

Rupa Marya, et al.  
v  
Warner/Chappell Music, Inc.

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Law 010  
Ch. 8 Intellectual Property

# Background Information

- In 1893, Mildred and Patty Hill wrote and composed a melody titled “Good Morning to All”. They assigned their rights to the manuscript containing this song and others to Clayton Summy (Summy Co.)
- In 1988, Warner/Chappell Music purchased Summy Co. with the presumption that they owned a copyright in the Happy Birthday Song and claimed copyright when song used in films, television and radio.
- Plaintiffs Marya et al, filed a lawsuit against Defendants Warner/Chappell and Summy Co. declaring invalid their alleged copyright in the Happy Birthday To You song. Plaintiffs state that defendants should be compelled to return “the millions of dollars of unlawful licensing fees” they have collected over the years by wrongfully asserting copyright ownership of the song’s actual lyrics.

- #1 - Defendants claim to have a copyright in the Happy Birthday lyrics. As a musical work, Happy Birthday has at least two copyrightable elements, the music and the lyrics, and each element is protected against infringement independently. See 1-2 Nimmer on Copyright § 2.05 (“Suppose the plaintiff’s work includes both music and ‘accompanying’ words, but the defendant copies only the plaintiff’s words, unaccompanied by his music, or only his music, unaccompanied by the words. It was clear under the 1909 Act, and remains clear under the present Act, that . . . the copyright . . . will protect against unauthorized use of the music alone or of the words alone, or of a combination of music and words.”).
- Defendant Summy Co. filed for copyright registration of a songbook titled “Song Stories for the Kindergarten” containing the song called “Good Morning to All” which shared the same melody as the Happy Birthday song. The defendants did not have a copyright to the Happy Birthday lyrics because these lyrics did not appear in the songbook. As a musical composition, the Happy Birthday song is composed of two copyrightable elements; the music and any accompanying words. Under Copyright Act of 1909, the Happy Birthday song is protected against unauthorized use of either the music, the words, or both together.

- #2 - The distinction between the music and the lyrics as copyrightable elements is critical in this case because both Parties agree that the Happy Birthday melody was borrowed from Good Morning and entered the public domain a long time ago. The Parties disagree only about the status of the Happy Birthday lyrics. Defendants contend, in brief, that the Hill sisters authored the lyrics to Happy Birthday around the turn of the last century, held onto the common law rights for several decades, and then transferred them to Summy Co., which published and registered them for a federal copyright in 1935. Plaintiffs challenge nearly every aspect of this narrative. They argue that the lyrics may have been written by someone else, the common law copyrights in the lyrics were lost due to general publication or abandonment before the lyrics were published, and the rights were never transferred to Summy Co.<sup>3</sup>
- It is critical to distinguish the copyrightable elements between the music and the lyrics of the Happy Birthday song because the copyright to the similar melody “Good Morning” expired in 1949 after two consecutive 28-year terms and entered the public domain. There is no documentation indicating that Patty Hill authored the lyrics or anyone else for this matter. Under common law rights, the author would determine when and where their work could first be published. Since the author was never established, the lyrics were abandoned and lost in general publication and Summy Co. did not own the rights to the lyrics.

③ #3 - The registration application for E51990 stated that it was an “Application for Copyright for Republished Musical Composition with New Copyright Matter.” (J.A. 48.) In other words, E51990 was a derivative work. See 17 U.S.C. § 101 (1976 Act) (“A ‘derivative work’ is a work based upon one or more preexisting works, such as a . . . musical arrangement . . .”). The title of the musical composition was listed as “Happy Birthday to You.” (J.A. 48.) The author of the new copyright material was “Preston Ware Orem, employed for hire by Clayton F. Summy Co.” (Id.) In one blank space, the application prompted the claimant to “[s]tate exactly on what new matter copyright is claimed . . . .” (Id.) For E51990, the response read: “Arrangement as easy piano solo, with text.” (Id.) Defendants contend that this registration entitles them to a presumption of validity. We disagree. Even assuming that the lyrics were printed in the deposit copy for E51990,<sup>5</sup> it is unclear whether those lyrics were being registered, and therefore it is unclear whether the Copyright Office determined the validity of Summy Co.’s alleged interest in the lyrics in 1935.

③ The registration application for E51990 was the application for copyright publication of derivative work authored by Preston Ware Orem. Derivative work is an expressive creation that includes major copyright-protected elements of an original, previously created first work. The new matter claimed for copyright was a musical composition by Orem titled “Happy Birthday to You” and listed as an arrangement as easy piano solo with text. Defendants tried validating that the lyrics to the Happy Birthday song was the text being registered with the piano arrangement even though they had previously stated Orem did not write the lyrics.

- #4 - Therefore, the registration is flawed in any event. If, as Defendants assert, the new matter being registered included the lyrics, then, contrary to the registration certificate, Mr. Orem could not have been the author of the new matter. Conversely, if Mr. Orem were the author of the new matter, then the lyrics could not have been a part of the registration. Defendants argue that we should overlook this “mistake”<sup>6</sup> and afford the registration a presumption of validity anyway because “[a]bsent intent to defraud and prejudice, inaccuracies in copyright registrations do not bar actions for infringement.” *Harris v. Emus Records Corp.*, 734 F.2d 1329, 1335 (9th Cir. 1984);
- E51990 did not contain original authorship of the lyrics nor did it list any Hill sisters as the author. The purpose of this application was to register the new matter authored by Orem. The work registered as E51990 was flawed because if defendants were asserting that the new matter being registered included the lyrics, then Orem could not have been the author of the new matter and contrary to this if Orem were the author of the new matter, the lyrics could not have been part of the registration since he did not write them. Defendants tried arguing that this inaccuracy in the copyright registration should be overlooked and should presumably validate their ownership of a copyright registration. This presumption could not determine whether Summy Co. had authorization from the author to publish that work or had the rights to the lyrics to copyright them.

