

# Exhibit E

1 UNITED STATES DISTRICT COURT  
2 CENTRAL DISTRICT OF CALIFORNIA  
3 WESTERN DIVISION

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5 -----X

6 GOOD MORNING TO YOU PRODUCTIONS CORP.,  
7 et al.;

8 Plaintiffs,

9 vs.

10 WARNER/CHAPPELL MUSIC INC., et al.,  
11 Defendants.

12 -----X

13 Lead Case No. CV 13-04460-GHK (MRWx)

14

15

16 V O L U M E I I

17 CONTINUED VIDEOTAPED DEPOSITION

18 OF RICHARD REIMER

19 New York, New York

20 Monday, July 21, 2014

21

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23

24 Reported by: David Henry

25 JOB 82467

1           A.    So I understand.

2           Q.    Yes.  And I appreciate your  
3 coming back today, so I don't want to keep  
4 anybody here any longer than necessary and  
5 let's just jump right into this.

6                   First, since you have worked at  
7 ASCAP, who has set the prices at which  
8 ASCAP issues its blanket licenses?

9           A.    As you may know, Mr. Rifkin,  
10 ASCAP operates in conformity with a consent  
11 judgment entered in a federal antitrust  
12 action.  One of the provision of that  
13 decree, as we refer to it, is a procedure  
14 by which any music user can apply to ASCAP  
15 for a license.  If ASCAP and the user  
16 cannot agree on the terms of that license,  
17 either the applicant or ASCAP may ask that  
18 the fees be determined by a judge of the  
19 United States District Court for the  
20 Southern District of New York.  With that  
21 said, ASCAP attempts to negotiate licenses  
22 on behalf of all of its members with music  
23 users.  In many instances we have been able  
24 to negotiate those rates, those licenses,  
25 and the rates with industrywide committees.

1 To cite two examples, the Radio Music  
2 License Committee that represents several  
3 thousand commercial radio stations, and the  
4 Television Music License Committee that  
5 represents about a thousand commercial  
6 television stations. If we are unable to  
7 negotiate license fees with industrywide  
8 committees or groups, we engage in  
9 negotiations directly with music users.  
10 From time to time we will promulgate  
11 license terms. Again these are for  
12 blankets licenses on behalf of all of  
13 ASCAP's members and offer those licenses to  
14 a wide array of music users. The best  
15 example of that is the bar-grill restaurant  
16 license. No industry group has seen fit to  
17 negotiate with ASCAP in terms of licenses,  
18 so as a result we promulgated a license  
19 agreement with rates about five, six, seven  
20 years ago and offered it to the entire  
21 bar-grill industry. I think that's a very  
22 long answer, but I think if I were to  
23 summarize, I would say that whenever  
24 possible the rates are negotiated. If it's  
25 not possible, we will offer a license on

1 terms that we believe are reasonable, and  
2 again, it's for a blanket license for all  
3 ASCAP members.

4 Q. Leaving apart occasions when  
5 either ASCAP or a user seeks judicial  
6 intervention through the rate court.

7 A. Of course, and in that instance  
8 the fee would be determined by the rate  
9 court judge.

10 Q. But leaving those instances  
11 apart, when ASCAP enters into agreements  
12 either with individual users or industry  
13 groups representing large groups of users,  
14 ASCAP is negotiating on behalf of the  
15 licensors of the music -- well, I take that  
16 back. ASCAP is actually the licensor of  
17 the music, correct?

18 A. Well, there are two licensors in  
19 that instance. We're getting the license  
20 from the members to on their behalf grant  
21 licenses in turn to the music users.

22 Q. And the party to the license with  
23 the user is ASCAP, correct?

24 A. Correct.

25 Q. And in that instance ASCAP

1 negotiates the fee with the user or the  
2 user group, leaving apart the instances  
3 where one or the other seeks intervention  
4 by the rate court, correct?

