

# Music Publisher Caught in Birthday Suit, Agrees to Settle



By Tal Grinblat and Nicholas S. Kanter

**IT'S ALMOST SETTLED. THE LEGAL** battle over the ever-pervasive “Happy Birthday to You”—sung by waiters in corporate restaurants around the world to embarrassed birthday celebrants and diners—may now reside in the public domain for all users, much to the relief of many in the entertainment industry. And it all started with a documentary film maker who objected to paying a \$1,500 license fee.

In 2013, Good Morning to You Productions Corp., Rupa Marya and Robert Siegel (collectively “GMTY”) filed a class action suit against one of the largest music publishing companies in the world, Warner/Chappell Music, Inc., and Summy-Birchard, Inc. (collectively “WCMI”), in the Central

District of California.<sup>1</sup> The suit sought to invalidate the copyright registration for the song “Happy Birthday to You.”

GMTY claimed the song is in the public domain, that WCMI had no rights to the lyrics or melody, and that WCMI should return “millions of dollars of unlawful licensing fees” received over the years.

## **Validity of the Summy Copyright Registration**

In 1893, Mildred and Patty Hill sold a manuscript containing 73 songs composed by the sisters, including one piece titled “Good Morning to All,” to Clayton F. Summy. The melody was composed by Mildred and the lyrics written by Patty. Summy subsequently published the song in a songbook called *Song Stories for the*

*Kindergarten*. Summy applied to register the copyright in the songbook that same year.

As a musical work, “Happy Birthday” has two primary copyrightable elements, one for the music composition (the tune) and the other for the lyrics. Each one is protected against infringement independently.

The parties both conceded that the “Happy Birthday” melody entered the public domain years ago. The issue in the case was whether the lyrics were still protectable by copyright, and if so, who had those rights. WCMI contended that the Hill sisters authored the lyrics to the song, held it for several decades, and then transferred it to Summy Company in 1935, which subsequently published and registered the lyrics for federal copyright.



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The issue for WCMI was that the copyright registration covered “arrangement as easy piano solo with text” and listed another person as the author of the lyrics. Hence, the copyright registration may not have covered the lyrics in the dispute.

### **Copyright Birthday Candles Begin Melting**

The court held that WCMI had no evidence a transfer of the lyrics occurred from the Hill sisters to WCMI. It found that while the Hill sisters gave Summy Company the rights to the melody and the rights to piano arrangements based on the melody, no rights were transferred to the lyrics. The court explained that because Summy never acquired rights to the “Happy Birthday” lyrics, WCMI as Summy’s successor-in-interest did not hold a valid copyright in the “Happy Birthday” lyrics entitling them to collect royalty or licensing fees.

In February, the parties agreed to a tentative settlement whereby Warner/Chappell agreed to refund \$14 million in royalties collected, though the settlement is not yet finalized by the court. A preliminary approval hearing is scheduled for mid-March. If approved, it could mean a return of license fees to many who paid for use of the song since 1949.

The court ruling and proposed settlement signifies a landmark win for the Davids in this David and Goliath-like battle, particularly for musicians, entertainment producers and other artists around the world.

For attorneys representing business owners wanting to protect their clients’ copyrights, the case serves as a reminder to ensure clients have valid and documented ownership rights to their works before enforcing those rights. 

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<sup>1</sup> *Rupa Marya, et al. v. Warner/Chappell Music, Inc., et al.*, C.D. Cal. (Sept. 22, 2015), 2015 WL 55684972015, 116 U.S.P.Q.2d 1563.