

NARUTO v. SLATER

United States Court of Appeals for the Ninth Circuit, 2018
888 F.3d 418

OPINION

BEA, Circuit Judge:

We must determine whether a monkey may sue humans, corporations, and companies for damages and injunctive relief arising from claims of copyright infringement. Our court's precedent requires us to conclude that the monkey's claim has standing under Article III of the United States Constitution. Nonetheless, we conclude that this monkey—and all animals, since they are not human—lacks statutory standing under the Copyright Act.¹ We therefore affirm the judgment of the district court.

FACTUAL AND PROCEDURAL BACKGROUND

Naruto was a seven-year-old crested macaque that lived—and may still live—in a reserve on the island of Sulawesi, Indonesia. In 2011, a wildlife photographer, David Slater, left his camera unattended in the reserve. Naruto allegedly took several photographs of himself (the “Monkey Selfies”) with Slater's camera.

Slater and Wildlife Personalities, Ltd., (“Wildlife”) published the Monkey Selfies in a book that Slater created through Blurb, Inc.'s (“Blurb”) website in December 2014. The book identifies Slater and Wildlife as the copyright owners of the Monkey Selfies. However, Slater admits throughout the book that Naruto took the photographs at issue. For example, the book describes one of the Monkey Selfies as follows: “Sulawesi crested black macaque smiles at itself while pressing the shutter button on a camera.” Another excerpt from the book describes Naruto as “[p]osing to take its own photograph, unworried by its own reflection, smiling. Surely a sign of self-awareness?”

In 2015 People for the Ethical Treatment of Animals (“PETA”) and Dr. Antje Engelhardt filed a complaint for copyright infringement against Slater, Wildlife, and Blurb, as Next Friends on behalf of Naruto. The complaint alleges that Dr. Engelhardt has studied the crested macaques in Sulawesi, Indonesia for over a decade and has known, monitored, and studied Naruto since his birth. The complaint does not allege any history or relationship between PETA and Naruto.² Instead, the complaint alleges that PETA is “the largest animal rights organization in the world” and “has championed establishing the rights and legal protections available to animals beyond their utility to human beings....”

¹ 17 U.S.C. § 101 *et seq.*

² At oral argument Appellant's counsel suggested that, upon remand, the complaint could be amended to state a significant relationship between PETA and Naruto. However, PETA and Engelhardt agreed not to seek amendment of the complaint, no doubt to procure our earlier hearing their appeal. Having procured the benefit of the bargain, we will hold them to their contract.

Slater, Wildlife, and Blurb filed motions to dismiss under Fed. R. Civ. P. 12(b)(1) and 12(b)(6) on the grounds that the complaint did not state facts sufficient to establish standing under Article III or statutory standing under the Copyright Act. The district court granted the motions to dismiss. In its order the district court stated the following with respect to Article III standing:

The Ninth Circuit has stated that Article III “does not compel the conclusion that a statutorily authorized suit in the name of an animal is not a ‘case or controversy.’ ” *Cetacean Cmty. v. Bush*, 386 F.3d 1169, 1175 (9th Cir. 2004). I need not discuss Article III standing further, because regardless of whether Naruto fulfills the requirements of Article III, he must demonstrate standing under the Copyright Act for his claim to survive under Rule 12(b)(6).

We are, of course, bound by the precedent set in *Cetacean Community* until and unless overruled by an en banc panel or the Supreme Court. *Miller v. Gammie*, 335 F.3d 889, 899 (9th Cir. 2003) (en banc).

The district court concluded that Naruto failed to establish statutory standing under the Copyright Act. PETA and Dr. Engelhardt timely appealed on Naruto's behalf. However, after the appeal was filed, and with the permission of Appellees, Dr. Engelhardt withdrew from the litigation. Therefore, on appeal, only PETA remains to represent Naruto as his “next friend.”

STANDARD OF REVIEW

This court reviews *de novo* dismissals under Fed. R. Civ. P. 12(b)(1) and Fed. R. Civ. P. 12(b)(6). *See Rhoades v. Avon Prods., Inc.*, 504 F.3d 1151, 1156 (9th Cir. 2007). “All allegations of material fact are taken as true and construed in the light most favorable to the nonmoving party.” *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001).

DISCUSSION

I. Next Friend Standing

We gravely doubt that PETA can validly assert “next friend” status to represent claims made for the monkey both (1) because PETA has failed to allege any facts to establish the required significant relationship between a next friend and a real party in interest and (2) because an animal cannot be represented, under our laws, by a “next friend.”

