

David Slater, a British wildlife photographer, has long been captivated by the array of life on our planet, traveling to remote locations to document species in their natural habitats. His journey led him to the forests of Sulawesi, Indonesia, where he spent days shadowing a troop of crested black macaques. With the intuition of a seasoned photographer, David knew spontaneity was key; he set up his camera on a tripod, curious to see if the inquisitive monkeys might engage with it. Indeed, his strategy proved successful when one macaque managed to press the shutter, resulting in what is now famously known as the “monkey selfie.”

The image swiftly gained notoriety, but with it came a legal maelstrom. Wikimedia Commons picked up the image, claiming it belonged to the public domain since a non-human had taken the photo. PETA also entered the fray, asserting rights on behalf of the macaque itself. The ensuing legal challenges revolved around the very definition of authorship and the role of non-human creators. Although the courts ultimately ruled that the photo could not be copyrighted by a non-human, scholars like Jonathan Siderits have argued for a more nuanced view that recognizes the shared human-animal creative process.

For David, the fallout has been significant. Estimates suggest he lost tens of thousands of pounds, both in legal fees and missed financial opportunities, as unauthorized copies of the image spread online. This saga exemplifies the hurdles artists face when their work involves non-human interactions, potentially stifling innovative art forms that dare to blend human intent with animal spontaneity. Within my proposal for a copyright authorship allocation system, this scenario suggests a fifty-fifty division: 50% to David for orchestrating the photographic set-up and 50% to the macaque for its serendipitous capture. This division honors David’s contribution while acknowledging the monkey’s pivotal role in creating a truly unique piece. Ultimately, the photo’s iconic nature emerges from its **unfixed** process— a multitude of potential images coalescing into reality the instant the monkey touches the camera.