

EXHIBIT 55

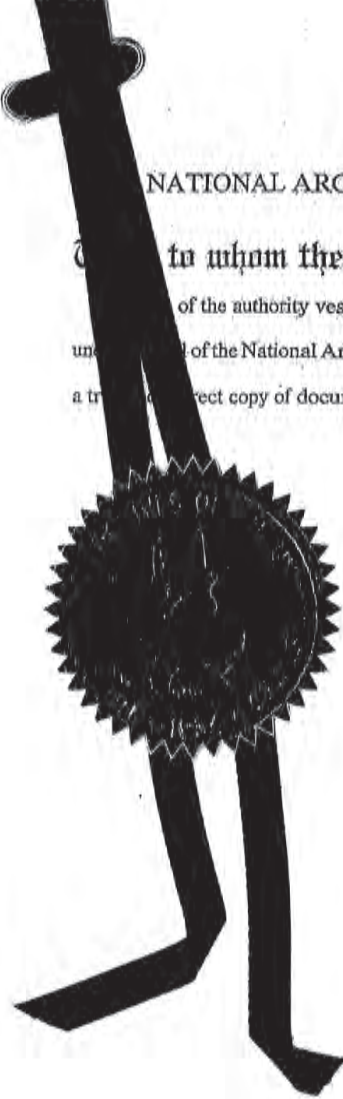
Ex. 55

707

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

to whom these presents shall come. Greeting:

of the authority vested in me by the Archivist of the United States, I certify on his behalf,
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<i>Lori Cox-Paul</i>	
NAME	DATE
<i>Lori Cox-Paul</i>	<i>10-24-2014</i>
TITLE	
Director of Archival Operations	
NAME AND ADDRESS OF DEPOSITORY	
National Archives at Kansas City 400 West Pershing Road Kansas City, MO 64108	

NA FORM 13040 (10-86)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK.

.....X
CLAYTON P. SUMMY CO.,
Plaintiff,
- against - COMPLAINT
McLOUGHLIN BROTHERS, INC.,
Defendant.
.....X

The plaintiff, complaining of the defendant, by its attorneys Beekman & Bogue, respectfully shows to the Court and alleges:

1. The plaintiff is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware.
2. The defendant is a corporation duly organized and existing under and by virtue of the laws of the State of New York.
3. This action arises under Act of March 4, 1909, ch. 320; 35 Stat. 1081; U.S.C. Title 17, as hereinafter more fully appears, and jurisdiction rests upon section 34 of the Act.
4. Prior to October 13, 1893, Patty S. Hill and her sister Mildred J. Hill, citizens of the United States, composed and wrote the music and words of a number of songs collectively entitled "Song Stories For the Kindergarten."
5. These songs were wholly original compositions and were and are copyrightable subject matter under

the laws of the United States.

6. On or about February 1, 1893, Patty S. Hill and Mildred J. Hill executed and delivered to Clayton F. Summy a written instrument by which they sold and assigned to him all their right, title and interest to the songs and authorized him to publish the songs in book form and to copyright the book in his own name.

7. Thereafter Clayton F. Summy after complying in all respects with the United States Revised Statutes, chapter 3, Title 60 (U.S. secs. 4948-4971) and all other laws governing copyright, on October 13, 1893 secured the exclusive rights and privileges in and to the copyright of the book, and received from the Register of Copyrights a certificate of registration of copyright No. 45997Y.

8. Since October 13, 1893, the book has been published by Clayton F. Summy or his successors and all copies of it or of selections from it, made by him or under his authority or license or that of his successors, have been printed, bound and published in strict conformity with the provisions of chapter 3, Title 60 of the Revised Statutes and all other laws governing copyright.

