Copyright and Non-Humans

Ownership

In Indonesia, David Slater, a wildlife photographer, left his camera unattended, and a crested macaque (https://www.nationalgeographic.com/mission) took pictures of itself. The photographer initially saw only blurry images, but PETA argued that Naruto should own the copyright.

The Ninth Circuit held that the Copyright Act's language assumed that authors were human and excluded animals that legally could not own or transfer property interests. Newly v. Slater, 854 F.3d 925 (9th Cir. 2017).

Slater has argued that he should own the copyright of the image, and in 2016 threatened to sue WikiMedia for posting them. But he has not thus far. WikiMedia argues since Naruto made the photos and cannot own copyrights, the photos are in the public domain.

Authorship

Can animals create art? Whether through training or natural talent, some animals, including cats and elephants, have produced works that many would recognize as pieces of art. In the spoof art criticism book *Why Cats Paint: A Theory of Feline Aesthetics* (images of Tiger [right] and Charlie [left] included here), Heather Busch and Burton Silver present feline artists and their creations.

The U.S. Copyright Office does not recognize nonhumans as authors, and will not register a work not created by a human. *Compendium of U.S. Copyright Office Practices 3d Ed.* § 313.2 (2017). If a cat makes the photos and cannot own copyrights, the photos are in the public domain.

Most copyrighted works are made by humans, but what about when a cat makes an attractive pattern on the floor after walking in paint? Or when a monkey plays with a camera and takes a selfie? Computers now create works that, if made by a human, would certainly be copyrighted. Who (if anyone) should own the copyright in those works? The four examples on this poster discuss copyright in works by nonhuman authors and make us consider some foundational concepts of copyright law.

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Incentive to Create

Developers have taught AI how to write text and music by applying machine learning algorithms to large collections of material. The AI then can create its own works based off the examples it has observed. Some programs are more unbiased than others. Racter, the program that created this poem, generates a text poem at random (though as you can see in the vote totals, more people thought a human wrote the text). Other programs apply sophisticated criteria when generating products. Should these works have copyright protection? Perhaps the creators of the software deserve some credit, but they weren't motivated to make the AI just to make new works. A major purpose of copyright is to provide an incentive to create works. The AI needs no incentives, so perhaps no copyright is needed, either.

Developed for the *AALL Spectrum* by the *AALL Copyright Committee*, with assistance from the *AALL Membership Committee*. More information on the *AALL Spectrum* article at https://www.aallnet.org/about-us/who-we-are/committees/juries/copyright-committee/