5 A. Correct.

6 Q. Okay. Since you have worked at  
7 ASCAP, has any ASCAP member had the right  
8 to instruct ASCAP how much to charge for  
9 ASCAP's blanket licenses?

10 A. Yes.

11 Q. How does that work?

12 A. Well, again in the first  
13 instance, members grant to us the right to  
14 license on their behalf all of their  
15 copyrighted musical works and then we  
16 attempt to negotiate blanket licenses. The  
17 ASCAP consent decree also has a provision  
18 that enables any music user and ASCAP  
19 member to effectively instruct ASCAP to  
20 license individual works. It doesn't  
21 happen frequently, but it certainly is an  
22 available option.

23 Q. And we may have spoken past each  
24 other. I was asking about not with respect  
25 to individual musical works, I was asking

1 applies.

2 Q. Okay. Since you have worked at  
3 ASCAP, has ASCAP helped any of its members  
4 to create new music?

5 A. If I understand that question  
6 correctly, let me answer it this way. We  
7 like to think of ASCAP as a full service  
8 performing rights organization, and one of  
9 the services we provide for our members is  
10 a variety of industry events, workshops,  
11 seminars, at which members, both  
12 prospective members, new members, old  
13 members, may participate; and so to that  
14 extent, of course one of the outcomes of  
15 those kinds of events is the creation of  
16 new music.

17 Q. So since you have worked at  
18 ASCAP, has ASCAP helped any of its members  
19 create new music?

20 MR. JOHNSON: Objection, asked  
21 and answered.

22 A. Well, I think my previous answer  
23 indicates yes.

24 Q. Has ASCAP worked on those new  
25 compositions?

1 MR. JOHNSON: Objection, asked  
2 and answered.

3 MS. LEMOINE: Join.

4 A. Anyone at ASCAP is a very broad  
5 statement or description. ASCAP has a  
6 board of directors. The board of directors  
7 is 12 writers and 12 publishers. I venture  
8 to guess that many or all of the writers  
9 who are currently members of the board of  
10 directors or have been in the past have  
11 collaborated with others in creating new  
12 music.

13 Q. And when they have done so in  
14 those instances, are you aware of them  
15 having done so in their official capacity  
16 on behalf of ASCAP?

17 A. I doubt that they were doing it  
18 as an ASCAP officer or director.

19 Q. Okay, thank you. Since you have  
20 worked at ASCAP, has ASCAP helped any of  
21 its members register copyrights in new  
22 music?

23 A. Again, if I understand the  
24 question correctly, to the extent that one  
25 significant aspect of ASCAP's operation is



1 the maintenance of records regarding the  
2 ASCAP repertory, I assume the answer to  
3 that has to be yes.

4 Q. And how has that happened? How  
5 has ASCAP helped any of its members  
6 register copyrights?

7 A. Well, for one thing we've  
8 maintained an extensive catalogue of all  
9 members' works. Now it's done  
10 electronically of course. We have an  
11 online registration facility that's  
12 available to all members.

13 Q. Registration from what?

14 A. Registration of their works.

15 Q. For membership in ASCAP?

16 A. Correct.

17 Q. Okay, and what I meant is  
18 registering copyrights with the Copyright  
19 Office. Does ASCAP assist its members to  
20 register copyrights with the Copyright  
21 Office?

22 A. It may from time to time be the  
23 case that one or another staff member of  
24 the ASCAP repertory department or ASCAP's  
25 membership department answers questions

1 from members as to how to properly go about  
2 registering their works with the copyright  
3 office.

4 Q. Are you aware of any instance  
5 when that has happened during the 43 years  
6 you've worked for ASCAP?

7 A. I certainly am aware. I can't  
8 give you specifics, but I know that that's  
9 one of the functions performed by the staff  
10 members of the two departments I've  
11 identified.

12 Q. You're not able to identify a  
13 single instance when someone at ASCAP has  
14 helped one of ASCAP's members to register a  
15 copyright with the copyright office?