9. Thereafter and on or about January 14, 1895 Clayton F. Summy assigned all his right, title and interest in the copyright of the book to Clayton F. Summy Co., an Illinois corporation, which on or about April 15, 1925 assigned such right, title and interest to Clayton F. Summy Co., another Illinois corporation, which on or about August 31, 1931, assigned such right, title

and interest to the plaintiff Clayton F. Summy Co., a Delaware corporation.

10. Mildred J. Hill died intestate on or about June 5, 1916, leaving her surviving as all her next of kin, Patty S. Hill; Jessica M. Hill, another sister; Mary Hill, another sister; William Wallace Hill, a brother; and Archibald Anderson Hill, son of Archibald Anderson Hill, a deceased brother.

11. Thereafter Jessica M. Hill, after complying in all respects with the Act of March 4, 1909, ch. 320; 35 Stat. 1088; 17 U.S.C. secs. 23 and 24, and all other laws governing copyright, secured on September 3, 1921, a renewal of the copyright from the Register of Copyrights of the United States, numbered R19043, which she held in trust for all entitled to an interest therein.

12. Mary Hill died intestate on September 16, 1916, a resident of San Diego, California, unmarried, and leaving no descendants; William Wallace Hill died on April 3, 1923, a resident of Chicago, Illinois, leaving a will which was probated in the Probate Court for Cook County, Illinois.

13. On February 20, 1939, Archibald Anderson Hill conveyed all his right, title and interest in and to the copyright and its renewal to Patty S. Hill and Jessica M. Hill, together with all claims and causes of action theretofore accrued or which might thereafter accrue through its infringement, and the assignment was entered in the United States Copyright Office, in volume 425 at page 31; on March 22, 1939, Allen Davy, administrator de bonis non

with the will annexed of William Wallace Hill, pursuant to an order duly entered on the same day in the Probate Court for Cook County, Illinois, assigned all the right, title and interest of William Wallace Hill in and to the copyright to Clayton F. Summy Co., together with all claims and causes of action theretofore accrued or which might thereafter accrue through its infringement, and the assignment was entered in the United States Copyright Office, in volume 425 at page 34; on June 2, 1942, Jessica M. Hill and Patty S. Hill conveyed all their right, title and interest in and to the copyright and its renewal to The Hill Foundation, Inc., a New York corporation, together with all claims and causes of action theretofore accrued or which might thereafter accrue through infringement of the copyright, and the assignment was entered in the United States Copyright Office, in volume 485 at pages 242-243; and on October 16, 1944, The Hill Foundation, Inc. conveyed (subject to defeasance upon conditions subsequent which have not occurred) all its right, title and interest in and to the copyright and its renewal to the plaintiff, together with all claims and causes of action theretofore accrued or which might thereafter accrue through infringement of the copyright, and on November 10, 1944 the assignment was entered in the United States Copyright Office in volume 552, at pages 67-68.

14. Plaintiff is the sole proprietor of all right, title and interest in and to the copyright, and in and to any and all rights, demands, claims and causes of action arising through its infringement.

15. One of the songs in the book, entitled "Good Morning To All", later became popularly known as

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"Happy Birthday to You", the opening lines of the verses later written by Patty S. Hill for the song.

16. In 1939 and thereafter defendant infringed the copyright by manufacturing, publishing and selling in the United States copies of "Sing-a-Song Player Book", a toy piano-xylophone to which was physically attached a sheet carrying the song "Happy Birthday To You" with the notes of the song denoted on the musical staff by numbers, so that the song might be played by striking the appropriately numbered keys of the toy piano.

17. Photostatic copies of the relevant pages of the copyrighted work are annexed hereto and marked exhibit A; no copy of "Sing-a-Song Player Book" is annexed because it is impractical to do so.

