

Podcasts | June 23, 2026

# Can a Monkey Sue You for Copyright Infringement?

## SPEAKERS

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In this episode of *No Infringement Intended*, [Austin Padgett](#) and [Rusty Close](#) unpack the infamous monkey selfie case — *Naruto v. Slater* — where PETA sued a wildlife photographer on behalf of a grinning Indonesian macaque, arguing the monkey owned the copyright to his own selfie. They break down why the Ninth Circuit dismissed the claim, why the court is deciding who is actually a friend of the monkey, and why the question of whether photographer David Slater actually owns the photo remains unanswered to this day. Austin and Rusty connect the case to the AI copyright debate, explaining why a ruling about a monkey pressing a shutter is now the legal cornerstone for how courts and the Copyright Office are answering the question of who — if anyone — owns AI-generated work.

*No Infringement Intended*, hosted by Rusty Close and Austin Padgett, is your go-to podcast for exploring the fascinating intersection of intellectual property and pop culture.

## Transcript

### ***No Infringement Intended* — Can a Monkey Sue You for Copyright Infringement?**

**Hosts:** Austin Padgett and Rusty Close

**Recorded:** 5/27/26

**Aired:** 6/23/26

#### **Austin Padgett (00:13):**

Come one and come all. It's time for gavels and gravy. Welcome to *No Infringement Intended*, an intellectual property podcast of our law firm, Troutman Pepper Locke. Hosted by the true-blue bad boys of intellectual property, Rusty Close and me, Austin Padgett. Today, we've got monkeys, we've got selfies, and we got a story that starts in an Indonesian jungle in 2011 and somehow ends up at the center of the artificial intelligence debate happening right now. You're not going to want to miss this one. With that tease in place, let me ask you to make sure that you're subscribed and then smash those five stars for your boys while you're at it. If you haven't reviewed us in a while, do it again and keep those five stars fresh. As always, we'll start with our mailbag. Looking through it, we've got something from Lydia, who says this, "Amy Poehler won the Golden Globe for the best podcast last year. You will not dethrone her. A legal podcast simply cannot win. Do you have a real plan or are you just tilting at windmills?" Rusty, how's that hit you?

#### **Rusty Close (01:20):**

Yeah, I'm going to take it a little bit personally, I think. I mean, for one thing, I question whether Lydia has even listened to our podcast because we're intentionally not just a legal podcast. I think we've tried to really move away from that designation.

**Austin Padgett (01:34):**

For sure. I mean, we've offered relationship advice. We've done a lot of good here for the world. Healing the world is what I'd say our podcast is about.

**Rusty Close (01:42):**

We've introduced the world to guitar pedal effects. We've talked about double neck guitars. We've really, really stretched the bounds of what a legal podcast can talk about.

**Austin Padgett (01:52):**

That's right, and I want to be real clear here, Lydia. Our goal is a very realistic one. We just want to be in the mix for a nomination for the Golden Globe for the best podcast. That is the goal. Here's the breakdown – I've looked at this. To be eligible, we need original content, at least six episodes in the year with a length of 30 minutes or more. Check, check, check. We're hitting all those. Now, here's the rub. The Golden Globes makes a top 25 list based on data from podcast platforms. To get in the discussion, you don't have to be number one, you just have to be number 25. Once we're in the room, I feel like the pod sells itself.

**Rusty Close (02:35):**

100%. I feel like we're doing our part and it's the audience and the rest of the world that's really letting us down.

**Austin Padgett (02:42):**

No doubt about it. I mean, we're going to get there. It may take more time, Lydia, than we originally hoped, but inch by inch. Rome wasn't built in a day, so they say.

**Rusty Close (02:51):**

I had the same thought, but it was Rome wasn't conquered in a day. I think you're the one who got it right.

**Austin Padgett (02:56):**

Yeah, there is a particular day that we, I don't know if celebrate's the right word, but associate with such an event so. Here we sit. It's graduation season as we're recording this. Rusty, you guys have any graduates this year in your house?

**Rusty Close (03:13):**

That could be a trick question. We don't have any high school graduates. Do you guys celebrate the graduation from elementary school?

**Austin Padgett (03:20):**

Yeah. Here's the wrinkle, is that this has become kind of the "Is Die Hard a Christmas movie?" type of question.

**Rusty Close (03:27):**

Yes. Is a hot dog a sandwich?

**Austin Padgett (03:29):**

Exactly. Yeah, for sure. We're all done with elementary school, but we do have two moving on to high school. This year we had a big celebration. I don't know if we called it a graduation, but they walked across the street from the middle school to the high school and therein became men and women introduced into high society.

**Rusty Close (03:50):**

Yeah, we had, so our middle graduated fifth grade. She'll be going on to a new school next year. Our school system does a similar thing where the eighth graders walk from the middle school to the high school. It's not merely across the street. It is about a two-mile walk in their case.

**Austin Padgett (03:56):**

Oh, wow. Okay.

**Rusty Close (04:02):**

Yeah. But it's a big deal.

**Austin Padgett (04:10):**

Physical fitness is involved in it as well. Wow.