First, “[i]n order to establish next-friend standing, the putative next friend must show: (1) that the petitioner is unable to litigate his own cause due to mental incapacity, lack of access to court, or other similar disability; and (2) the next friend has some significant relationship with, and is truly dedicated to the best interests of, the petitioner.” *Coalition of Clergy v. Bush*, 310 F.3d 1153, 1159–60 (9th Cir. 2002) (*quoting Massie ex rel. Kroll v. Woodford*, 244 F.3d 1192, 1194 (9th Cir. 2001)). Here, we are concerned with the second requirement. PETA does not claim to have a relationship with Naruto that is any more significant than its relationship with any other animal. Thus,

PETA fails to meet the “significant relationship” requirement and cannot sue as Naruto's next friend.³

But, even if PETA had alleged a significant relationship with Naruto, it still could not sue as Naruto's next friend. In *Whitmore v. Arkansas*, 495 U.S. 149, 110 S.Ct. 1717, 109 L.Ed.2d 135 (1990), the Supreme Court discussed “next friend” standing in a habeas case in which a third-party litigant sought to challenge the death sentence of a capital defendant, Simmons, who had forsworn his right to appeal. In considering whether the third-party, Whitmore, had standing to sue on behalf of Simmons, the Court emphasized the limited nature of “next friend” standing and explained the rationale behind its limitations. For example, requiring a showing of incompetency and a “significant relationship” ensures that “the litigant asserting only a generalized interest in constitutional governance” does not “circumvent the jurisdictional limits of Article III simply by assuming the mantle of ‘next friend.’ ” *Id.* at 164, 110 S.Ct. 1717. In short, requirements of a significant interest in the subject party protect against abuses of the third-party standing rule. As the Court noted in a prior case, “however worthy and high minded the motives of ‘next friends’ may be, they inevitably run the risk of making the actual [party] a pawn to be manipulated on a chessboard larger than his own case.” *Lenhard v. Wolff*, 443 U.S. 1306, 1312, 100 S.Ct. 3, 61 L.Ed.2d 885 (1979). Based on the dangers inherent in any third-party standing doctrine, the Court declined to expand “next

³ 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 had been settled. It remains unclear what claims PETA purported to be “settling,” since the court was under the impression 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 the 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.” *See Settlement Reached: ‘Monkey Selfie’ Case Broke New Ground For Animal Rights*, PETA, <https://www.peta.org/blog/settlement-reached-monkey-selfie-case-broke-new-ground-animal-rights/> (last visited Apr. 5, 2018). But now, in the wake of PETA's proposed dismissal, Naruto is left without an advocate, his supposed “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 interests. 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 interests 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,” *see* PETA, <https://peta.org> (last visited Apr. 5, 2018), 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*, 443 U.S. 1306, 1312, 100 S.Ct. 3, 61 L.Ed.2d 885 (1979). *See infra* page 422 for exact language.

friend” standing beyond what was authorized by Congress in the habeas corpus statute. *Whitmore*, 495 U.S. at 164–165, 110 S.Ct. 1717.

Here, we follow the Supreme Court's lead in holding that “the scope of any federal doctrine of ‘next friend’ standing is no broader than what is permitted by the ... statute.” *Id.* Although Congress has authorized “next friend” lawsuits on behalf of habeas petitioners, *see* 28 U.S.C. § 2242, and on behalf of a “minor or incompetent person,” *see* Fed. R. Civ. P. 17(c), there is no such authorization for “next friend” lawsuits brought on behalf of animals. Our precedent on statutory interpretation should apply to court rules as well as statutes: if animals are to be accorded rights to sue, the provisions involved therefore should state such rights expressly. *See Cetacean Cmty.*, 386 F.3d at 1179. Because we believe the Supreme Court's reasoning in *Whitmore* counsels against court-initiated expansion of “next friend” standing, we decline to recognize the right of next friends to bring suit on behalf of animals, absent express authorization from Congress.