18. Defendant continued to infringe the copyright after receiving notice from plaintiff that it was infringing.

WHEREFORE plaintiff demands:

(a) that defendant be required to pay to plaintiff such damages as plaintiff has sustained in consequence of defendant's infringement of the copyright and to account and pay over to plaintiff all the gains, profits and advantages derived by defendant from its infringement of plaintiff's copyright or such damages as to the Court shall appear proper within the provisions of the copyright statutes;

(b) that defendant be required to deliver for destruction all infringing copies;

(c) that defendant pay to plaintiff the costs of this action and reasonable attorneys' fees to be allowed to the plaintiff by the Court; and

(d) that the plaintiff have such other and further relief as is just.

BEH KAMM & TUGGLE,
Attorneys for Plaintiff,
Office and Post Office Address,
No. 15 Broad Street,
New York 5, New York.

By



A member of the firm of
Attorneys of Record
for the plaintiff.

EXHIBIT A

SONG * STORIES

For the Kindergarten.

Music Composed and Arranged by

Mildred J. Hill.

Words Written and Adapted by

Patty S. Hill.

With an Introduction by

ANNA E. BRYAN.

BOARDS, \$1.00
CLOTH, 1.50.

Chicago:

CLAYTON F. SUMMY.

174-176 Wabash Ave.

Copyright, 1906, by CLAYTON F. SUMMY

Ex. 55

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Ex. 55

716

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GOOD-MORNING TO ALL.

To be sung standing

Brightly.

Good - morn - ing to you Good - morn - ing to

you. Good - morn - ing dear chil - dren. Good - morn - ing to all.

GOOD-BYE SONG.

Air from MOZART

All our work is o - ver Bu - sy hands are thro' ..
Tho' we part we meet a - gain The mor - rows work to do. So

Have they been thro' all the day. Lov - ing kind and true?
good - bye lit - tle chil - dren And lov - ing teach - ers too

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Ex-30-284

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CLAYTON F. SUMMY CO.,

Plaintiff,

- against -

ROUGHLIN FROEYER, INC.,

Defendant.

COMPLAINT

BEKMAN & BOGUE

Attorneys for Plaintiff,

15 BROAD ST.

BOROUGH OF MANHATTAN
NEW YORK 5, N. Y.



EXHIBIT 56

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

To all to whom these presents shall come. Greeting:

In virtue of the authority vested in me by the Archivist of the United States, I certify on his behalf, under the seal of the National Archives and Records Administration, that the attached reproduction(s) is a true and correct copy of documents in his custody.



SIGNATURE <i>Lori Cox-Paul</i>	
NAME <i>Lori Cox-Paul</i>	DATE <i>12-24-2014</i>
TITLE Director of Archival Operations	
NAME AND ADDRESS OF DEPOSITORY National Archives at Kansas City 400 West Pershing Road Kansas City, MO 64108	

NA FORM 13040 (10-86)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK.

.....X
CLAYTON F. SUMMY CO., :
 :
 : Plaintiff, :
 :
 : -against- : COMPLAINT
 :
 : LOUIS MARX & COMPANY, INC., :
 :
 : Defendant. :
 :
 :X

The plaintiff, complaining of the defendant, by its attorneys Beekman & Bogue, respectfully shows to the Court and alleges:

1. The plaintiff is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware.
2. The defendant is a corporation duly organized and existing under and by virtue of the laws of the State of New York.
3. This action arises under Act of March 4, 1909, ch. 320; 35 Stat. 1081; U. S. C. Title 17, as hereinafter more fully appears, and jurisdiction rests upon section 34 of the Act.
4. Prior to October 13, 1893, Patty S. Hill and her sister Mildred J. Hill, citizens of the United States, composed and wrote the music and words of a number of songs collectively entitled "Song Stories For the Kindergarten."
5. These songs were wholly original compositions and were and are copyrightable subject matter under the laws of the United States.

6. On or about February 1, 1893, Patty S. Hill and Mildred J. Hill executed and delivered to Clayton F. Summy a written instrument by which they sold and assigned to him all their right, title and interest to the songs and authorized him to publish the songs in book form and to copyright the book in his own name.

