt sue Slater and the publisher of the book
→ They act as "Next Friends" (legal representatives) on behalf of Naruto
- **First instance decision:** The U.S. District Court dismissed the case
→ PETA refused to accept this and appealed the decision
- **Attempted settlement** between PETA and Slater



But...

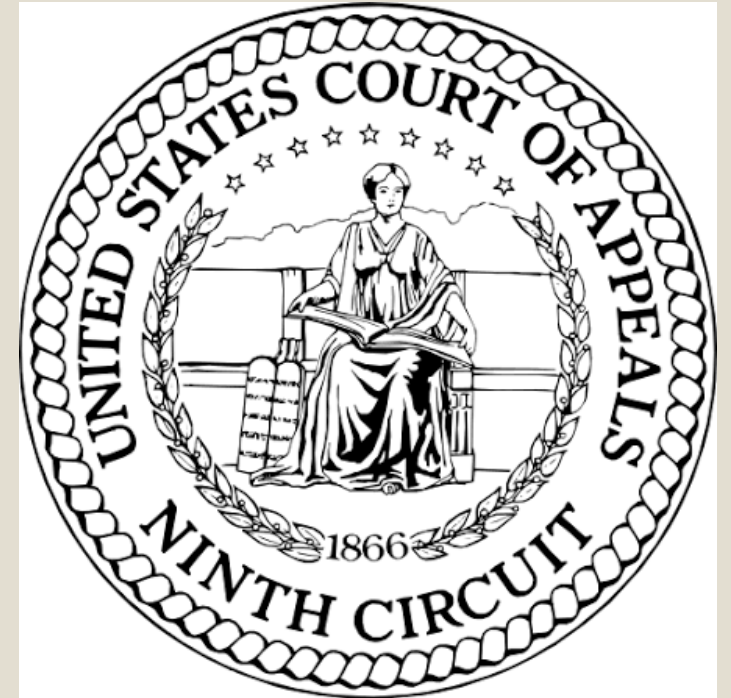
- Rejected settlement
- So the US Court of Appeals for the 9th Circuit had to determine:

Can a monkey sue humans, corporations, and companies for damages and injunctive relief arising from claims of copyright infringement?

Opinion

“We must determine whether a monkey may sue humans, corporations, and companies for damages and injunctive relief arising from claims of copyright infringement. Our court’s precedent requires us to conclude that the monkey’s claim **has standing under Article III of the United States Constitution.**

Nonetheless, we conclude that this monkey — and all animals, since they are not human — **lacks statutory standing under the Copyright Act.** We therefore affirm the judgment of the district court.”



(P): Standing

Procedural law issue
(admissibility)

Standing under **Article III** of the
United States Constitution

Substantive legal issue
(merits)

Statutory standing under the
Copyright Act

(P): Standing



1) **Next friend** - Standing

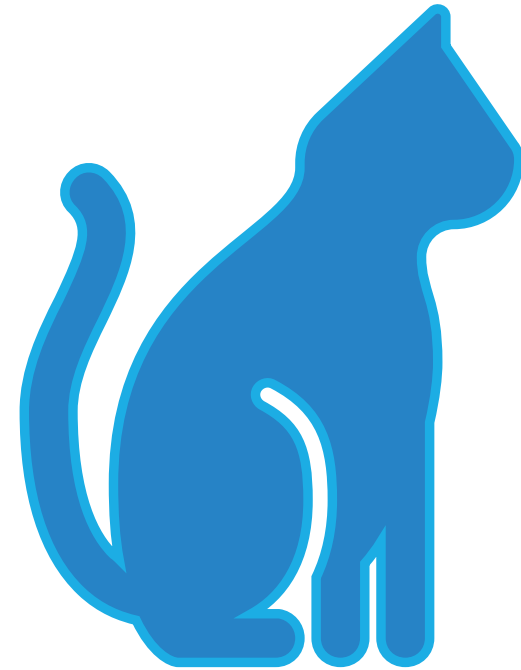


2) Standing under **Article III** of the **United States Constitution**



3) Statutory standing under the **Copyright Act**

1) PETA AS „NEXT FRIEND“?



Legal basis:

Federal Rule of Civil Procedure 17

(2) *Without a Representative.* A minor or an incompetent person who does not have a duly appointed representative may sue **by a next friend** or by a guardian ad litem. The court must appoint a guardian ad litem—or issue another appropriate order—to protect a minor or incompetent person who is unrepresented in an action.

Next friend

- “**Next friend**” = legal representation for individuals lacking legal capacity (e.g., minors)
- **Requirements:**
 - 1) the affected person is unable to litigate on their own
 - 2) close and significant relationship with the representative

PETA as „Next Friend“?

- PETA attempted to sue as "Next Friend" on behalf of Naruto
- Court **rejected this**
Reasons:
 - **No Statutory Basis:** Copyright act doesn't authorize „next friend“ lawsuits for animals
(→ Precedent: *Cetacean Community v. Bush*)
 - **Lack of relationship:** PETA failed to prove a close, established connection to Naruto

Legal conclusion



Twist: Despite disqualifying PETA, the court notes that Naruto's legal standing under Article III of the Constitution is not destroyed.