16 MS. LEMOINE: Objection, asked  
17 and answered.

18 A. If by identify you mean a  
19 specific instance in which a specific  
20 member sought help for registering a  
21 specific work, the answer is no.

22 Q. Okay. You did prepare for  
23 today's resumed deposition, correct?

24 A. By reading the questions that  
25 were agreed upon, yes, that's correct.

1 of any ASCAP member?

2 A. I was aware of that question  
3 before I came here today.

4 MR. RIFKIN: I have nothing  
5 further. Thank you, Mr. Reimer.

6 MS. LEMOINE: I've got a few  
7 questions for you, Mr. Reimer. Do you  
8 need a break at this time?

9 THE WITNESS: I'll let you know  
10 if I do.

11 EXAMINATION BY MS. LEMOINE:

12 Q. Okay. So Mr. Rifkin has asked a  
13 series of questions about the relationship  
14 between ASCAP and its members, but can you  
15 just explain in your own words, what is the  
16 relationship between ASCAP and its members?

17 A. Well, I think as I began to  
18 indicate, ASCAP obtains from its members a  
19 non-exclusive right to license non-dramatic  
20 public performances on behalf of the  
21 members. As such, ASCAP attempts to  
22 license anyone that is publicly performing  
23 music and whose performances are not  
24 otherwise subject to exemption under the  
25 federal copyright law. As ASCAP does not

1 own any of the rights of the music it  
2 licenses, ASCAP's interest if you will is  
3 in being certain that ASCAP's members do in  
4 fact own the works on behalf of which, or  
5 for which ASCAP is licensing the performing  
6 rights.

7 Q. And is that in fact a licensing  
8 agent on its members' behalf for the works  
9 in the ASCAP repertory?

10 A. That I think is one way to  
11 characterize the relationship. Of course  
12 that relationship is set out in the  
13 membership agreement between ASCAP and its  
14 members, and it speaks in terms of a grant  
15 of rights to license on behalf of the  
16 members.

17 Q. Did ASCAP litigate rate court  
18 proceedings on members' behalf?

19 A. Frequently, yes.

20 Q. Does ASCAP pursue copyright  
21 infringement actions on its members'  
22 behalf?

23 A. Yes, it does.

24 Q. Does it conduct lobbying efforts  
25 on its members' behalf?

1 A. Yes, it does.

2 Q. So in the context of the  
3 relationship between ASCAP and its members  
4 that you've just described today, does  
5 ASCAP have an interest in the validity of  
6 the copyrights in its members' works in the  
7 ASCAP repertory?

8 A. Well, certainly ASCAP has an  
9 interest in making certain that when it's  
10 licensing on behalf of its members, that  
11 those members actually have the rights in  
12 the works that ASCAP is licensing. And  
13 that would apply to any member of ASCAP and  
14 the entire ASCAP repertory.

15 Q. So does ASCAP engage in  
16 confidential communication with its members  
17 concerning the validity of the copyright in  
18 those musical works that are in the ASCAP  
19 repertory?

20 A. As with many of my answers to  
21 Mr. Rifkin, I'm sure that that has occurred  
22 in the past, but I don't have any specific  
23 examples to cite to you.

24 Q. How about does ASCAP engage in  
25 privileged communication with its members

1 concerning the validity of the copyrights  
2 for their musical works in the ASCAP  
3 repertory?

4 A. Same answer. I'm virtually  
5 certain that has occurred, but I don't have  
6 any specific examples for you.

7 Q. Do you have any reason to doubt  
8 as you sit here today that the  
9 communication between Summy-Birchard and  
10 ASCAP concerning the validity of the  
11 copyright for Happy Birthday To You were  
12 intended to be confidential and privileged  
13 communication?