**Rusty Close (04:12):**

Absolutely. Yeah, it's part of the if you can't make it to two miles, you can't matriculate kind of thing.

**Austin Padgett (04:18):**

I like that. Yeah, additional requirements on top of it because there's not enough on the kids these days.

**Rusty Close (04:24):**

Standardized tests and a two-mile walk at your own pace.

**Austin Padgett (04:28):**

I love it. I love it. Well, one of the best parts about graduation season is the commencement address, and there have been some great ones through the years. Rusty, you remember any of the speeches that you had at your commencements or any famous speeches that you love?

**Rusty Close (04:43):**

I thought about this. I do not remember who even spoke at high school graduation. I do remember we had it in the old Atlanta Omni, which was a pretty cool experience, one of the few that had their graduation ceremony there. Little known secret, I went to college from '96 to 2000, but I didn't actually graduate until 2003. I left some credits on the table that I needed to take care of.

**Austin Padgett (04:56):**

For sure. Yeah.

**Rusty Close (05:08):**

I didn't actually go and walk for that one. Law school graduation, I remember it being outside in front of the law school. We had decent weather, but again, don't really remember the speaker. When I graduated from Georgia Tech, I don't really remember the speaker for that one either. I think in all cases I was just happy to be done, and so let's get through this ceremony.

**Austin Padgett (05:28):**

No, I hear you for sure. Yeah. The main one for me is I remember my high school graduation. A beloved principal had retired just before we finished, so our last year was with a new principal, and the old principal came back and gave, I think it was the commencement address. It may have been one of the other speeches.

**Rusty Close (05:47):**

That's pretty cool. That's a cool thing to do.

**Austin Padgett (05:49):**

Kind of a biblical reference to the "a cord of three strands is not easily broken" thing, and he had, they represented things. But I mean, he was a great dude, and I distinctly remember his speech. It was before the viral days.

**Rusty Close (05:56):**

Sure. Well before.

**Austin Padgett (06:04):**

Yeah. Had it been, I have no doubt that Mr. Helms's speech would have rang out throughout the ages. I mean, this year had some viral moments with Eric Church delivering the address at the University of North Carolina. I don't know if you saw that one or not.

**Rusty Close (06:20):**

I did see some clips from that. What I was wondering is, did Eric Church go to the University of North Carolina or does he have any ties to it?

**Austin Padgett (06:28):**

I don't know if he went there, but he's definitely a huge fan.

**Rusty Close (06:31):**

Massive Tar Heel fan.

**Austin Padgett (06:33):**

Yeah, and probably, I believe, went there. I think there's some – I watched the entire speech. It's actually not that long, but he goes through the six strings of the guitar and what they stand for, kind of like the three strands are not.

**Rusty Close (06:44):**

Yeah, he's not stepping on our content, is he?

**Austin Padgett (06:46):**

Not yet. But he was watching himself, for sure. You could tell there was a dance going on. No doubt about it.

**Rusty Close (06:52):**

We're on his radar.

**Austin Padgett (06:53):**

Yeah, exactly. But there's also been labeled what is now called an AI booing trend. I don't know if you've seen any of this. It's basically the fact that if there's a speaker that praises AI in any way, the crowd of new graduates immediately turns on them and starts booing them. Just a few weeks ago, we had our big trademark law

conference where about 10,000 attorneys descend upon a city.

**Rusty Close (07:20):**

Of the coolest attorneys.

**Austin Padgett (07:21):**

The absolute coolest. The trend is, rather than actually go to the conference, you go out and you meet people all day.

**Rusty Close (07:29):**

Sure. I'm not really here for the conference. I'm here for the events around the conference.

**Austin Padgett (07:33):**

Exactly. As a guy who does not drink coffee, the number of coffees I fake drink is pretty astounding. But it's also interesting that this year, I mean, a lot of people wanted to talk about AI.

**Rusty Close (07:47):**

Yes.

**Austin Padgett (07:48):**

I felt like about day two, I was starting to be like, let's talk about anything else.

**Rusty Close (07:52):**

Literally anything.

**Austin Padgett (07:54):**

Right. Yeah, exactly. Any topic of any type, I will find it interesting. I want to take you back to our very first episode when you told me about a guy named Scott Borchetta.

**Rusty Close (08:07):**

I remember it fondly, yeah.

**Austin Padgett (08:08):**

Remind me of who he is.

**Rusty Close (08:10):**

He was the founder of the record company Big Machine, which is who Taylor Swift signed her first deal with. My recollection is it was a six-album deal. Big Machine, as is common in any such situation, owned the master recordings of her albums and then sold those master recordings or the rights to them ultimately to Scooter Braun, which ruined Taylor Swift's life, more or less, allegedly.

**Austin Padgett (08:43):**

That's exactly right. This year Borchetta goes to Middle Tennessee State University, or MTSU, if you've ever heard of it, to give the commencement address for the College of Media and Entertainment. It's a big school, so the separate colleges of the topic separating the schools, they have their different graduation.

**Rusty Close (09:03):**

That's just south of Nashville, right? Isn't MTSU?

