

“We should extend copyright protection to non-human entities such as animals and AI”

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1. Introduction

All jurisdictions have deployed efforts in protecting the citizens' rights by enacting and adopting laws whether done unilaterally- domestically or through joint efforts, on international fora, by signing and/or accessing to international treaties and conventions. Among the protected rights, there are rights to property. While the concept of right to property is broad, one of its components has taken a significant place as it does not cease to prove an ever developing area of law affecting while benefiting all sectors- this is Intellectual Property. In the absence of doctrine imposed definition, and for the sake of proper understanding of this concept, the meaning given to it by the Convention establishing the World Intellectual Property Organisation (“WIPO”) can shed light on a comprehensive understanding of Intellectual Property. In its article 2, it provides for the main components of this right: *“Literary artistic and scientific works; performances of performing artists, phonograms, and broadcasts; inventions in all fields of human endeavour; scientific discoveries; industrial designs; trademarks, service marks, and commercial names and designations; protection against unfair competition; and "all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.”*¹ One of the components of Intellectual Property Rights is Copyright which serves in the protection of creators' rights for their literary, artistic and scientific works.²

Considering the meaning of Intellectual Property and Copyright, it is understood that such rights arise from the use of intellect to create something that becomes part of someone's property. The protection of ownership lies on the determination of the person entitled to commercial exploitation of the creation.³ This brings on the question of whether only humans can be entitled to such protection or whether, non-human entities such as animals and Artificial Intelligence should be new subjects of protection offered by copyright. This issue comes at a time when, animals have in some instances performed acts regarded by some as worth protection by copyright laws and in the century of technology whereby the machines generate works regarded as creative and deserving protection of the law under copyright. This paper assesses the relevance of protection offered by copyrights to the animals and artificial intelligence in

¹ Article 2 (viii) of the Convention Establishing the World Intellectual Property Organization, 14 July 1967.

² WIPO, “*What is Intellectual Property?*”, retrieved at < [What is intellectual property? 2020 \(wipo.int\)](https://www.wipo.int/what-is-intellectual-property-2020) > accessed on 14 August 2021.

³ Dehns, Patent and Trademark Attorneys, “*Ownership of Intellectual Property Rights*”, retrieved at < [Ownership of Intellectual Property Rights.pdf](https://www.dehns.com/ownership-of-intellectual-property-rights.pdf) (dehns.com) > accessed on 14 August 2021.

light of the purposes of copyright law and the criteria for protection. The idea of the author is that not only human entities (including legal personalities) should be entitled to copyright.

2. The purpose of copyright law

In the Berne Convention for the Protection of Literary and Artistic Works, (the “Berne Convention”), the countries expressly reiterate their desire to protect the rights of the authors in their literary and artistic works in the most effective and uniform possible.⁴ This protection is both economic and moral form. Creative rights of authors, performers, broadcasters and many others whose livelihoods depend on their creation and the recognition of their rights. With copyright, the authors are motivated to create more, invest and generate employment.⁵

While it should not be disputed that humans are the primary subjects of copyright protection, some opinions have emerged arguing that non-human entities such as animals and Artificial Intelligence should also benefit the protection granted by copyright laws.

In the famous case which involved NARUTO, a Crested Macaque, by and through his Next Friends, People for the Ethical Treatment of Animals, Inc. as the Plaintiff vs. DAVID JOHN SLATER; BLURB, INC, known as “Monkey Selfie”, the Defendant Slater left his camera unattended and an autonomous *Macaca nigra*, named Naruto picked up the camera and took a series of photographs of himself one which became famous. Slater admitted that Naruto took the photographs.⁶

If legal scholars and laws in place recognize copyright as those applying to the creativity of the authors, expression of ideas in different forms, the recognition of copyright has economic and moral rights: the first enable the creators to exploit and have control over the use and benefits arising from their works while the second gives the acknowledgment as the author and prevent others from using it.⁷ Allowing non-human entities including animals and artificial intelligence should consider economic rights and moral rights arising from the creation and the threshold of both economic and moral is not a requirement. Consequently, even if animals and artificial intelligence may not be in a position to have control over the economic fruits of their creation, at least the recognition of their creations should be privileged

⁴ Berne Convention for the Protection of Literary and Artistic Works, as amended on September 28, 1979.

⁵ Bartleby Research, “*The Purpose of Copyright Laws*” retrieved at < [The Purpose Of Copyright Laws - 1130 Words | Bartleby](#) > accessed on 14 August 2021.

⁶ NARUTO, a Crested Macaque, by and through his Next Friends, People for the Ethical Treatment of Animals, Inc., Plaintiff-Appellant, v. DAVID JOHN SLATER; BLURB, INC., a Delaware corporation; WILDLIFE PERSONALITIES, LTD., a United Kingdom private limited company, Defendants-Appellees, retrieved at < [16-15469.pdf \(uscourts.gov\)](#) > accessed on 15 August 2021.

⁷ WIPO, *Supra* note 2, p.24.

provided that the efforts that led to the creation are undisputedly attributable to the animal or artificial intelligence.