7. Thereafter Clayton F. Summy after complying in all respects with the United States Revised Statutes, chapter 3, Title 60 (R.S. secs. 4948-4971) and all other laws governing copyright, on October 13, 1893 secured the exclusive rights and privileges in and to the copyright of the book, and received from the Register of Copyrights a certificate of registration of copyright No. 45997Y.

8. Since October 13, 1893, the book has been published by Clayton F. Summy or his successors and all copies of it or of selections from it, made by him or under his authority or license or that of his successors, have been printed, bound and published in strict conformity with the provisions of chapter 3, Title 60 of the Revised Statutes and all other laws governing copyright.

9. Thereafter and on or about January 14, 1895 Clayton F. Summy assigned all his right, title and interest in the copyright of the book to Clayton F. Summy Co., an Illinois corporation, which on or about April 15, 1925 assigned such right, title and interest to Clayton F. Summy Co., another Illinois corporation, which on or about August 31, 1931, assigned such right, title and interest to the plaintiff Clayton F. Summy Co., a Delaware corporation.

10. Mildred J. Hill died intestate on or about

Ex. 56

June 5, 1916, leaving her surviving as all her next of kin, Patty S. Hill; Jessica M. Hill, another sister; Mary Hill, another sister; William Wallace Hill, a brother; and Archibald Anderson Hill, son of Archibald Anderson Hill, a deceased brother.

11. Thereafter Jessica M. Hill, after complying in all respects with the Act of March 4, 1909, ch. 320; 35 Stat. 1088; 17 U.S.C. secs. 23 and 24, and all other laws governing copyright, secured on September 3, 1921, a renewal of the copyright from the Register of Copyrights of the United States, numbered R19043, which she held in trust for all entitled to an interest therein.

12. Mary Hill died intestate on September 16, 1916, a resident of San Diego, California, unmarried, and leaving no descendants; William Wallace Hill died on April 3, 1923, a resident of Chicago, Illinois, leaving a will which was probated in the Probate Court for Cook County, Illinois.

13. On February 20, 1939, Archibald Anderson Hill conveyed all his right, title and interest in and to the copyright and its renewal to Patty S. Hill and Jessica M. Hill, together with all claims and causes of action theretofore accrued or which might thereafter accrue through its infringement, and the assignment was entered in the United States Copyright Office, in volume 425 at page 31; on March 22, 1939, Allen Davy, administrator de bonis non with the will annexed of William Wallace Hill, pursuant to an order duly entered on the same day in the

Probate Court for Cook County, Illinois, assigned all the right, title and interest of William Wallace Hill in and to the copyright to Clayton F. Summy Co., together with all claims and causes of action theretofore accrued or which might thereafter accrue through its infringement, and the assignment was entered in the United States Copyright Office, in volume 425 at page 34; on June 2, 1942, Jessica M. Hill and Patty S. Hill conveyed all their right, title and interest in and to the copyright and its renewal to The Hill Foundation, Inc., a New York corporation, together with all claims and causes of action theretofore accrued or which might thereafter accrue through infringement of the copyright, and the assignment was entered in the United States Copyright Office, in volume 485 at pages 242-243; and on October 16, 1944, The Hill Foundation, Inc. conveyed (subject to defeasance upon conditions subsequent which have not occurred) all its right, title and interest in and to the copyright and its renewal to the plaintiff, together with all claims and causes of action theretofore accrued or which might thereafter accrue through infringement of the copyright, and on November 10, 1944 the assignment was entered in the United States Copyright Office in volume 552, at pages 61-68.

14. Plaintiff is the sole proprietor of all right, title and interest in and to the copyright, and in and to any and all rights, demands, claims and causes of action arising through its infringement.

15. One of the songs in the book, entitled "Good Morning To All", later became popularly known as

"Happy Birthday to You", the opening lines of the verses later written by Patty S. Hill for the song.