Even so, we must proceed to the merits because Naruto's lack of a next friend does not destroy his standing to sue, as having a “case or controversy” under Article III of the Constitution. Federal Rule of Civil Procedure 17, which authorizes “next friend” lawsuits, obligates the court “to consider whether [incompetent parties] are adequately protected,” even where they have no “next friend” or “guardian.” *U.S. v. 30.64 Acres of Land*, 795 F.2d 796, 805 (9th Cir. 1986). Within this obligation, the court has “broad discretion and need not appoint a guardian ad litem [or next friend] if it determines the person is or can be otherwise adequately protected.” *Id.* (citing *Roberts v. Ohio Casualty Ins. Co.*, 256 F.2d 35, 39 (5th Cir. 1958) (“Rule 17(c) does not make the appointment of a guardian ad litem mandatory.”)). *See also Harris v. Mangum*, 863 F.3d 1133, 1139 n.2 (9th Cir. 2017) (noting circumstances in which “appointing a guardian ad litem ... could hinder the purpose of Rule 17(c),” and thus was not required). For example, “the court may find that the incompetent person's interests would be adequately protected by the appointment of a lawyer.” *Krain v. Smallwood*, 880 F.2d 1119, 1121 (9th Cir. 1989) (citing *Westcott v. United States Fidelity & Guaranty Co.*, 158 F.2d 20, 22 (4th Cir. 1946)). Indeed, courts have done just this, and the fact that those courts did not then dismiss the case proves that the lack of a next friend does not destroy an incompetent party's standing. *See, e.g., Westcott*, 158 F.2d at 22 (affirming judgment against minor who was represented by an attorney but not a guardian ad litem).⁴

Concluding otherwise would conflict with our precedent. In *Cetacean Community*, 386 F.3d at 1171, we held that a group of cetaceans could demonstrate Article III standing. There, the cetaceans had no purported “next friend.” Thus, were we to vacate the case we have before us now and remand with instructions to dismiss because of PETA's failure to establish “next friend” standing, our jurisprudence would permit a case brought “directly” by animals without any allegation that the suit was brought by a “next friend”—as was the case in *Cetacean*—but would not permit a case brought by an organization as the “next friend” of the animal at issue if the organization failed to meet the relational requirements. That cannot be the law. We thus hold that

⁴ Here, we find that this case was briefed and argued by competent counsel who represented the legal interests of the incompetent party, but not a person, Naruto. Thus, his interests up to submission of the case following oral argument were adequately protected, notwithstanding any deficiencies in PETA's “next friend” relationship.

Naruto's Article III standing under *Cetacean* is not dependent on PETA's sufficiency as a guardian or "next friend," and we proceed to our Article III standing analysis.⁵

II. Article III Standing

The *Cetacean* court held that all of the world's whales, dolphins, and porpoises (the "Cetaceans"), through their self-appointed lawyer, alleged facts sufficient to establish standing under Article III. 386 F.3d at 1175. The Cetaceans alleged concrete physical injuries caused by the Navy's sonar systems in a suit brought by the "self-appointed attorney for all of the world's whales, porpoises, and dolphins." *Id.* at 1171. The Ninth Circuit made clear that the "sole plaintiff in this case" is the Cetaceans and did not discuss

⁵ This is where we depart from the concurring opinion. First, Judge N.R. Smith seems to posit that we must restrict our inquiry into Article III standing and its effect on jurisdiction to an examination of the validity of the claimed Next Friend status, because that is how the complaint is stated. *See infra*, note 8 (Smith, J., concurring in part). In other words, since Naruto's only stated basis for jurisdiction is Next Friend status, we can determine whether we have jurisdiction by examining only the validity of the Next Friend claim. But such a restriction is contrary to our long held and often restated duty to examine *sua sponte* whether jurisdiction exists, regardless how the parties have framed their claims. *See, e.g. Gonzalez v. Thaler*, 565 U.S. 134, 141, 132 S.Ct. 641, 181 L.Ed.2d 619 (2012) ("When a requirement goes to subject-matter jurisdiction, courts are obligated to consider *sua sponte* the issues that the parties have disclaimed or have not presented. Subject matter jurisdiction can never be waived or forfeited.") (internal citations omitted). We therefore respectfully reject this suggested limitation.

Next, although Judge N.R. Smith agrees that an animal cannot sue by next friend, he nevertheless limits his analysis to cases involving next friend suits under statutes which contain particular next friend provisions. Under *Whitmore* and *Coalition*, he argues, we must dismiss based on PETA's insufficiency as a "next friend." But if we all agree that suits by animals *cannot* be brought under FRCP 17, because the rule refers only to "persons," not "animals," why would we want to follow and be bound by habeas cases for humans for which the statute (§ 2242) expressly *provides* next friend standing? The concurrence does not explain this point.