**Austin Padgett (09:06):**

Correct. They've got a big kind of music and arts and media program.

**Rusty Close (09:11):**

Yeah. Okay.

**Austin Padgett (09:12):**

I should mention that this school within MTSU is actually called the Scott Borchetta College of Media and Entertainment. There was a large donation at one point of Big Machine dollars. Borchetta gets invited to give the commencement address, and he starts discussing AI's current place in the industry and how it continues to change streaming, social media, et cetera. Then he says this, and I've got the quote: "AI is rewriting production as we sit here." He's essentially highlighting the inevitability of what's going on. Per the trend, the students just start booing.

**Rusty Close (09:49):**

Boo.

**Austin Padgett (09:50):**

Exactly. Borchetta's response was very much along the lines of how I give my kids the "life's not fair" speech, which is never effective, but continues to get handed down from generation to generation. In response to the boos, I've got... I'll try to read it as he gave it. He said, "I know it. Deal with it. Like I said, it's a tool. Hey, like I said, you can hear me now or you can pay me later. Hey, then do something about it. Okay, it's a tool. Make it work for

you.” He continues to go on with his written speech and says, “The things you learned in your first year here may already be obsolete.”

**Rusty Close (10:30):**

He’s really reading the room on this speech.

**Austin Padgett (10:33):**

Yeah, exactly. Rusty, on that line, do you have any advice for the graduates of 2026?

**Rusty Close (10:39):**

I first want to know if he then walked out of the auditorium and shook his fist at the cloud. How far did he carry this imagery on as being the old man?

**Austin Padgett (10:48):**

Yeah, I should say that I just stopped there with those comments. I did not continue to watch the rest. I just got my transcription real quick because I saw an article that this had happened and I was like, “That’s pretty amazing.”

**Rusty Close (10:58):**

In terms of what advice would we give to the graduates of 2026, I mean, it’s the reality. We’re all dealing with it day to day and figuring out how it’s going to fit into our lives. I don’t know that I’d necessarily say just abandon all hope and go to trade school or something like that, but I do think you have to figure out a way that you can do something where AI is a supplement to what you do and a tool that goes along with what you do, but doesn’t just completely take over what you do.

**Austin Padgett (11:24):**

No doubt about it. Well, this brokers the conversation that you and I have been avoiding to some degree on the AI front, whether it’s coffees or wherever. We’ve had echoes of AI stuff in different episodes where we talk about technological change. I don’t know about you, but the AI issue becomes all-consuming, and it gets boring really quickly, as we were saying. I already live way outside the city in what many of my colleagues think is a bunker, so I don’t want to lend any more thought in that direction. My thought here is that we’ll take this topic in pieces across different episodes, not in any linear fashion, but we’ll build our own kind of encyclopedia that people can look back at and get some thoughts on here and there. You have anything else to that effect?

**Rusty Close (12:11):**

My only hope is that they don’t just take all of the recordings that we’ve done so far and create a library of our voices so that AI can just generate these episodes without our input.

**Austin Padgett (12:23):**

It's all work product, man. We're just the source.

**Rusty Close (12:26):**

That's right. That's right.

**Austin Padgett (12:28):**

That's right. For the first piece of the conversation, I want to start with a monkey named Naruto, or at least the monkey some people think is named Naruto, but we'll get there. Let's simplify this and go back to 2011 in the jungles of Indonesia. There's a British wildlife photographer named David Slater who sets up a camera on a tripod. The general account Slater has given is that he had been spending time with this troop of macaques, which I'm just gonna call monkeys for a lot of different reasons.

**Rusty Close (12:57):**

Let's do that.

**Austin Padgett (12:58):**

Okay. He's been building their trust over several days and he set up this camera in a way that the curious monkeys could interact with it and with the idea that they might take it and take interesting shots. He's described it as a deliberate creative strategy, not just some accident. There's some reasons there and then we'll get to it. But, Rusty, things get murky in the jungle, as they always do.

**Rusty Close (13:21):**

I was gonna say, that's a phrase I live by.

**Austin Padgett (13:24):**

Yeah, for sure. Welcome to the jungle, so to speak. The details of exactly how the tripod was set up, whether it was on the ground, elevated, what lens he was using, whether the camera was on a timer or just set to fire when the shutter was pressed, I can't state that with confidence in our episode here today. I'm gonna take him on his word for it just for the sake. It doesn't really impact our analysis – deep, thoughtful analysis that we'll provide here. But I just want to say from what I've read and what I've listened to, there's some different accounts of how all this went down. I'm not sure which is more accurate, which is more embellished over time through retelling, or maybe we have the old massaging the facts to fit the law that sometimes happens. As you might expect, the details of how deliberate this setup was are legally significant, and we'll get into that. These monkeys are curious about the camera equipment and one, possibly several of them, handle the camera and it seems press the shutter on it. As you can imagine, lots of pictures, but one stands out particularly, and you may have seen it. It's a picture where the camera's pointed back at this crested macaque monkey and it appears to be smiling, really huge grin,

having a great time with this camera. Slater gets back from his trip and, as nature photographers do, figures out how he's going to publish this and monetize the pictures. The picture I mean is this particular one, and it goes viral. Are you following me so far?

