

# Chicago Daily Law Bulletin®

Volume 162, No. 55

Serving Chicago's legal community for 161 years

## A happier 'Happy Birthday' for you

**F**or many years most of us have, on the anniversary of someone's birth, sung the song "Happy Birthday to You." You know, the song that goes "Happy birthday to you, happy birthday to you, happy birthday dear ... " And, well, you know the rest.

Did we care or even know that we might be committing copyright infringement by singing it? Of course not. But until just a month or so ago, Warner/Chappell Music would have insisted that we were.

The main reason we needn't have cared about copyright in the song was usually that we were singing it in a private setting, hidden from the eyes of Warner/Chappell. The main reason that movie and television and radio producers did care was because public consumption is not so hidden, and Warner/Chappell insisted they owned a still-valid copyright in the song. Royalties, therefore, must be paid for permission to use.

And paid they were; estimates are that Warner/Chappell received an average of \$2 million per year in royalties for many years for granting a license to use "Happy Birthday." But what sort of rights could possibly exist in such an old, and extremely simple, song? And doesn't everyone sing it, in homes, restaurants, stadiums and public venues all over the world?

A little bit of trivia connected with the song: The Guinness Book of World Records states that "Happy Birthday to You" is officially the world's most recognized song. (No. 2 on the list is "For He's a Jolly Good Fellow" and No. 3 is "Auld Lang Syne.") And "Happy Birthday" was the

first song sung in outer space (unless aliens stole the song on one of their visits to New Mexico and sang it on their way back home).

And then in June 2013, a group of potential users decided that rather than simply submitting to Warner/Chappell's demand for royalties, they would challenge the copyright status of the song.

Based on not only the song's age but its' somewhat obscure lineage, they filed suit, arguing that if there ever was any copyright protection for the song, it has expired. Their claim for relief included a request that the court specifically find that the song is unarguably in the public domain. The song would thus be legally free for use by anyone at any time, without any requirement for permission or the payment of royalties.

Current copyright law states that protection exists for the life of the author plus 70 years. For songs, one copyright can be claimed by a lyricist in his/her lyrics and another by a composer in his/her music. Thus, one or the other portion of a song may fall into the public domain (which means no further copyright protection), while the remaining portion is still protected.

That was the argument of Warner/Chappell in its claim that "Happy Birthday" was still copyrighted. The music for the song was created by sisters Patty and Mildred Hill back in 1893, but with a different title, namely, "Good Morning to All."

Apparently Patty wrote the lyrics and Mildred wrote the tune, based on some other popular melodies of the day. Considering the viability of the Hill sisters (long deceased) and assuming that the music was suf-

### COPYRIGHTS AND WRONGS



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ficiently original with them (an arguable assumption), copyright in the music seems to have expired. Neither of the sisters had any children.

The "Happy Birthday" lyrics, however, simple though they are, tell another story. They may or may not have been created in 1911, when they were included by themselves in a publication as being by two other authors. In 1935, an arrangement of the song with the lyrics was the subject of a copyright registration application, with the authors shown as two entirely different people.

That filing apparently gave rise to a claim by the surviving Hill sister that the sisters owned both the music and the lyrics. However, there is no evidence that the sisters had anything to do with the lyrics. If they did, the copyright could have expired for the lyrics as well. But no one knows who decided to apply these lyrics to that melody, or when, and indeed, it is possible that it just happened.

The Hill sisters' "Good

Morning to All" lyrics, ending in "Good morning to you," were very similar to and could quite easily have simply morphed into "Happy birthday to you."

In 1988, Warner/Chappell purchased all rights to the company that claimed ownership in the song, and since then, has insisted that copyright still lives in it. As a matter of practice, most large entertainment companies are averse to litigation, if possible.

Consequently, and especially with large-budget projects, when faced with a demand by Warner/Chappell that they pay a royalty (\$10,000 is a not unusual amount), they paid rather than attempting to fight.

In September 2015, the U.S. District Court for the Central District of California ruled that the 1935 registration was deficient and the court could not acknowledge that either the Hill sisters or Warner/Chappell's predecessors owned a copyright in the lyrics (the parties admitted public domain status of the melody).

Last month, a settlement was reached by the parties that included consent to a judicial declaration that the "Happy Birthday" lyrics are in the public domain. Warner/Chappell also agreed to restitution of a substantial sum to various parties from whom royalties were collected.

The court's decision simply confirms what we all subconsciously felt all along; we must have known the song was in the public domain, since we never would have committed copyright infringement by singing it.

A party, complete with a birthday cake and candles, celebrating the outcome will be announced shortly.