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GOING BANANAS OVER COPYRIGHT: MONKEY SELFIES AND THE INTERSECTIONS OF RHETORIC, INTELLECTUAL PROPERTY, AND ANIMAL STUDIES

Readers may recall a story that circulated in the popular media several years ago, about a macaque monkey by the name of Naruto who allegedly took its own selfie. The monkey's selfie quickly went viral, and not surprisingly, a debate ensued about who actually holds the copyright to the image. The freelance photographer who orchestrated the photo, David Slater, had traveled to Indonesia, where he apparently spent a good amount of time interacting with these monkeys in ways that eventually led to their taking selfies (Wilkinson). Slater ultimately ended up with the selfie in question, sparking the debate about copyright and intellectual property, and who owns rights to the photo.

Slater was able to get copyright for the photo in the U.K., "where he resides, and published the photo in a nature photography book" (Wilkinson). Shortly thereafter, larger websites began reprinting the selfie but did not pay Slater any royalties as copyright holder. At that point, Slater requested that these websites stop reprinting the photo. They refused, however, stating that Slater had no right to make such a request, since the monkey had taken the photo, not Slater. More specifically, "The U.S. copyright office subsequently weighed in, saying that animals cannot hold a copyright, and therefore the image is in the public domain," which meant that Slater could not receive royalties for the photo in the first place (Wilkinson).

Further complicating matters, in 2015, the People for Ethical Treatment of Animals (PETA) sued Slater in federal court on behalf of the monkey; their argument in doing so was that the monkey legally owned copyright to the image (Wilkinson). PETA lost the suit in 2017 in a California U.S. district court, and later "appealed to the Ninth Circuit, which heard arguments last month" (Wilkinson). More recently, the parties "filed a joint motion saying that they have settled the case and asking the court to dismiss the appeal" (Underhill).

As one media article put it, "PETA's case was largely scoffed at," given the perceived lack of plausibility that a monkey can hold a copyright" (Wilkinson). Or, put differently, "PETA's standing to sue depended entirely on whether nonhumans can legally hold a copyright under U.S. law" (Underhill). While the notion may seem outlandish to some, I would argue that this case has implications not only for copyright law but also for how we understand our relationships with our nonhuman kin more broadly. That is, while there may not be a mechanism within the legal world or within copyright law for recognizing a nonhuman animal as a rightful holder of a copyright, does that mean we ought to discount the fact that this creature did, in fact, participate in the creation of a photographic image—in the act of visual communication that constitutes a selfie? And, then, what are the rhetorical implications of such visible, visual acts of nonhuman knowledge making?

Monkeys, especially, are arguably considered both charismatic and enigmatic creatures within the context of popular culture, often appearing in social media clips and

popular examples involving science and animal communication, as well as animal ethics. (For more on the intersections of rhetoric and animal communication that also takes monkeys as a representative anecdote, though in a different context, see Laurie Gries' discussion in "Monkeying Around.") As Hayley Zertuche describes in her discussion of animal selfies, albeit with a slightly different focus, "These popular animal images are significant since depictions of animals in visual media have a crucial influence on cultural perspectives and actions" (2017, n.p.). A material feminist approach to understanding the implications of this photo might then consider a more nuanced configuration, in which humans, nonhumans, technologies, and environments participate in specific intra-actions that catalyze nuanced configurations of the worlds that humans and macaques share (see Alaimo, 2010, 2016; Barad, 2007; Haraway, 2008).

A material feminist reading might understand the photo not only as a rhetorical configuration that has clear, initial implications for copyright law but also, more broadly, has significant implications for building worlds that reveal and perpetuate knowledge about a particular species of macaque monkey that thrives, or more aptly, struggles to survive, in a landscape that is vulnerable to the forces of human interaction and consumerism. As one *National Geographic* article describes, Indonesian crested black macaques "are hunted for meat, kept as pets, and threatened by a shrinking habitat" (Holland). By dismissing this case as just about copyright, and likewise by dismissing the possibility of the monkey as participant in the creation of this image, we tread the slippery slope of denying or silencing the voices of nonhuman creatures as sentient beings in high-stakes contexts involving animal rights, animal testing, factory farming, environmental degradation, and related scenarios in which animals' lives are at stake or on the line. We run the risk of overlooking the ways that visual culture can participate in the complex and nuanced practices of rhetorical advocacy, in the name of focusing on who "wins" the immediate, agonistic debate.

