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“Happy Birthday to You” and You and You—The Song Belongs to All of Us!

BY [RUMA MAZUMDAR](#) / ON APRIL 16, 2016

After close to three years of litigation, a copyright battle over whether the nation’s most sung song belongs to the public or a music publisher has finally been settled. The popular birthday celebration song that we’ve all grown up singing, “Happy Birthday To You” belongs to the public domain. As a result, anyone who wants to use the song in a video, movie, TV show, musical, or any sort of performance, will not have to worry about paying for the use of the song—it is totally free.

What started this battle over whether the song was copyrighted or not, began when a filmmaker, Jennifer Nelson of Good Morning to You Productions, decided to produce a documentary movie about the song, titled “Happy Birthday.” Since the song would be performed in the film, Nelson paid \$1,500 and entered into a licensing agreement with Warner/Chappell, the publishing arm of Warner Music Group and owner of the song’s copyright. This did not sit well with her as she thought the song did not belong to anyone—in fact, her understanding was that it belonged to everyone. Though she paid the fee, she also brought this class action suit against the giant publisher to keep them from collecting from other musicians and producers, and to pay back fees they have collected since at least 2009.

To quickly trace the convoluted history of the song, we begin in 1893 when a kindergarten teacher, Patty Smith Hill, and her older sister, Mildred J. Hill, wrote and published a song for Patty’s kindergarten students, titled “Good Morning To All.” The original lyrics were: “Good morning to you / Good morning to you / Good morning, dear children / Good morning to all.” Mildred, a composer, helped Patty create a simple melody to match the words that would be easy for children to grasp. This melody eventually came to be sung with the “Happy Birthday” lyrics, which District Judge George H. King ruled Patty had written. The sisters published the melody in a kindergarten songbook with their publisher Clayton F. Summy Co. (later Birch Tree Group). Summy obtained registrations to “Happy Birthday” in 1935 with permission from the Hill family.

Warner/Chappell acquired the song when it purchased Birch Tree Group in 1988. Since then it has collected about \$2 million per year in licensing fees for the song. Warner’s defense lies in the claim that the song was copyrighted in 1935. They also argued that the Hill sisters eventually gave Summy Co. the rights in the lyrics to exploit and protect. However, in September of last year Judge King ruled that the copyright Warner/Chappell held pertained only to “specific piano arrangements of the music,” and not the melody or lyrics. Warner/Chappell had bought and asserted faulty copyright of the original tune to “Good Morning to You” whose copyright actually expired in 1949.

The music publisher has now agreed to a \$14 million settlement in this class-action lawsuit. After legal fees, much of the settlement money will be used to pay back those individuals who had to pay to license "Happy Birthday" after 2009. While many paid to use the song prior to 2009, because Warner/Chappell is thought to have taken in \$50 million over the years the current settlement unfortunately will not be able to cover everyone. Regardless, moving forward this iconic song is now in the public domain so no one will ever have to pay to use it again!

In a [memorandum](#) in supporting the settlement, plaintiffs state, "[a]fter the settlement is approved, th[e] restraint will be removed and the song will be performed and used far more often than it has been in the past." Perhaps we should expect a surge in birthday related television, movies, and music mash-ups in the near future.

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