

**‘HAPPY BIRTHDAY TO YOU’: THE WORLD’S MOST FAMOUS
CELEBRATORY SONG’S COPYRIGHT CHALLENGED**

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ABSTRACT

It is a well-known adage that the best things in life are free, but how true could this be with a copyright looming over the “Happy Birthday to You” song’s head? On September 22, 2015, a U.S. District Court in California freed “Happy Birthday to You” by ruling on the case *Marya v. Warner/Chappell Music, Inc.* and declaring Warner/Chappell’s copyright invalid. Although the song is widely known by all, many individuals do not know that “Happy Birthday to You” was copyrighted at all, let alone know that Warner/Chappell was making \$2 million a year from ownership. [1] The history of how the song came to be provides an insight into how Warner/Chappell obtained a copyright and how the existence of the copyright was impacting everyone from filmmakers to restaurant chains.

I. HISTORY

The world owes the creation of “Happy Birthday to You” to two sisters, Mildred Jane Hill and Patty Smith Hill. Mildred and Patty began to collaborate on writing songs for children in 1889. One of their earliest efforts was the song “Good Morning to All,” and the melody of this song became the melody of “Happy Birthday to You.” Patty would first write the words of the songs and then Mildred would compose a melody. [2]

Four years later, in 1893, the sisters sold a manuscript containing 73 songs to publisher Clayton F. Summy, and this manuscript included “Good Morning to All.”

Within the year, Summy published *Song Stories for the Kindergarten* and was able to obtain copyright protection as the proprietor of the collection of songs but not as the author. [3] In 1921, the original copyright for *Song Stories for the Kindergarten* expired and Summy didn't renew his copyright for this work. This meant that the contents of *Song Stories for the Kindergarten* should have become public domain. [4]

Then in 1934, Jessica Hill, Mildred and Patty Hill's sister, sold and assigned rights for certain piano arrangements of "Good Morning to All" to Summy Co. who began granting licensing rights through the American Society of Composers, Authors and Publishers (ASCAP) for public performances of "Happy Birthday to You" in February 1938. [5] Summy Co. renewed its copyright registrations in 1962, and was renamed Birch Tree Ltd. Warner/Chappell Music, Inc. acquiesced Birch Tree Ltd. in 1998 and has been enforcing copyright on the song ever since. [6]

As birthday parties emerged, "Happy Birthday to You" became extremely well known as the standard birthday song and continued to grow in popularity. In a 1999 press release, the American Society of Composers, Authors and Publishers announced that "Happy Birthday to You" was "far and away" the most popular song of the twentieth century, having been "publicly performed hundreds of millions of times." [7]

Additionally, the Internet Movie Database reveals that the song has appeared in 143 movies as well as in countless advertisements, in everything from Oldsmobile automobiles to Frosted Flakes and Cheerios cereals. As the song became more popular, it began to generate greater and greater revenues. It also started to become expensive to sing "Happy Birthday to You" in movies, on albums, and even in restaurants.

II. THE CASE

On April 21, 2014, Rupa Marya, Robert Siegel, Good Morning to You Productions Corp., and Majar Productions, LLC filed a complaint against Warner/Chappell Music, Inc. and Summy-Birchard Inc. to invalidate their copyright on “Happy Birthday to You.” [8] The plaintiffs argued that Warner/Chappell did not own a copyright in the “Happy Birthday to You” lyrics and that they should be compelled to return the millions of dollars of unlawful licensing fees they have collected by wrongfully asserting copyright ownership in the lyrics. [9] The lawsuit was prompted when documentarian Jennifer Nelson had to pay \$1500 for a synchronization license to Warner/Chappell to include the song in her movie. Another plaintiff, musician Ruypa Marya, revealed she had to pay \$455 to include "Happy Birthday to You" in a live album in which her bandmates sang the song to her. [10]