16. In 1939 and thereafter defendant infringed the copyright by manufacturing, publishing and selling in the United States copies of "Play-A-Way Piano Book", a toy piano-xylophone to which was physically attached a sheet carrying the song "Happy Birthday To You" with the notes of the song denoted on the musical staff by numbers, so that the song might be played by striking the appropriately numbered keys of the toy piano.

17. Photostatic copies of the relevant pages of the copyrighted work are annexed hereto and marked Exhibit A; no copy of "Play-A-Way Piano Book" is annexed because it is impractical to do so.

18. Defendant continued to infringe the copyright after receiving notice from plaintiff that it was infringing.

WHEREFORE plaintiff demands:

(a) that defendant be required to pay to plaintiff such damages as plaintiff has sustained in consequence of defendant's infringement of the copyright and to account and pay over to plaintiff all the gains, profits and advantages derived by defendant from its infringement of plaintiff's copyright or such damages as to the Court shall appear proper within the provisions of the copyright statutes;

(b) that defendant be required to deliver for

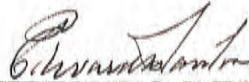
destruction all infringing copies;

(c) that defendant pay to plaintiff the costs of this action and reasonable attorneys' fees to be allowed to the plaintiff by the Court; and

(d) that the plaintiff have such other and further relief as is just.

FEIKMAN & BOGUE,
Attorneys for Plaintiff,
Office and Post Office Address,
No. 15 Broad Street,
New York 5, N.Y.

By



A member of the firm of
Attorneys of Record
for the plaintiff.

E X H I B I T A

SONG * STORIES

For the Kindergarten.

Music Composed and Arranged by

Mildred J. Hill.

Words Written and Adapted by

Patty S. Hill.

With an Introduction by

ANNA E. BRYAN.

BOARDS, \$1.00
CLOTH, 1.50

Chicago :

CLAYTON F. SUMMY.

174-176 Wabash Ave

Copyright, 1912, by Clayton F. Summy

Ex. 56

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Ex. 56

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GOOD-MORNING TO ALL.

To be sung standing.

Brightly.

Good - morn - ing to you Good - morn - ing to
you. Good - morn - ing dear chil - dren. Good - morn - ing to all

The musical score consists of three systems. Each system has a vocal line in treble clef with lyrics underneath, and piano accompaniment in grand staff (treble and bass clefs). The key signature has one sharp (F#) and the time signature is 3/4. The first system covers the first two lines of lyrics. The second system covers the next two lines of lyrics.

GOOD-BYE SONG.

Air from MOZART

All our work is o - ver Bu - sy hands are thro'
Tho' we part we meet a - gain The mor - rows work to do. So
have they been thro' all the day. Lov - ing kind and
good - bye to the chil - dren And lov - ing teach - ers

The musical score consists of two systems. Each system has a vocal line in treble clef with lyrics underneath, and piano accompaniment in grand staff (treble and bass clefs). The key signature has one sharp (F#) and the time signature is 3/4. The first system covers the first two lines of lyrics. The second system covers the next two lines of lyrics.

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Ex-30-185

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CLAYTON F. SUREY CO.,

Plaintiff,

-vs-

LOUIS WEISS & COMPANY, INC.

Defendant.

15

COMPLAINT

BECKMAN & BOGUE

Attorneys for Plaintiff,

15 BROAD ST.

BOROUGH OF MANHATTAN
NEW YORK 5, N. Y.



EXHIBIT 57

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

all to whom these presents shall come. Greeting:

By virtue of the authority vested in me by the Archivist of the United States, I certify on his behalf, under the seal of the National Archives and Records Administration, that the attached reproduction(s) is (are) a true and correct copy of documents in his custody.