In our view, the question of standing was explicitly decided in *Cetacean*. Although, as we explain later, we believe *Cetacean* was wrongly decided, we are bound by it. Short of an intervening decision from the Supreme Court or from an en banc panel of this court, *see Miller v. Gammie*, 335 F.3d 889, 899 (9th Cir. 2003), we cannot escape the proposition that animals have Article III standing to sue. With this as a starting premise, how could it be that PETA's deficiency as Naruto's representative could destroy Naruto's otherwise valid Article III standing? Again, the concurrence fails to explain.

Judge N.R. Smith insightfully identifies a series of issues raised by the prospect of allowing animals to sue. For example, if animals may sue, who may represent their interests? If animals have property rights, do they also have corresponding duties? How do we prevent people (or organizations, like PETA) from using animals to advance their human agendas? In reflecting on these questions, Judge Smith reaches the reasonable conclusion that animals should not be permitted to sue in human courts. As a pure policy matter, we agree. But we are not a legislature, and this court's decision in *Cetacean* limits our options. What we *can* do is urge this court to reexamine *Cetacean*. *See infra* note 6. What we *cannot* do is pretend *Cetacean* does not exist, or that it states something other, or milder, or more ambiguous on whether cetaceans have Article III standing.

“next friend” or third-party standing. *Id.* Although the Ninth Circuit affirmed the district court’s dismissal because the Cetaceans lacked statutory standing under the environmental statutes at issue in that case, the court stated that “Article III does not compel the conclusion that a statutorily authorized suit in the name of an animal is not a ‘case or controversy.’”⁶ *Id.* at 1175.

Here, the complaint alleges that Naruto is the author and owner of the Monkey Selfies. The complaint further alleges that Naruto has suffered concrete and particularized economic harms as a result of the infringing conduct by the Appellees, harms that can be redressed by a judgment declaring Naruto as the author and owner of the Monkey Selfies. Under *Cetacean*, the complaint includes facts sufficient to establish Article III standing. Therefore, we must determine whether Naruto has statutory standing⁷ to sue for copyright infringement.

⁶ The use of the double negative here is problematic in that it creates unnecessary ambiguity in the court’s holding. Better, we think, to say a petition is “timely” than that it is “not untimely,” for example. Better here to have said the animal has Article III standing. “This type of litotes (the negation of an opposite) often makes language convoluted. George Orwell ridiculed it with this example: ‘A not unblack dog was chasing a not unsmall rabbit across a not ungreen field.’” Bryan Garner, Garner’s Modern American Usage 545 (2003) (citing “Politics and the English Language” (1946), in *4 Collected Essays, Journalism and Letters of George Orwell* 127, 138 n.1 (1968)). But this language does not change our ultimate conclusion. If nothing about Article III *compels* the conclusion that animals lack standing, then it cannot also be true that animals lack standing simply by virtue of their being animals. In other words, *Cetacean* at the very least holds that it is *possible* for animals, like humans, to demonstrate the kind of case or controversy required to establish Article III standing. Although the claims in *Cetacean* sounded in physical harm to plaintiffs, and the claims in *Naruto* sound in economic harm to Naruto, that difference is not a point of distinction for Article III purposes. “Cases or Controversies” have described claims involving property interests, as well as claims involving personal injuries, since the Founding, and before, at common law. Thus, the sort of blanket exclusion of animals from Article III jurisdiction which Judge N.R. Smith advocates is, alas, fundamentally inconsistent with *Cetacean*’s holding.

⁷ Mindful that the term “standing” carries with it jurisdictional connotations, we clarify that our use of the term “statutory standing” refers to Naruto’s ability to sue under the Copyright Act, not his ability to sue generally. Thus, as we have observed in previous cases, “[t]hrough lack of *statutory* standing requires dismissal for failure to state a claim, lack of Article III standing requires dismissal for lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1).” *Maya v. Centex Corp.*, 658 F.3d 1060, 1067 (9th Cir. 2011). The former is a determination on the merits, while the latter is purely jurisdictional.