Warner/Chappell argued that the Hill sisters eventually gave Summy Co. the rights in the lyrics to exploit and protect, but the court concluded that this assertion has no support in the record. As a musical work both the lyrics and music of “Happy Birthday to You” are copyrightable, and are both independently protected from infringement. [11] Warner/Chappell argues that the Hill sisters authored the lyrics to “Happy Birthday to You” and then transferred them to Summy Co., which published and registered them for a federal copyright in 1935. [12] Plaintiffs challenge that someone else may have written the lyrics and the rights were never transferred to Summy Co. [13] The court said the Hill sisters gave Summy Co. the rights to the melody, and the rights to piano arrangements based on the melody, but never any rights to the lyrics. [14] Because Summy Co. never acquired the rights to the “Happy Birthday to

You” lyrics, Warner/Chappell, as Summy Co.'s purported successors-in-interest, do not own a valid copyright in the “Happy Birthday to You” lyrics. [15]

There was a turning point in the case when the plaintiffs had evidence that they called “a proverbial smoking gun”: a 1922 songbook containing “Good Morning and Birthday Song,” with the birthday lyrics in the third verse. [16] While other songs in the book are given with copyright notices, “Good Morning and Birthday Song” says only that it appears through “special permission” of the Summy Company. [17] Under the laws of the time, an authorized publication without proper copyright notice would result in forfeiture of the copyright according to plaintiff’s lawyers involved in the case. [18] Moreover, under the 1998 law, anything published before 1923 is considered part of the public domain. [19] This would mean that Warner/Chappell was claiming copyright rights on a piece of work that was already in the public domain, and therefore not subject to copyright.

Although the court ruled that Warner/Chappell did not have a right to the lyrics of the song, they may not be held liable for the hundreds of millions of dollars speculators claim Warner/Chappell will owe. The statute of limitations for a claim such as the one brought forth by Marya and Good Morning To You Productions is three years so Warner/Chappell is estimated to owe around \$6 million. [20] The statute of limitations has been upheld and two plaintiffs were dismissed because their allegations fell outside the statute of limitations. [21]

Warner/Chappell has full right to appeal the ruling to the US Court of Appeals for the 9th Circuit, although there have been no comments from the Warner/Chappell

lawyers indicating that they are pursuing further litigation. For now, then, “Happy Birthday to You” is free to use by all, rendering the adage true at last.

ENDNOTES

- [1]. Brauneis, Robert. Copyright and the World's Most Popular Song, at 19
- [2]. *Id.* at 10
- [3]. Steve Brachmann, 'Happy Birthday to You' Copyright Challenged in Class Action, IPWATCHDOG (Aug. 5, 2014), <http://www.ipwatchdog.com/2014/08/05/happy-birthday-to-you-copyright-challenged-in-class-action/id=50684/>
- [4]. *See id.*
- [5]. *See id.*
- [6]. *See id.*
- [7]. Copyright and the World's Most Popular Song at 16
- [8]. *See Marya v. Warner/Chappell Music, Inc.*, No. CV134460GHKMRWX, 2015 WL 5568497, at *3 (C.D. Cal. Sept. 22, 2015).
- [9]. *See id.*
- [10]. Associated Press, *Judge frees 'happy birthday' song from copyright claims*, DAILY MAIL.COM (Sept. 23, 2015), <http://www.dailymail.co.uk/wires/ap/article-3245843/Judge-frees-Happy-Birthday-song-copyright-claims.html>
- [11]. *See Marya v. Warner/Chappell Music, Inc.*, No. CV134460GHKMRWX, 2015 WL 5568497, at *17 (C.D. Cal. Sept. 22, 2015).
- [12]. *See id.*
- [13]. *See id.*
- [14]. *See id.* at 20
- [15]. *Id.*
- [16]. Ben Sisario, *An Old Songbook Could Put 'Happy Birthday' in the Public Domain*, THE NEW YORK TIMES (Aug. 4, 2015), <http://www.nytimes.com/2015/08/05/business/media/an-old-songbook-could-put-happy-birthday-in-the-public-domain.html>
- [17]. *See id.*
- [18]. *See id.*
- [19]. *See id.*
- [20]. Steve Brachmann, 'Happy Birthday to You' Copyright Challenged in Class Action, IPWATCHDOG (Aug. 5, 2014), <http://www.ipwatchdog.com/2014/08/05/happy-birthday-to-you-copyright-challenged-in-class-action/id=50684/>
- [21]. *See id.*