- ⑤ #5 - Given this facial and material mistake in the registration certificate, we cannot presume (1) that Patty authored the lyrics or (2) that Summy Co. had any rights to the lyrics at the time of the E51990 registration. Accordingly, Defendants must present other evidence to prove their case.
- ⑥ Both parties agreed on all other details of the claim except: 1. Who wrote the song 2. If Summy Co. owned the rights of the lyrics at the time of registration for the song. The information given at the time of registration does not make it clear, therefore it is a material mistake. The court determined that these two elements must be determined by other evidence in order for the Defendants to prove the case.

- ⑥ **#6 - Defendants claim that Patty wrote the lyrics to Happy Birthday; Plaintiffs claim someone else may have.<sup>8</sup> Since Plaintiffs do not have the burden of proof on this issue, they may discharge their initial burden on their Motion by pointing to affirmative evidence negating Defendants' authorship claim. Plaintiffs point to the many publications of the Happy Birthday lyrics throughout the 1920s and 1930s that did not credit Patty. References to the lyrics (without full publication) appeared in 1901 and 1909. The words were fully published in 1911, 1912, 1915, 1922, 1924, and 1928. The song was performed in several movies in the early to mid-1930s. Furthermore, though none of these publications explicitly credited anyone with authoring the Happy Birthday lyrics, several of them were copyrighted, and the certificates of registration listed other authors. For instance, *The Elementary Worker and His Work*, which was published in 1911 and contained the full Happy Birthday lyrics, listed Alice Jacobs and Ermina Chester Lincoln as its authors**



- Defendant's claimed that Patty had written the lyrics to "Happy Birthday", then when giving the authorization to the song to Summy Co. it included the lyrics to both "Happy Birthday" and "Good Morning". The plaintiffs however, claimed that she did not, with various instances where the song was used including being claimed by other authors like Alice Jacobs and Ermina Chester. This connection to who wrote the song was a key element in figuring out if the lyrics were in fact the copyright property of Warner/Chappell.

- ⑦ **#7 - The publication of The Everyday Song Book, however, is not sufficient to entitle Plaintiffs to a directed verdict at trial. As Defendants point out, there is no direct evidence that the Hill sisters had authorized Summy Co. to grant permission for the publication of the lyrics in The Everyday Song Book. It is undisputed that, in 1922, Summy Co. did not have any rights to the Happy Birthday lyrics; Defendants claim that the rights to the lyrics were given to Summy Co., at the earliest, in 1934 and 1935. It is also not clear if Summy Co. gave the publisher of The Everyday Song Book permission to publish the Happy Birthday lyrics specifically or just permission to publish Good Morning, of which Summy Co. had been printing and selling copies on the Hill sisters' behalf at that time. Since the publication of The Everyday Song Book would not be sufficient to entitle Plaintiffs to a directed verdict, Plaintiffs cannot satisfy their initial burden under Rule 56. Accordingly, Plaintiffs' Motion is DENIED as to this issue.**

- The publication of the book, *The Everyday Song* was another claim brought by the plaintiff's stating that under common law of the Copyright Act of 1909, work was protected by common law "until the moment of general publication". Because the book was published in around 1935, Patty lost the rights to the lyrics through "divestive publication". This issue was questionable because original publication was not definite, in terms of consent and intended audience. The courts determined that the publishing of the book was not enough to determine if the publication of the lyrics specifically and determined that Plaintiff's motion was denied in regards to this issue.

- ⑧ **#8 - Defendants ask us to find that the Hill sisters eventually gave Summy Co. the rights in the lyrics to exploit and protect, but this assertion has no support in the record. 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. Defendants' speculation that the pleadings in the Hill-Summy lawsuit somehow show that the Second Agreement involved a transfer of rights in the lyrics is implausible and unreasonable. Defendants' suggestion that the Third Agreement effected such a transfer is circular and fares no better. As far as the record is concerned, even if the Hill sisters still held common law rights by the time of the Second or Third Agreement, they did not give those rights to Summy Co. In light of the foregoing, Defendants' Motion is DENIED and Plaintiffs' Motion is GRANTED as set forth above.<sup>20</sup> Because 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.**

- This statement explains part of the court's conclusion where even though the defendants state that they received rights to the song's lyrics, there is no support or record that shows that arrangement, only arrangements on receiving the rights to the melody. Even in the 2<sup>nd</sup> and 3<sup>rd</sup> agreements there is no solid proof that the lyrics were part of the rights to the song. The courts denied the defendants motion and granted the plaintiff's motion. Meaning that the defendants do not hold a valid copyright of the "Happy Birthday" song because previous agreements did not include the lyrics to the song.

- **#9 - explain who won the case and provide your conclusion of the case**
- Plaintiffs Ruppia Marya, Robert Siegel, Good Morning to You Productions Corp. and Majar Productions won the case. Since Summy Co. never acquired the right to the Happy birthday lyrics, Warren/Chappell, its successors, do not own a valid copyright in the lyrics.