While we believe *Cetacean* was incorrectly decided, it is binding circuit precedent that non-human animals enjoy constitutional standing to pursue claims in federal court. *See Cetacean*, 386 F.3d at 1175–76; *see also Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1106 (9th Cir.), cert. denied sub nom. *FCA U.S. LLC v. Ctr. for Auto Safety*, — — U.S. ———, 137 S.Ct. 38, 196 L.Ed.2d 26 (2016) (“While we have the authority to distinguish precedent on a principled basis, we are not free to ignore the literal meaning of our rulings, even when the panel believes the precedent is ‘unwise or incorrect.’”) (quoting *Hart v. Massanari*, 266 F.3d 1155, 1170 (9th Cir. 2001)). Although we must faithfully apply precedent, we are not restrained from pointing out, when we conclude

III. Statutory Standing under the Copyright Act

In *Cetacean*, this court stated the following with respect to statutory standing for animals:

We agree with the district court in *Citizens to End Animal Suffering & Exploitation, Inc.*, that “[i]f Congress and the President intended to take the extraordinary step of authorizing animals as well as people and legal entities to sue, they could, and should, have said so plainly.” *In the absence of any such statement* in the ESA, the MMPA, or NEPA, or the APA, we conclude that the Cetaceans do not have statutory standing to sue.

Id. at 1179 (emphasis added).⁸ The court in *Cetacean* did not rely on the fact that the statutes at issue in that case referred to “persons” or “individuals.” *Id.* Instead, the court crafted a simple rule of statutory interpretation: if an Act of Congress plainly states that animals have statutory standing, then animals have statutory standing. If the statute does not so plainly state, then animals do not have statutory standing. The Copyright Act does not expressly authorize animals to file copyright infringement suits under the statute.⁹

after reasoned consideration, that a prior decision of the court needs reexamination. This is such a case.

Animals have neither constitutional nor statutory standing. Article III standing “often turns on the nature and source of the claim asserted.” *Warth v. Seldin*, 422 U.S. 490, 500, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975). Other than *Cetacean*, no case has held that animals have constitutional standing to pursue claims in federal court. *See e.g., Tilikum ex rel. People for the Ethical Treatment of Animals, Inc. v. Sea World Parks & Entm't, Inc.*, 842 F.Supp.2d 1259 (S.D. Cal. 2012) (Thirteenth Amendment prohibition on slavery and involuntary servitude applied only to humans, and thus whales lacked Article III standing to bring action against operator of theme park under Thirteenth Amendment). Prior to *Cetacean*, no court ever intimated that animals possess interests that can form the basis of a case or controversy. As to statutory standing, Congress has never provided that animals may sue in their own names in federal court, and there is no aspect of federal law (other than *Cetacean*) that has ever recognized that animals have the right to sue in their own name as a litigant. To that point, Rule 17(a) requires that the suit be brought in the name of the “party in interest”; and that next friend or guardian representation obtains only for a *person*. *See* Fed. R. Civ. P. 17(c). Because animals do not possess cognizable interests, it stands to reason that they cannot bring suit in federal court in their own names to protect such interests unless Congress determines otherwise.

⁸ In *Citizens to End Animal Suffering & Exploitation, Inc. v. New England Aquarium*, 836 F.Supp. 45, 49 (D. Mass. 1993), a dolphin and several animal-rights organizations filed suit against the United States Department of the Navy and the Department of Commerce under the Marine Mammal Protection Act (MMPA). The plaintiffs alleged that the dolphin's transfer from the New England Aquarium to the Department of the Navy violated its rights under the MMPA. Without distinguishing between “statutory standing” and Article III standing, the district court granted the defendants' motion for summary judgment because the dolphin lacked standing to sue under the MMPA. *Id.* (“This court will not impute to Congress or the President the intention to provide standing to a marine mammal without a clear statement in the statute.”). The plaintiffs did not file an appeal. *Id.*

⁹ PETA also argues that the Copyright Act contemplates statutory standing for animals because it permits statutory standing for corporations and unincorporated associations

Therefore, based on this court's precedent in *Cetacean*, Naruto lacks statutory standing to sue under the Copyright Act.¹⁰

Several provisions of the Copyright Act also persuade us against the conclusion that animals have statutory standing to sue under the Copyright Act. *See Davis v. Mich. Dep't of Treasury*, 489 U.S. 803, 809, 109 S.Ct. 1500, 103 L.Ed.2d 891 (1989) (“It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.”). For example, the “children” of an “author,” “whether legitimate or not,” can inherit certain rights under the Copyright Act. *See* 17 U.S.C. § § 101, 201, 203, 304. Also, an author's “widow or widower owns the author's entire termination interest unless there are any surviving children or grandchildren of the author, in which case the widow or widower owns one-half of the author's interest.” *Id.* § 203(a)(2)(A). The terms “children,” “grandchildren,” “legitimate,” “widow,” and “widower” all imply humanity and necessarily exclude animals that do not marry and do not have heirs entitled to property by law. Based on this court's decision in *Cetacean* and the text of the Copyright Act as a whole, the district court did not err in concluding that Naruto—and, more broadly, animals other than humans—lack statutory standing to sue under the Copyright Act.