SIGNATURE	
<i>Lori Cox-Paul</i>	
NAME	DATE
Lori Cox-Paul	10-24-2014
TITLE	
Director of Archival Operations	
NAME AND ADDRESS OF DEPOSITORY	
National Archives at Kansas City 400 West Pershing Road Kansas City, MO 64108	

NA FORM 13040 (10-86)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
CLAYTON F. SUDBY CO., :
Plaintiff, :
-against- : COMPLAINT
PAUL FRIGAY and OLIVER SMITH, :
Defendants.:
-----X

The plaintiff, complaining of the defendants, by its attorneys Beekman & Rogue, respectfully shows to the Court and alleges:

1. The Plaintiff is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware.

2. Upon information and belief the defendants are citizens of the United States and residents of the State of New York.

3. This action arises under Act of March 4, 1909, ch. 320; 35 Stat. 1081; U. S. C. Title 17, as hereinafter more fully appears, and jurisdiction rests upon section 34 of the Act.

4. Prior to October 13, 1893, Patty S. Hill and her sister, Mildred J. Hill, citizens of the United States, composed and wrote the music and words of a number of songs collectively entitled "Song Stories For the Kindergarten".

5. These songs were wholly original compositions and were and are copyrightable subject matter under the laws of the United States.

6. On or about February 1, 1893, Patty S. Hill and Mildred J. Hill executed and delivered to Clayton F. Summy a written instrument by which they sold and assigned to him all their right, title and interest to the songs and authorized him to publish the songs in book form and to copyright the book in his own name.

7. Thereafter Clayton F. Summy after complying in all respects with the United States Revised Statutes, chapter 3, Title 60 (U. S. secs. 4948-4971) and all other laws governing copyrights, on October 13, 1893 secured the exclusive rights and privileges in and to the copyright of the book, and received from the Register of Copyrights a certificate of registration of copyright No. 45997Y.

8. Since October 13, 1893, the book has been published by Clayton F. Summy or his successors and all copies of it or of selections from it, made by him or under his authority or license or that of his successors, have been printed, bound and published in strict conformity with the provisions of chapter 3, Title 60 of the Revised Statutes and all other laws governing copyright.

9. Thereafter and on or about January 14, 1895 Clayton F. Summy assigned all his right, title and interest in the copyright of the book to Clayton F. Summy Co., an Illinois corporation, which on or about April 15, 1925 assigned such right, title and interest to Clayton F. Summy Co., another Illinois corporation, which on or about August 31, 1931, assigned such right, title and interest to the plaintiff Clayton F. Summy Co., a Delaware corporation.

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10. Mildred J. Hill died intestate on or about June 5, 1916, leaving her surviving as all her next of kin, Patty S. Hill; Jessica M. Hill, another sister; Mary Hill, another sister; William Wallace Hill, a brother; and Archibald Anderson Hill, son of Archibald Alexander Hill, a deceased brother.

11. Thereafter Jessica M. Hill, after complying in all respects with the Act of March 4, 1909, ch. 320; 35 Stat. 1088, 17 U. S. C. secs. 23 and 24, and all other laws governing copyright, secured on September 3, 1921, a renewal of the copyright from the Register of Copyrights of the United States, numbered R19043, which she held in trust for all entitled to an interest therein.

12. Mary Hill died intestate on September 16, 1916, a resident of San Diego, California, unmarried, and leaving no descendants; William Wallace Hill died on April 3, 1923, a resident of Chicago, Illinois, leaving a will which was probated in the Probate Court for Cook County, Illinois.

13. On February 20, 1939, Archibald Anderson Hill conveyed all his right, title and interest in and to the copyright and its renewal to Patty S. Hill and Jessica M. Hill, together with all claims and causes of action theretofore accrued or which might thereafter accrue through its infringement, and the assignment was entered in the United States Copyright Office, in volume 425 at page 31; on March 22, 1939, Allen Davy, administrator de bonis non with the will annexed of William Wallace Hill, pursuant to an order duly entered on the same day in the Probate Court for Cook County, Illinois, assigned all the right,

