

October 19, 2015

Marya v. Warner/Chappell Music, Inc.: The 'Happy Birthday' Decision

Joyce E Kung, Associate

"Obviously, pianos do not sing," reads last month's Central District of California decision in *Marya v. Warner/Chappell Music, Inc.*¹ The decision extinguished Warner/Chappell's purported rights in the lyrics to the popular tune "Happy Birthday."

Doing so required some amount of sleuthing.

The melody for "Happy Birthday" was written by sisters Mildred and Patty Hill at some point before 1893. The sisters tested and reengineered the melody until they came up with a song that young children could easily master.² The original lyrics were "Good Morning to All,"³ but later adaptations by the Hills included "Happy Journey to You," "Happy New Year to You," and, of course, "Happy Birthday to You."⁴ Mildred is credited with composing the music with Patty's help, while Patty is credited with writing the lyrics.⁵

In 1893, the Hills assigned their rights to a manuscript containing "Good Morning to All" to Clayton F. Summy, and that year, Summy published the manuscript and obtained copyright registration for the book, *Song Stories for the Kindergarten*. Given the copyright term available under the Copyright Act of 1909, copyright for *Song Stories* and "Good Morning to All" expired in 1949.⁶ The first publication of the "Happy Birthday" lyrics is murkier, and early publications do not properly attribute.

In 1934, another Hill sister as Mildred's heir sued the producers of the play "As Thousands Cheer" (which included a performance of "Happy Birthday") for infringement, but the basis of the suit was infringement of the copyright for "Good Morning to All," which shared the same melody.⁷ Between 1934 and 1935, the Hills allegedly assigned to Summy some licenses for various piano arrangements for "Good Morning

¹ *Marya v. Warner/Chappell Music, Inc.*, No. CV134460GHKMRWX, 2015 WL 5568497, at *14 (C.D. Cal. Sept. 22, 2015).

² *Id.* at *8.

³ "Good morning to all, good morning to all, good morning dear children, good morning to all." *Id.* at *1 n.1.

⁴ *Id.*

⁵ *Id.* at *1.

⁶ *Id.* at *1.

⁷ *Id.* at *2.

October 19, 2015

to All” and “Happy Birthday” pursuant to a second agreement. In 1935, the Clayton F. Summy Company registered copyrights, and Warner/Chappell claims that one of those registrations identified as E51990 secured registration for the “Happy Birthday” lyrics. In 1942, the Hills sued Summy for granting licenses to the sound and dialog rights of “Happy Birthday” to producers and for public performance beyond Summy’s authority, and in 1944, the parties entered settlement and a third agreement for eleven different copyrights.⁸

The million dollar (or rather, \$2 million per year, which Warner/Chappell reportedly earns in licensing fees) question before the Court was whether the Hills had ever transferred the “Happy Birthday” lyrics to Summy, Warner/Chappell’s predecessor. The Court recognized the need to infer facts from the pleadings in the 1942 lawsuit to determine the contents of the second agreement. Based on those pleadings, the Hills and Summy had described the second agreement as transferring rights in “piano arrangements.” The Court explained its logic: “Obviously, pianos do not sing. Thus, it is not logical to infer that rights to ‘piano arrangements’ would include rights to any lyrics or words as well.”⁹

Second, the Court inferred that the underlying legal theory of the 1942 lawsuit would have been inconsistent had the second agreement covered the “Happy Birthday” lyrics.¹⁰ Third, the Court clarified that it was the first agreement that was the subject of the 1942 lawsuit, and that, as relief, the Hills sought to terminate the second agreement—and that the lawsuit was not about the “Happy Birthday” lyrics as Warner/Chappell had alleged, but rather about the “Good Morning to All”/“Happy Birthday” melody, which was the subject of the first agreement.¹¹ The Court refused to agree with Warner/Chappell’s speculation that the Hills’ decision not to sue Summy or any others for publishing or publicly performing the lyrics meant that the Hills had assigned the lyrics to Summy. Further, the Court stated that the third agreement transferred the Hills’ “right, title and interest . . . in” a number of registered copyrighted works, including various piano arrangement, *Song Stories*, and copyrights to E51990, but that it is silent on the “Happy Birthday” lyrics themselves.¹² The Court thus granted Plaintiffs’ motion on the issue of whether the Hills ever transferred the “Happy Birthday” lyrics to Summy.

Additional facts and arguments, though neither salient nor even accepted by the Court, were notable. For example, though the Court denied the parties’ cross motions on abandonment of the lyrics, a *TIME*

⁸ *Id.* at *2-3.

⁹ *Id.* at *14. The Court had also noted that E51990 was registered as a derivative work with “Preston Ware Orem, employed for hire by Clayton F. Summy Co.” as the author, and claims “Arrangement as easy piano, with text.” *Id.* at *6. The Copyright Office’s catalog entry contains additional information, including that the work is by Mildred J. Hill and arranged by Preston Ware Orem, though notably missing is Patty Hill, the author of the lyrics. *Id.* at *6 n.9.

¹⁰ *Id.* at *15.

¹¹ *Id.* at *15-16.

¹² *Id.* at *16-17.

October 19, 2015

magazine article reporting on the 1934 lawsuit explained that “Lyricist Patty Hill . . . *had no complaint to make on the use of the words because she long ago resigned herself to the fact that her ditty had become common property of the nation.*”¹³ Another article from 1950 reported that the American Society of Composers, Authors and Publishers (ASCAP) was collecting royalties for the performance of “Happy Birthday” but also noted that the play titled “Happy Birthday” in 1947 spoke the lyrics of the song “Happy Birthday” but did not sing the melody “when it was discovered that the well-known birthday song was not in the public domain. . . .”¹⁴

The Court concluded that “[b]ecause Summy Co. never acquired the rights to the *Happy Birthday* lyrics, Defendants, as Summy Co.’s purported successors-in-interest, do not own a valid copyright in the *Happy Birthday* lyrics.”¹⁵ Warner/Chappell is expected to appeal.

About the Author

Joyce E Kung is an associate in Cohen & Gresser’s Intellectual Property & Technology group. Ms. Kung has experience in intellectual property disputes and transactions, specifically relating to patents, trademarks, and copyrights. She is registered to practice before the United States Patent and Trademark Office.

About the Firm

Cohen & Gresser is an international law firm with offices in New York, Paris, and Seoul. We represent clients in complex litigation and corporate transactions throughout the world. Founded in 2002, Cohen & Gresser LLP has grown to nearly sixty lawyers in six practice areas: Litigation and Arbitration, Intellectual Property and Technology, White Collar Defense, Corporate, Tax, and Employment Law.

[New York](#) | [Paris](#) | [Seoul](#)

www.cohengresser.com
info@cohengresser.com
+1 212 957 7600



[View C&G’s profile](#)

¹³ *Id.* at *11.

¹⁴ *Id.* at *19 n.21

¹⁵ *Id.* at *20.