With regards to the artificial intelligence, the prominent legal scholars also do not exclude the fact that copyrights, in their nature, do not expressly exclude the recognition and protection of creations made with minimal or absence of human interventions. They rather admit that it has been the matter of the laws of the countries which only considered humans (motivated by the fact that the technology had not gained ground to expose its potential in relation to the creativity). Andrez Guadamuz gave a perfect description of how national laws were enacted with a rigidity of attributing the essence of creativity to humans. He also admits that with the future, artists using the artificial intelligence where the machines are given capacity to receive data and produce a given creation, they nowadays go beyond mimicking and generate contents that are even better than the human, disabling humans to distinguish between human-generated and machine-generated content.⁸

Considering the objective and purpose of protection of copyright laws, it is necessary to go beyond the capacity of the creator to enjoy the economic protection arising from the creation in order to be protected by copyright laws. Instead, there is a need to put much efforts in protecting animals, artificial intelligence and other non-human beings under copyright laws to the minimum of acknowledgment and recognition of their creations to the extent of their originality.

3. Creations by non-human entities should be allowed protection offered by copyright laws

The idea of offering protection under copyright laws to the creations made by non-humans should not only be substantiated basing on the above perspective-of purpose of copyright but also the perspective of the criteria set by the legislations in place in order to protect copyright.

Article 3 of the Berne Convention lays down the criteria upon which the protection should be guaranteed. The criteria for protection include: the nationality of the author; place of publication of the work; residence of the author; published works. When the above criteria are assessed against the works that are generated by non-human entities, the later immediately lose protection not because their originality is contested but rather because the inception of the laws governing intellectual rights have failed to foresee the potential advance in technology which would substantially take over human creativity or

⁸ Andrez Guadamuz, WIPO Magazine, “*Artificial Intelligence and Copyright*”, retrieved at < [Artificial intelligence and copyright \(wipo.int\)](https://www.wipo.int/magazine/issue-10-2021/artificial-intelligence-and-copyright) > accessed on 15 August 2021.

deliberately ignored the potential of animals in producing works which would otherwise be protected had they been able to acquire the protection.

We are of the view that, the criteria set by the convention focused much more on economic aspect of providing incentives to humans for their creations while the objective of intellectual property laws and copyright in particular go beyond that to offer the recognition of the works.

The relevance of protection of copyright for animals can be summarized in an objective and inclusive answer to the following question: *“If a photographer is granted copyright for the pictures s/he took and edited using a camera of the latest technology, a drone for example, why wouldn't a monkey like Naruto which managed to take a selfie be granted a similar copyright?”* Of course, an objective answer can only be raised by the reasonable liberals in terms of IP such as Next Friends, People for the Ethical Treatment of Animals, Inc in the aforementioned Naruto case. Their submission that: *“Naruto [and any other animal] has the right to own and benefit from the copyright in the Monkey Selfies in the same manner and to the same extent as any other author. Had the Monkey Selfies been made by a human using Slater's unattended camera, that human would be declared the photographs' author and copyright owner. While the claim of authorship by species other than homo sapiens may be novel, “authorship” under the Copyright Act is sufficiently broad so as to permit the protections of the law to extend to any original work, including those created by Naruto. Naruto [animals] should be afforded the protection of a claim of ownership, and the right to recover damages and other relief for copyright infringement”*.⁹

The author should be considered as the authorship should be a matter of what is done irrespective of who is doing it. In that case, if a monkey takes a picture in the same way a photographer like Robert Doisneau did while taking the faibles of human nature, and a computer can generate a melody that a guitarist is able to make, therefore a the photographer, the monkey, the computer and the guitarist are all artists whose work should be recognized provided that they are original creators especially that for a copyright needs to be original work of authorship irrespective of its literary or artistic merit.¹⁰

While the international treaties and conventions in place aim at the protection of economic rights of the authors and moral rights such as recognition, it is self-evident that all jurisdictions have adopted their laws in the efforts of implementing those international instruments, a continued denial of recognizing copyrights to animals and other non-human entities yet their creativity potential is undisputed results into the violation of the States to not defeat the object and purpose of the treaty not only prior to its entry

⁹ Complaint for Copyright Infringement, para 5, retrieved at < [PETA_monkey_selfie_2015.pdf\(animallaw.info\)](#) > accessed on 15 August 2021.

¹⁰ WIPO, “Module2: Copyright”, p.41.

into force but also when it is into force. This denial occurred before the States started enforcing the intellectual property instruments which resulted into violation and the same persisted until today.

4. Conclusion and recommendation

In light of the foregoing views, the author is of the view that at the core of intellectual property rights and governing instruments on both international and domestic levels, the primary purpose was not only economic exploitation but also the recognition. With the protection of artistic works by the copyright laws in the benefit of works by animals and artificial intelligence as well as other non-human entities, there would be a harmony in the protection of the rights on the two fronts.

The author recommends that the States and academicians change the trend to adjust laws and accommodate changes since it has become clear that animals and advance in technology have the potential of creating what was created by humans in the past. This will even benefit not only the animals but also their owners (be they individuals or the States) and the owners of the machines owners who will collect the benefits from the works of their machines and use them in maintenance of the artificial intelligence.

5. REFERENCES

Legal texts

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