The lack of a proper “next friend” does not mean the case disappears immediately;



the constitutional question of animal standing must still be analyzed separately

2) Standing under **Article III** of the United States Constitution



Article III, Section 2

The judicial Power shall extend to all **Cases**, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all **Cases** affecting Ambassadors, other public Ministers and Consuls;—to all **Cases** of admiralty and maritime Jurisdiction;—to **Controversies** to which the United States shall be a Party;—to **Controversies** between two or more States;—between a State and Citizens of another State,—between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

Standing under Article III of the United States Constitution

Article III “does not compel the conclusion that a statutorily authorized suit in the name of an animal is not a ‘case or controversy.’”

Cetacean Cmty. v. Bush, 386 F.3d 1169, 1175 (9th Cir. 2004)

(not displayed for copyright reasons)

The *Cetacean* Precedent

- *Cetacean Community v. Georg W. Bush*, (2004)
- Court dismissed case, but defined a **core principle**: Animals do not have standing to sue in U.S. federal courts unless a federal statute expressly authorizes them to do so

Section 2

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Jurisdiction
States shall
or more
another
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Subjects

Standing under Article III of the United States Constitution

Article III “does not compel the

“We are, of course, bound by the precedent set in Cetacean Community until and unless overruled by an en banc panel (Plenum) or the Supreme Court“

3) Statutory standing under the Copyright Act



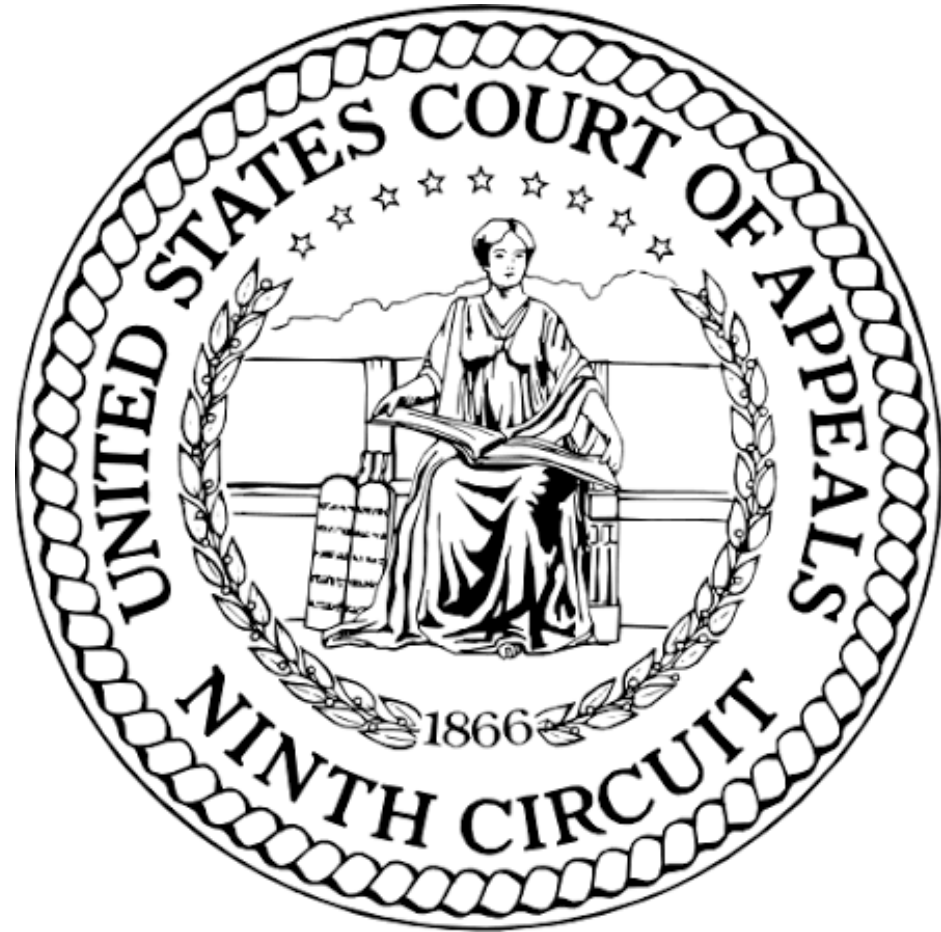
Statutory standing under the Copyright Act

Does Naruto have statutory standing under the Copyright Act?

NO

Why?

- ***Cetacean* Precedent:** animals only have statutory standing to sue if Congress or the President *expressly* state so in the legislation
→ (-) in the Copyright Act
- **Implied Humanity** in the Copyright Act: “*children*”, “*widow*”, and “*widower*”



In the end...