**Rusty Close (14:55):**

Yeah. My only question, you may not know the answer to this, but I'm just thinking if you put a tripod with a camera on it and just leave it, even if I did that with my kids or your kids, inevitably it would be knocked over in mere moments. Do we have any idea of did he kind of secure the tripod at least so that it wasn't just, oh, wow, they're picking it up and hitting each other over the head with it kind of thing?

**Austin Padgett (15:18):**

That's a good question. You would have to hope that he had a lot of padding around. Maybe it was a custom configuration.

**Rusty Close (15:25):**

Right. But you don't know? Okay.

**Austin Padgett (15:27):**

I don't know, in all candor.

**Rusty Close (15:28):**

Fair enough.

**Austin Padgett (15:29):**

It did remind me a lot of at my wedding, we put the disposable cameras on each table and let people take pictures. Some did.

**Rusty Close (15:38):**

Risky move.

**Austin Padgett (15:39):**

There was one particular child who was very dear to us who took amazing but very candid pictures of a lot of different things that day. I think he used like four or five of the cameras.

**Rusty Close (15:52):**

Good for him.

**Austin Padgett (15:53):**

When we get them back and we take... This was back in the day, you take them to get developed.

**Rusty Close (15:58):**

Sure.

**Austin Padgett (15:58):**

It was quite the surprise when we opened up the pictures and still have them and hold them dear. This image goes viral and it appears on a research website, like an encyclopedic website, let's say, with this note and it says – and this is a third-party website, has nothing to do with Slater or any of his work – and it says, “This file is in the public domain because as the work of a non-human animal, it has no human author in whom copyright is vested.” After discovering this, Slater requests the removal of the picture from this website. There's a legal point here. Rusty, I think I've told you about this legal principle before, but have I told you about copyright ownership and specifically my beach vacation story that I use?

**Rusty Close (16:47):**

I believe so, where you offer to take the family picture. When you stumble upon someone at the beach, family taking a picture, you offer to take the picture and then you let them know, “and now I own the copyright in that picture that's on your phone or camera.”

**Austin Padgett (17:01):**

Exactly right.

**Rusty Close (17:03):**

A hilarious vacation game.

**Austin Padgett (17:04):**

So funny. Everyone has a great time with that one. I've only done it a few times and I try to really sell it as a joke and it doesn't land any particular time. But it is a great example that under the general rules of copyright, whoever creates the thing owns it from the outset. There are some important exceptions that we've talked about in other episodes, but for our purposes, that's what we're talking about here. So, when I take the picture of the family, I own the picture. There's undoubtedly an implicit license when I hand back the phone, they can do whatever they want with it and that sort of thing, post to their socials, all that kind of stuff, but I still own it. They can't change that without a writing from me.

**Rusty Close (17:45):**

That's right. Take me to court.

**Austin Padgett (17:47):**

Yeah, it's absolutely a huge position of power and a responsibility I take incredibly seriously.

**Rusty Close (17:52):**

I do think there is no better time than a family at the beach trying to take a decent picture with kids. That's usually when everyone is at their absolute best and having just the best time they've ever had. It's not stressful at all. There's no bickering going on. So, I can see why the joke would just hit just right at that moment.

**Austin Padgett (18:13):**

Correct. It's particularly great because I grew up down on the Gulf Coast and a lot of these people are all in matching outfits. It's really great to know they were just getting together. Maybe there will be a professional photographer at some point, but I will happily jump in and take those pictures when they're all in denim or they're in their khaki pants and white tops, those sorts of things.

**Rusty Close (18:34):**

White tops for sure. Yeah.

**Austin Padgett (18:34):**

No doubt. What we have here is a battle for claiming the creation of this picture. Rusty, you can probably intuit both sides' arguments. You got Slater and then you got the website. So, Slater says what?

**Rusty Close (18:49):**

He says, "I set up this whole scenario. It's my camera, my tripod. I put it into play, and I'm just waiting for the situation to occur where the picture gets taken. But I've done, whatever, I've gotten it to the goal line sort of thing."

**Austin Padgett (19:06):**

No doubt. Perfect. Then the website on the other side says that the copyright is held by the creator. The macaque took the picture, the monkey owns it.

**Rusty Close (19:15):**

You are the monkey on the beach.

**Austin Padgett (19:16):**

That's right.

**Rusty Close (19:17):**

In this scenario.

**Austin Padgett (19:19):**

That's exactly right. Yeah, and I'll own that. This is a dispute that doesn't turn into a court decision, but there is some pouring on here. The U.S. Copyright Office has this book, and when I say book, it's a digital publication called the Compendium. It's a kind of instructional manual about what can be registered as a copyright and the procedures around registration. As part of that manual, it includes examples of certain situations and the Copyright Office's view on them. In its 2014 revisions, the Copyright Office includes this example of certain types of works that are not copyrightable. Number one on the list is a photograph taken by a monkey, and that's an exact quote. Side note here, that same section, which is one of my favorites, lists something that's not copyrightable is an application for a song naming the Holy Spirit as the author of the work. If you make that claim of supernatural connection, the Copyright Office is actually going to take you up on it—

**Rusty Close (20:22):**

Sure.