Thus, a material feminist reading imbued with ideas about animal studies might question the terms of this creature's participation in the creation of the photo in the first place, and its implications for how we understand the nature of our relationships with nonhuman animals and our potential ethical obligations to them. Photographer David Slater describes in detail on his website, for instance, the processes of interaction with the monkeys that eventually led to the selfie in question. He spent a good amount of time observing and interacting with the monkeys, during which he experimented with different techniques that included setting up his camera with the self-timer activated, and waiting for the curious monkeys to come over and play with the camera (Slater, "Sulawesi macaques..."). Eventually, as he describes:

I put my camera on a tripod with a very wide angle lens, settings configured such as predictive autofocus, motorwind, even a flashgun, to give me a chance of a facial close up if they were to approach again for a play. I duly moved away and bingo, they moved in, fingering the toy, pressing the buttons and fingering the lens. I was then to witness one of the funniest things ever as they grinned, grimaced and bared teeth at themselves in the reflection of the large glassy lens. (Slater, "Sulawesi macaques...")

Such photographic practices have become commonplace enough in contemporary culture. A recent NPR article, for instance, described what happened when "an

expeditioner with the Australian Antarctic Division left his camera on the ice while visiting a penguin colony, [and] the birds quickly hustled over to investigate” (Kennedy). The camera, already recording video, captured “a hilarious 38-second video” of the characteristically curious Emperor penguins gathering around to examine the camera, thus resulting in some popular penguin selfies.

On the one hand, then, we might consider that the macaque monkeys did not necessarily comprehend the terms of their interaction with these technologies of visualization, and subsequently we may question the implications of what, for them, was mostly likely just a process of curious play with the objects they encountered in their immediate, surrounding environment. On the other hand, the photos arguably draw attention to a cryptic and vulnerable species in need of human advocacy, for as Slater contends: “It is totally humbling and almost beyond my ability to write here just what impact these images have had. Some people admit to crying with laughter, other to crying with shock as they stare into the face of a close ancestor they never realised existed, and so uncannily like us humans. And then they discover these creatures are hunted and in need of some publicity” (Slater, “Sulawesi macaques...” emphasis added). Finally, we may consider the ways that the practices of visualization themselves paradoxically make vulnerable, as they simultaneously seek to advocate on behalf of those already-vulnerable species (see Proppen, 2018). I do not mean, here, to dismiss the legal rhetorical aspects of the debate by delving into the murkier questions of human ethical obligation as it pertains to our interactions with vulnerable, nonhuman species; rather, my intention is to think about the immediate debate as a point of entry into the larger questions that it surely prompts, or really to think of these issues as two sides of the same coin.

In terms of the outcome of the actual court case, it has not been wholly clear as to who holds the copyright (Underhill, 2017). However, in April 2018, a U.S. appeals court upheld a lower court ruling, when it ruled “that lawsuits can’t be filed claiming animals have copyrights to photos,” thus suggesting that Slater then owns the copyright. (Thanwala n.p.). Some media articles have suggested that the photo may fall into the public domain; this would mean, then, that “Slater can still sell his book, for example, even if one or more pictures in it are in the public domain. He couldn’t keep other people from using the picture, though, which limits the value” (Underhill). However, Slater’s website notes his “right to be identified as the author of all images published on this website”; moreover, the website also allows visitors to purchase signed copies of the monkey selfie, whereby ten percent of the purchase is donated to a monkey conservation initiative in Sulawesi, Indonesia (Slater, “The Monkey Selfie”). We may also speculate about the different possible motivations for PETA’s lawsuit, as other media articles have done (see Underhill, Wilkinson). At the end of the day, though, we might wonder what we as scholars of rhetoric, and those in the legal community, have gained by thinking about or handling the specifics of this case. From a legal perspective, it seems difficult to see any real winners here. Moreover, it would seem that the monkey was made more visible through the practices of visualization, in an effort to advocate on its behalf, while in the process being made simultaneously, and paradoxically, more vulnerable, through those very practices, by way of a court case that attempted to demonstrate why, according to the law, agency should be denied to nonhuman animals. This case thus raises as many questions as it answers, and when considered in light of its broader

rhetorical implications, provides a fruitful point of entry for engaging with the intersections of legal rhetorics, animal ethics, and nonhuman animal agency.

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