- the court dismissed PETA's legal action, because Naturo lacks statutory standing under the Copyright Act
- **Slater** has the copyright & marketing rights

Concurring opinion (Judge N.R Smith)

- Criticism of the Majority's conclusion in this case
- **Lack of jurisdiction**, because PETA isn't a next friend to Naruto → ultra vires
- **Risk of abuse** and manipulation
- Naruto cannot communicate his own interests

German law

Would this case also be possible under German law ?

- **No Copyright for animals:** Under German law (§ 7 and § 2 Abs. 2 UrhG), copyright requires a "personal intellectual creation," which can exclusively be produced by a **human** being. Therefore, Naruto cannot be an author.

→ An animal can legally function as a tool or aid for an automated picture, but only if the human photographer retains complete control over the creative process.

German law

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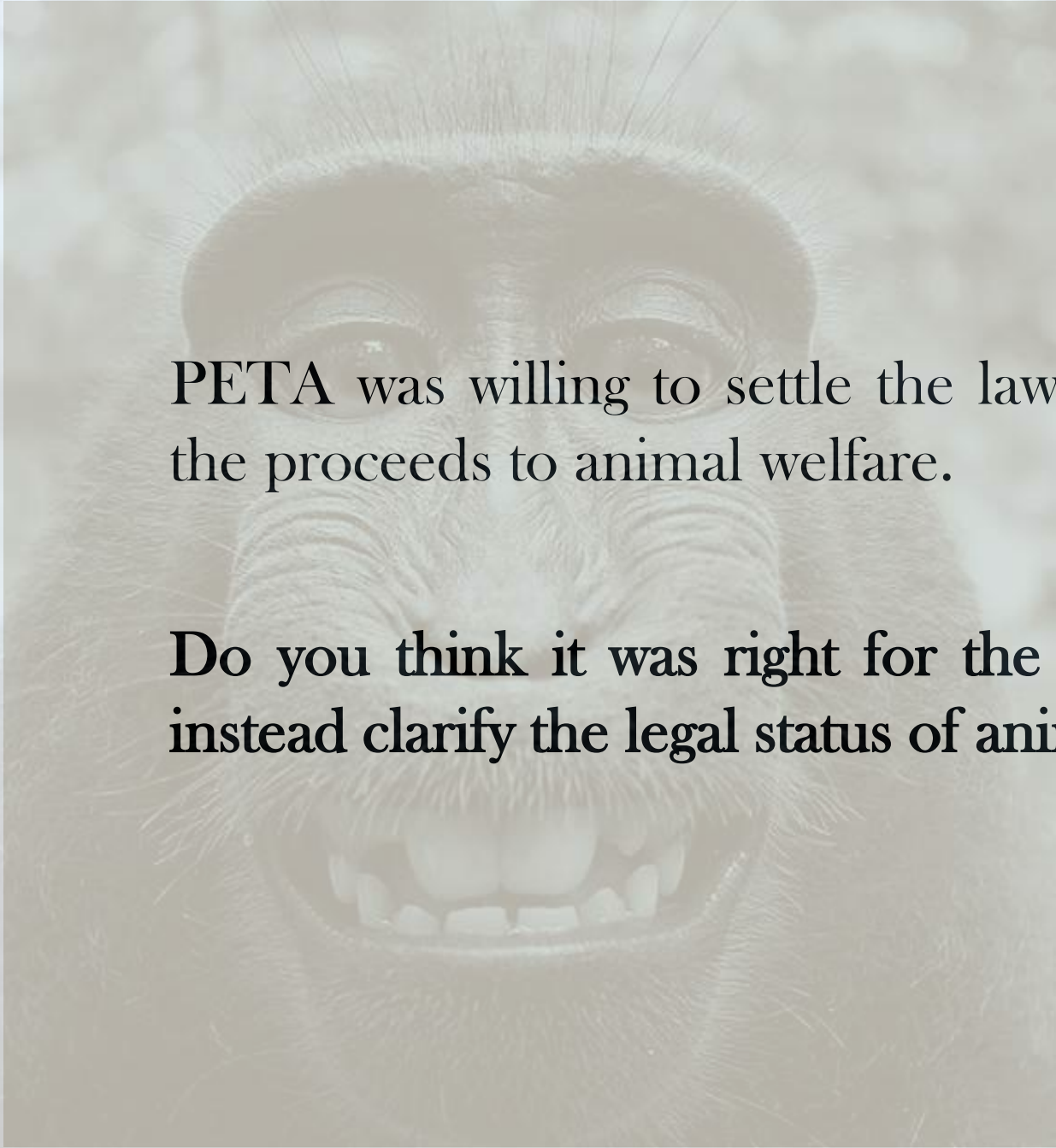
- Slater would need to have had full control over all essential conditions of the shot to have the copyright → Naruto took the selfie

... Public Domain Status in Germany



Conclusion

- unusual decision
- lawsuits of this nature are legally groundless under both US and German law
- No non-human plaintiffs
- animals as legal instruments to promote external financial or political agendas



PETA was willing to settle the lawsuit in exchange for a donation of the proceeds to animal welfare.

Do you think it was right for the court to reject the settlement and instead clarify the legal status of animals under the Copyright Act?