**Austin Padgett (20:23):**

—and view the work as without human authorship for its purposes.

**Rusty Close (20:26):**

There's always, I suppose, the inspiration for any song comes from somewhere, but maybe let's just go ahead and take credit for writing the song. Don't necessarily turn it over to the Holy Spirit.

**Austin Padgett (20:39):**

Exactly. For Slater's part, he said that the unpaid distributions at this point of this photo, that it was just killing his business. He had a real winner here, and the virality of it plus what he viewed as unauthorized publication and distribution, it didn't make dollars for him.

**Rusty Close (20:57):**

Sure.

**Austin Padgett (20:57):**

I'd tell you that that would be the end of it, but things are about to get worse. Slater takes this photo, and he publishes the monkey's picture in a book called *Wildlife Personalities*. Rusty, this is going to seem out of nowhere, but what do you know – and this is probably where we're going to get notes on this episode from some folks – what do you know about the People for the Ethical Treatment of Animals, or otherwise known as PETA for short?

**Rusty Close (21:23):**

I'm glad you asked. The main thing, other than they like to stick their nose into stuff, I think they've had for many years a campaign that is essentially, "I'd rather wear nothing than wear fur." Whether it's actresses or musicians or models or whatever, have more or less posed unclothed for these PETA ads to bring attention to this.

**Austin Padgett (21:49):**

Right. PETA sees an opportunity here, and they sue Slater and the publisher for copyright infringement on behalf of the monkey that it names Naruto. Specifically, the case was brought by Naruto, a crested macaque, by and through his Next Friends, which is an important phrase, People for the Ethical Treatment of Animals, Inc. and Dr. Engelhardt, against Slater and the publishers at issue of this book. Dr. Engelhardt is a primatologist who had actually studied the macaques on Naruto's reserve, and from the records, it appears that she later withdrew from the litigation. I don't have any more than that.

**Rusty Close (22:31):**

Initially, she was on the PETA side. She wasn't being sued. She was one of the...

**Austin Padgett (22:35):**

Correct. She is one of the next friends.

**Rusty Close (22:37):**

Okay. She was an expert. I got it. Okay.

**Austin Padgett (22:39):**

That next friend reference is the legal mechanism that PETA uses, and it allows – in a court, it allows someone to sue on behalf of another party who's unable to sue themselves. Usually, you're thinking of a minor, a prisoner, someone who's mentally incompetent. The big case at the Supreme Court was this case called *Whitmore v. Arkansas*, and the Supreme Court held that a next friend has to demonstrate a significant relationship with the party and provide a valid reason why that real party cannot appear. We've got to have a real relationship with Naruto and a reason that Naruto can't come to the United States.

**Rusty Close (23:18):**

Sure.

**Austin Padgett (23:19):**

California specifically and get this thing done. The claim in the lawsuit is that Naruto is the author and the copyright owner of the photos and is entitled to the proceeds. So, Rusty, thinking about this, what bigger opportunity is at issue here for PETA?

**Rusty Close (23:35):**

Well, I suppose if they get their way where Naruto can be, has standing to sue in a lawsuit and can be the owner of a copyright, it leads you right down the road to saying that the monkey is a person, right?

**Austin Padgett (23:52):**

Yeah, yeah. Huge implication.

**Rusty Close (23:53):**

Okay.

**Austin Padgett (23:54):**

There are probably some other aspects of this that, this was a big photo and this is a big deal even still at the time. You've got a fundraising organization like PETA getting publicity like they do for naked celebrities and things like that.

**Rusty Close (24:09):**

Maybe that ad campaign is getting a little stale.

**Austin Padgett (24:11):**

Yeah, it's time to be the monkey lawsuit people now.

**Rusty Close (24:14):**

Rebranding of sorts.

**Austin Padgett (24:17):**

To be fair, I think there are a few documentaries about PETA. There was one on HBO not too long ago about primates. Stuck in some pretty strange, probably terrible positions. I think PETA was at the head of trying to get some of this resolved through a legal mechanism. It probably is where your fundraising, you gotta make a splash and you gotta be known and seen for things, but then you've got a lot of different types of irons in the fire, so to speak. The case raises the threshold question of "can an animal have legal standing to sue", of course, and "can

an animal hold a copyright?” PETA’s complaint alleged that Naruto had taken the photos of himself by examining and manipulating Slater’s unattended camera by “independent autonomous motion,” and purposely pushing the shutter release. They claimed that he understood the cause-and-effect relationship between pressing the shutter release, the noise of the shutter, and the change to his reflection in the camera lens. It’s doing some of the work there in the pleading. In other words, PETA’s arguing Naruto understood what he was doing and was making a deliberative creative act, again, not an accident. Acting like what we would typically view as a person as the creator of a copyright. PETA alleges that the defendants infringed on Naruto’s copyright by falsely claiming to be the photographers and authors and by selling copies of the images for profit. They want Naruto to get those profits, is the claim in the complaint. The defendants move to dismiss the case, and the district court grants the defendants’ motion to dismiss. Without ruling on Naruto’s standing under Article 3 of the Constitution, the court simply holds – and this is the trial court we’re talking about – they hold that the Copyright Act does not confer standing upon animals. During oral argument, Judge Orrick conceded that in his view, his hands were tied by prevailing norms. I’ll read you a quote. “I’m not the person to weigh into this.” That’s what he said from the bench. Basically, he was, I won’t read the whole thing, he was basically suggesting that if the political branches want to clarify that animals have the right of copyright ownership, what he says is, “They’re free, I think, under the Constitution to do that.”