14 A. No.

15 MS. LEMOINE: That's all I  
16 have.

17 EXAMINATION BY MR. RIFKIN:

18 Q. I have some followup.

19 Mr. Reimer, you said that ASCAP  
20 engages in rate court proceedings on behalf  
21 of its members, correct?

22 A. Correct.

23 Q. Those are proceedings to fix the  
24 rates for blanket licenses, correct?

25 A. Well, blanket licenses among

1 A. Yes, I am.

2 Q. Have you ever done that for the  
3 song Happy Birthday To You?

4 A. I have not.

5 Q. And has ASCAP ever done that for  
6 the song Happy Birthday To You?

7 A. Mr. Rifkin, over the course of  
8 more than the 43 years that I've been at  
9 ASCAP, ASCAP has brought literally  
10 thousands of infringement actions. I don't  
11 know whether Happy Birthday was among them.

12 Q. You said that ASCAP is interested  
13 in the validity of copyrights in its  
14 repertory, correct?

15 A. Correct.

16 Q. What did ASCAP do to determine  
17 the validity of the copyright to Happy  
18 Birthday To You?

19 A. I don't know that ASCAP has done  
20 anything.

21 Q. When you say that ASCAP is  
22 interested in the validity of its  
23 copyrights, what did you mean by that?

24 A. I thought I gave a fairly  
25 complete answer. Could we read it back?

1 Q. Does ASCAP have a legal interest  
2 in the validity of any copyrights in its  
3 repertory?

4 MS. LEMOINE: Objection, asked  
5 and answered.

6 A. I don't know what you mean by a  
7 legal interest.

8 Q. Are ASCAP's rights affected one  
9 way or another by the validity of  
10 copyrights in its repertory?

11 A. It could well be, yes.

12 Q. How so?

13 A. We could not license works that  
14 are not the subject of valid copyrights.

15 Q. When you say you could not  
16 license works that are not the subject of  
17 valid copyrights, you mean individual works  
18 that are not the subject of valid  
19 copyrights?

20 A. I do.

21 Q. Okay. When ASCAP sells a blanket  
22 license, is it limited in any respect to  
23 particular works, or is it all of the works  
24 in the repertory?

25 A. It is typically all of the works



1 sure that its members do own valid  
2 copyrights in the music they license  
3 through ASCAP, does ASCAP have that  
4 interest as well?

5 MR. JOHNSON: Objection to  
6 form. That question doesn't make any  
7 sense.

8 MS. LEMOINE: Join.

9 A. I don't understand it.

10 Q. If a member does not have a valid  
11 copyright in music that it has identified  
12 to be licensed with the ASCAP blanket  
13 license, what interest does ASCAP have in  
14 that particular music?

15 MR. JOHNSON: Objection to  
16 form.

17 MS. LEMOINE: Objection to  
18 form.

19 A. If your question is, if I  
20 understand it correctly, if the member has  
21 no interest, what is ASCAP's interest? I  
22 have no idea. To me that's a meaningless  
23 question.

24 Q. Does ASCAP stand to gain or lose  
25 anything by a determination that a

1 copyright is invalid?

2 A. If you're talking about a single  
3 copyright, I don't know the answer to that.  
4 Certainly we can't license on behalf of  
5 members if the members don't have the  
6 rights.

7 Q. Are you able to identify for me  
8 any instance in which ASCAP has appeared in  
9 any judicial proceeding to defend the  
10 validity of any copyright on behalf of any  
11 member during the entire period of your  
12 employment at ASCAP?

13 MR. JOHNSON: Objection, asked  
14 and answered.

15 A. I can't conceive of any reason  
16 why ASCAP would appear in a proceeding to  
17 defend a copyright. It's the rights of the  
18 members that are at stake.

19 MR. RIFKIN: I have nothing  
20 further.

21 MS. LEMOINE: I don't have  
22 anything further.

23 MR. RIFKIN: Thank you,  
24 Mr. Reimer.

25 (Time noted: 5:18 p.m.)