IV. Attorneys' Fees

Counsel for Slater and Wildlife requests that the court grant him appellate-stage attorneys' fees and remand to the district court for the determination of the amount of those fees.¹¹ Counsel for Slater and Wildlife is entitled to attorneys' fees and costs for this

without express authorization for those non-human entities. That argument does not refute the requirement, established in *Cetacean*, that Congress plainly state any grant of statutory standing to animals. Also, the Supreme Court has held corporations to be “persons” for standing, both for constitutional and statutory purposes. *See, e.g., Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 341–42, 130 S.Ct. 876, 175 L.Ed.2d 753 (2010) (concluding that corporations—associations of persons—have speech rights under the First Amendment); *Burwell v. Hobby Lobby Stores, Inc.*, --- U.S. ---, 134 S.Ct. 2751, 2768, 189 L.Ed.2d 675 (2014) (concluding that the plaintiff corporation was a “person” under the Religious Freedom Restoration Act of 1993). Moreover, corporations and unincorporated associations are formed and owned by humans; they are not formed or owned by animals. *See Bank of the U.S. v. Deveaux*, 9 U.S. 61, 92, 5 Cranch 61, 3 L.Ed. 38 (1806) (looking to “the character of the individuals who compose the corporation” in recognizing for the first time the capacity of corporations to sue in federal court).

¹⁰ PETA also argues that *Cetacean* is distinguishable because the statutes at issue in *Cetacean* represented a waiver of the United States' sovereign immunity, and such waivers, unlike the Copyright Act, are narrowly construed. *See United States v. Nordic Vill., Inc.*, 503 U.S. 30, 34, 112 S.Ct. 1011, 117 L.Ed.2d 181 (1992) (“[T]he Government's consent to be sued ‘must be construed strictly in favor of the sovereign’...” (citation omitted)). However this court never mentioned sovereign immunity in *Cetacean*, nor did it imply that it narrowly construed the statutory language of the four statutes at issue under the canon of construction described by PETA to reach its decision.

¹¹ *See* 17 U.S.C. § 505 (“In any civil action under this title, the court in its discretion may allow the recovery of full costs by or against any party other than the United States or an officer thereof. Except as otherwise provided by this title, the court may also award a reasonable attorney's fee to the prevailing party as part of the costs.”). By stipulation, the

appeal. *See Fogerty v. Fantasy, Inc.*, 510 U.S. 517, 534 n.19, 114 S.Ct. 1023, 127 L.Ed.2d 455 (1994). Thus, the request in the answering brief by Slater and Wildlife for an award of attorneys' fees on appeal is granted.¹² The determination of an appropriate amount of fees on appeal is transferred to the district court pursuant to Ninth Circuit Rule 39-1.8.

AFFIRMED.

N.R. SMITH, Circuit Judge, concurring in part:

I concur that this case must be dismissed. Federal courts do not have jurisdiction to hear this case at all. Because the courts lack jurisdiction, the appeal should be dismissed and the district court's judgment on the merits should be vacated. *Coal. of Clergy, Lawyers, & Professors v. Bush*, 310 F.3d 1153, 1162–65 (9th Cir. 2002) (“Because we conclude that the Coalition lacks [next-friend or third-party] standing, we decline to reach the remaining questions addressed by the district court.... We therefore vacate those portions of the district court's opinion which reached those questions.”). Indeed, where there is no standing, any further ruling “is, by very definition, for a court to act *ultra vires*.” *Id.* at 1165 (quoting *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 101–02, 118 S.Ct. 1003, 140 L.Ed.2d 210 (1998)). The Majority misses this point. I write to express my disagreement with the Majority's conclusion that next-friend standing is nonjurisdictional.

As the Majority opinion highlights in its treatment of the merits, PETA brought a frivolous lawsuit here. The argument that animals have statutory standing to maintain a Copyright Act claim—or any property right claims—is an easy question. Under the holding in *Cetacean Community v. Bush*, 386 F.3d 1169 (9th Cir. 2004), the Copyright Act, and basic property law, animals have no such rights.

parties have deferred the determination of trial-stage attorneys' fees until the resolution of this appeal.

¹² We do not speculate on the effect that any settlement agreement, such as that mentioned in the joint motion to dismiss and vacate, may have on Appellees' ability to realize any such award. We note that the joint motion recited that Appellant Naruto was not a party to the settlement agreement.