**Rusty Close (26:36):**

But I’m not doing it.

**Austin Padgett (26:39):**

I’m not doing it. It’s somebody else’s job. PETA loses right out of the gate. It’s a motion to dismiss, so very early on, we’re done with the case. PETA appeals to the Ninth Circuit, and the court views the question as this, “We must determine whether a monkey may sue humans, corporations, and companies for damages and injunctive relief arising from claims of copyright infringement.” The Ninth Circuit’s ideal, actually, for PETA because it has a prior case that recognizes the possibility of an animal having Article 3 standing where Congress gives authorization under an applicable statute. You’ve got to kind of have – you got to have two hits. You got to have the standing elements that you normally would, but the statute itself has to allow the animal to have standing, which has kind of already been ruled on at Judge Orrick. He’s explaining, there’s nothing I can do here, it doesn’t do that. Before we get there, let me tell you about a weird part of this case. The oral arguments are presented to the court on July 12, 2017. In early September, parties file a joint motion to dismiss the appeal and vacate the judgment. They’re asking, “Hey, we want to be done here, but we also want you to overturn Judge Orrick’s decision.” They inform the court that Slater and PETA have settled. Any thoughts on that? Where’s that coming from?

**Rusty Close (27:59):**

Well, my first thought is you said Slater and PETA had settled, but what did Naruto think about the settlement? Was he in on the discussion?

**Austin Padgett (28:06):**

That's a good note. That comes up.

**Rusty Close (28:08):**

I'm guessing that PETA probably was reading the tea leaves and didn't like the way they thought things might be going, and they were trying to avoid any sort of definitive ruling that would say, "Well, no, animals don't have standing and no, animals can't be copyright owners," before a court actually put that down on paper.

**Austin Padgett (28:33):**

Yeah, I've got a really juicy quote from the decision that I'm going to read you in just a minute to kind of—

**Rusty Close (28:38):**

Lay it on us.

**Austin Padgett (28:39):**

Flesh that out, so to speak. Here's another detail of it. The Competitive Enterprise Institute, which is a libertarian think tank, files an amicus brief before the court. They're saying, "Hey, we had next friends..." They're saying, "We're friends of the court," on September 13th, so just after the settlement is given over to the court and asking, "Hey, we want you to end this case and also turn over the old decision to vacate it." They urged the court to deny the vacatur. The brief argues, among other things, that since Naruto was not a party to the settlement, as you mentioned, PETA didn't have any standing to ask for the removal of that prior decision. I can tell you, the court did not dismiss the case and they didn't vacate the old judgment. It's a bit of a smackdown to PETA here, and we'll get there. Let me first give you kind of the Ninth Circuit's three items. First, they say PETA failed to qualify as Naruto's next friend because it couldn't demonstrate the required significant relationship with the monkey. They had no closer connection to Naruto than to any other animal in the world. Second, despite that, Naruto independently did have Article 3 constitutional standing because the complaint alleged that he was the author of the photographs and had suffered concrete economic harm – Naruto's pocketbook here – from the unauthorized use of those photos. Third point – and so this kind of follows this cascading waterfall, the business in the front, party in the back of the decision – Naruto lacks statutory standing under the Copyright Act because Congress never expressly authorized animals to bring copyright infringement suits, which is from that case of the Ninth Circuit that says you have to have two things: you got to have constitutional standing and there has to be an express statement in the law itself giving animals the right to sue.

**Rusty Close (30:32):**

The court says the monkey does have Article 3 constitutional standing?

**Austin Padgett (30:40):**

As pled, yes.

**Rusty Close (30:41):**

As pled. As pled.

**Austin Padgett (30:43):**

The monkey, through his next friends, pleads that he owns the copyright and that he's damaged by it, which are basically the two things—

**Rusty Close (30:51):**

Okay.

**Austin Padgett (30:52):**

—you've got to prove, "I own this thing. They've used it in an infringing way to my harm."

**Rusty Close (30:57):**

Then to put it in some terms I think you'd be familiar with, they give us the "not so fast, my friend," because they say he doesn't have – I'm saying he, I guess Naruto's a he?

**Austin Padgett (31:08):**

It is. From what we know, he's a male macaque.

**Rusty Close (31:11):**

He doesn't have standing under the Copyright Act.

**Austin Padgett (31:16):**

Correct. That's right. That is the holding of the Ninth Circuit's decision. On that first point of the next friend status, that PETA's no closer to this monkey than any other monkey in the world, the court has this long footnote that I'm just going to read for you because it's lengthy.

**Rusty Close (31:32):**

That is.

**Austin Padgett (31:32):**

But it is worth the, yeah, I've printed it up here in our show notes. I will tell you when it's over. "We feel compelled to note that PETA's deficiencies in this regard go far beyond its failure to plead a significant relationship with

Naruto. Indeed, if any such relationship exists, PETA appears to have failed to live up to the title of friend. After seeing the proverbial writing on the wall at oral argument, PETA and Appellees filed a motion asking this court to dismiss Naruto's appeal and to vacate the district court's adverse judgment, representing that PETA's claims against Slater have been settled. While it remains unclear what claims PETA purported to be settling, since the court was under the impression that this lawsuit was about Naruto's claims and per PETA's motion, Naruto was not a party to the settlement, nor were Naruto's claims settled therein. Nevertheless, PETA apparently obtained something from that settlement with Slater, although not anything that would necessarily go to Naruto. As part of the arrangement, Slater agreed to pay a quarter of his earnings from the monkey selfie book to charities that protect the habitat of Naruto and other crested macaques in Indonesia. But now, in the wake of PETA's proposed dismissal, Naruto is left without an advocate, his purported friend having abandoned Naruto's substantive claims in what appears to be an effort to prevent the publication of a decision adverse to PETA's institutional interest. But were he capable of recognizing this abandonment, we wonder whether Naruto might initiate an action for breach of confidential relationship against his former next friend, PETA, for its failure to pursue his interest before its own. Puzzlingly, while representing to the world that animals are not ours to eat, wear, experiment on, use for entertainment, or abuse in any other way, PETA seems to employ Naruto as an unwitting pawn in its ideological goals. Yet this is precisely what is to be avoided by requiring next friends to have a significant relationship with, rather than an institutional interest in, the incompetent party, a point made by Chief Justice Rehnquist in *Lenhard v. Wolff*."

**Rusty Close (33:39):**

Goodness.

**Austin Padgett (33:41):**

Yeah. What a quote. That's the end of the quote I should say.

**Rusty Close (33:44):**

That's about as close as you can come to the judge just calling you up to the bench and just chewing you out in front of everybody.

**Austin Padgett (33:51):**

Fortunately, they put it in a footnote.

**Rusty Close (33:52):**

Yeah, yeah.

**Austin Padgett (33:53):**

Maybe there's some aspect of that, but boy, that's a hard-hitting one. Typically, if the parties have dismissed, the courts are busy.

**Rusty Close (35:00):**

Whatever. Yeah, we're moving on.

**Austin Padgett (34:02):**

Yeah, so the fact that they said, "You know what? This was *Naruto's* case. You brought this. Now what are we doing?" is a really fascinating part of this case. But it raises a bigger question: what does this have to do with anything, and why are we talking about this case other than the real interesting part? Because we started out with Scott Borchetta talking about AI and getting booed. This seems like a relatively basic case, but it is the silent killer in the AI copyright realm. It's silly in how we get there, but the case is about some big questions. What does authorship actually mean under copyright law? What does it mean to be human? The case has taken on much broader implications, I can tell you, Rusty, for AI-generated works. The monkey selfie case is now constantly cited in AI copyright debates. If a monkey can't own a copyright, who owns, if anyone, AI-created materials? That's kind of the question that ends up being asked. The Copyright Office itself released its Copyright and Artificial Intelligence Report, and it's been doing this in multiple parts. Part One came out in summer of 2024 and really talked more about deep-fakes and things that were of particular interest at that point in time. Part Two was released in January 2025, and it focuses specifically on the copyrightability of AI outputs and human authorship requirement. The office affirmed that human authorship is a long-standing principle of copyright law and that copyright protection in the age of AI remains tied to human creativity. While human authors can be aided by AI tools – which was kind of the commencement address's point anyway – only works with sufficiently creative human input qualify for copyright protection.

**Austin Padgett (35:50):**

So, critically, inputting a prompt into a generative AI tool does not constitute authorship for output. The report also firmly rejects the notion that humans and AI can work together as joint authors, clarifying that authorship must involve human intellectual input and expressive choice, which AI systems, as mere tools, do not possess. The Copyright Office's conclusion that no court has recognized copyright in material created by non-humans and those that have spoken on this issue have "rejected the possibility" – that's a big quote, and it's citing *Naruto v. Slater* as kind of the chief precedent for that proposition. This monkey case is like the underlying fundamental cornerstone of this big white paper that the Copyright Office puts out that basically says, "Hey, if it's AI and it doesn't involve meaningful human input and creativity, it's not copyrightable." It's essentially the same as a monkey taking a picture.

**Rusty Close (36:49):**

It just makes you start thinking about, okay, well, at what point is there enough human intervention in the output? I think we've all used those tools. I've used the tools to create images for us to use when we promote these episodes. I just put it in, "This is what I want." "No, make it look a little more like that." "No, change this up, make it look a little more like that." Then I'm just using the image. The terms of use of those systems will say that you, as the user, own the output, but I think that's a different concept than is it copyrightable? It's mine to use, but it's also not copyrightable.

**Austin Padgett (37:30):**

As between you and I, the platform.

**Rusty Close (37:31):**

Yeah.

**Austin Padgett (37:32):**

Yeah.

**Rusty Close (37:34):**

Do I get the output and then now I'm gonna take it a step further? What changes do I need to make to it? It's the starting point of what ultimately becomes my image. How far do I have to go? Do I sign my name at the bottom and now I've manipulated it enough that it's copyrightable? That's what I'm sure we're gonna figure out over the next few years.

**Austin Padgett (37:55):**

Yeah, there are cases in the hopper, and it's one of the reasons we should just hold off on any... We don't want to look like idiots out here.

**Rusty Close (38:01):**

Oh, God, no. We do enough of that on our own.

**Austin Padgett (38:03):**

Exactly, prognosticating about what's gonna happen and then the courts come and probably put us in a footnote and really burn us.

**Rusty Close (38:11):**

Right, right.

**Austin Padgett (38:12):**

That would not be great for the pod, particularly when we're on this trajectory to the Golden Globes. I see that we're over 30 minutes now, which is checking that box.

**Rusty Close (38:21):**

If they're putting us in a footnote, maybe we're like PETA. All the publicity we can get is...

**Austin Padgett (38:25):**

Yeah, there's no bad publicity, in a sense.

**Rusty Close (38:28):**

That's right.

**Austin Padgett (38:29):**

I'm sure the firm will get behind that proposition. To your point, there's more left open than we'd like to think. The *Naruto* case doesn't resolve the question of whether Slater owns the copyright. That remains unanswered in all of this.

**Rusty Close (38:42):**

That's interesting. Yeah, that's a nuance that I think gets lost in this.

**Austin Padgett (38:46):**

For sure. The only decision we have is that the monkey does not own it. Maybe there is something ownable here. It would just need to have a court decide it, or maybe the Copyright Office come out and elaborate on this compendium's quote and maybe offer us what would Slater have to do for this to be copyrightable. The case resolved around kind of the easier question because it wasn't presented with the more difficult question of when a human engineers the conditions for a non-human to create something, does that human's creative contribution count as authorship? That's to your point of what has to happen to cross that line into human creativity? Typically, under copyright law – and we should probably do an episode of this – the level of creativity to be copyrightable is pretty low. That's kind of a famous proposition here because all we're really protecting is from copying itself. People can have the same ideas and you don't necessarily have copyright infringement as long as they haven't copied one another. That question is now being asked about AI every day in courts and copyright offices around the world, and we don't really have a clean answer yet. But this case laid the foundation.

**Austin Padgett (39:54):**

Here are the three things to consider for homework for our listeners here, not for us. We've got enough on our plates. But if these people are buckling up once a month to listen to us, they must have a lot of free time to ponder the deeper questions of life. So, one, where is that line on human creative contribution? What I'm trying to do here is set up future episodes. Two, if nobody owns it, what happens to the public domain when it grows so rapidly at such an enormous scale? Because part of AI's thing and what we were kind of worried about a little bit is that we're providing the source material. At some point, the AI's own material becomes its source and becomes a perpetuating machine, a big machine, so to speak. Third, and this might not be a question for our specific podcast, but we'll cover it anyway at some point, I'm sure. Who speaks for the non-human creator, if anyone? Who is the

next friend of the AI robots?

**Rusty Close (40:50):**

Don't sign me up for that job.

**Austin Padgett (40:52):**

No, it's the reason I have my bunker way out in the hills. Any other thoughts, Rusty, as we close this one up?

**Rusty Close (41:01):**

No, I think it's just one of those things where it's going to get sorted out one way or the other. I mean, you can almost imagine Slater bringing a claim against the organization that posted his picture and said, "There's no copyright here because a human didn't create the picture." He brings a claim against them and says, "Hey, I'm damaged by this. I do have a claim to this." Then we get the courts to weigh in on that issue. This case is pretty well known. It's almost surprising that that hasn't happened, just to see that some people would get involved just to see how it would play out.

**Austin Padgett (41:33):**

We have an earlier episode about what does it take for a producer? What level of creative contribution of a bunch of humans doing something? You've got similar questions here, but now you've got non-humans in the mix. From what I'm seeing, the non-humans are doing a bulk of the work. So, we'll get this figured out in time, but shifting sands, which makes it interesting for about three coffees' worth of talk.

**Rusty Close (42:00):**

Yes, not a week's worth.

**Austin Padgett (42:02):**

Correct. We'll tackle some more of this in future episodes. We'll also talk more about guitars, professional wrestling, and the other things that make life worth living as humans.

**Rusty Close (42:12):**

That's right.

**Austin Padgett (42:12):**

I want to say thanks to everyone for listening. If you enjoyed today's episode, hit like and subscribe. Give us that five-star rating. It goes a long way towards helping new listeners find your boys over here and inching us closer to that precious and inevitable Golden Globe nomination. Just remember, whether you take the picture yourself or

you let the monkey do it, there is *No Infringement Intended*.

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