title and interest of William Wallace Hill in and to the copyright to Clayton F. Summy Co., together with all claims and causes of action theretofore accrued or which might thereafter accrue through its infringement, and the assignment was entered in the United States Copyright Office, in volume 425 at page 34; on June 2, 1942, Jessica A. Hill and Patty S. Hill conveyed all their right, title and interest in and to the copyright and its renewal to The Hill Foundation, Inc., a New York corporation, together with all claims and causes of action theretofore accrued or which might thereafter accrue through infringement of the copyright, and the assignment was entered in the United States Copyright Office, in volume 485 at pages 242-243; and on October 16, 1944, The Hill Foundation, Inc. conveyed (subject to defeasance upon conditions subsequent which have not occurred) all its right, title and interest in and to the copyright and its renewal to the plaintiff, together with all claims and causes of action theretofore accrued or which might thereafter accrue through infringement of the copyright, and on November 10, 1944, the assignment was entered in the United States Copyright Office in volume 552, at pages 61-68.

14. Plaintiff is the sole proprietor of all right, title and interest in and to the copyright, and in and to any and all rights, demands, claims and causes of action arising through its infringement.

15. One of the songs in the book, entitled "Good Morning To All", later became popularly known as "Happy Birthday to You", the opening lines of the verses later written by Patty S. Hill for the song.

16. Upon information and belief defendants presented and still continue to present a dramatic musical produc-

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tion for the convenience, accommodation, entertainment and refreshment of the public generally, known as "On The Town"; said dramatic musical production was and is presented for the profit of defendants and for the purposes of profit; said dramatic musical production was and is presented for the entertainment and amusement of the public generally and to promote and advance the interests and business of defendants; and defendants gave and continues to give, daily performances and renditions of said dramatic musical production publicly for profit, and received and continue to receive income therefrom.

17. Upon information and belief, on or about the 13th day of April, 1945 and at other times prior and subsequent thereto, the defendants as a part of and by means of said dramatic musical production entitled "On The Town" gave and caused to be given public performances and renditions of said composition "Happy Birthday to You", for profit and for the purposes of profit, on and in premises known as the Adelphi Theatre, situated at 152 West 54th Street, New York, N. Y. and elsewhere.

18. The performances of said composition "Happy Birthday to You" referred to in Paragraph 17 hereof were given by defendants without the previous knowledge, approval or consent of the plaintiff, in infringement of the aforesaid copyright.

19. Upon information and belief said performances of said composition "Happy Birthday to You" were given in said Adelphi Theatre and elsewhere by defendants causing and participating therein and under the direction and control of the defendants; the same was for the entertainment and amusement of the patrons attending and patronizing said theatres and to attract trade and custo-

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ners to said theatres; such renditions and performances were public and for profit and for the purposes of profit; and the same was for the purpose of making "On The Town", the dramatic musical production presented by defendants, well and favorably known and attractive to the public generally and to encourage the public to attend such performances of said production and to pay for the same for the purpose of ultimate profit of the defendants.

20. The said wrongful acts of the defendants have caused and are causing injury and damage to the plaintiff, which damage cannot be accurately computed and unless the court restrains the defendants from the further commission of said acts the plaintiff will suffer irreparable injury for all of which the plaintiff is without any adequate remedy at law.

WHEREFORE, plaintiff demands

(a) That defendants and all persons acting under their direction, permission, control, or license, be enjoined and restrained from publicly performing said composition "Happy Birthday to You" and from causing or permitting same to be publicly performed in the respective places of business of defendants or in any other place owned, used, controlled or operated by them and from aiding and abetting public performance of such composition in any public place or otherwise.

(b) That defendants be required to pay the plaintiff such damages as plaintiff has sustained in consequence of defendants' infringement of the copyright and to account and pay over to plaintiff all gains, profits and advantages derived by defendants from its infringement


of plaintiff's copyright or such damage as to the court shall appear proper within the provisions of the copyright statutes.

(c) That defendants pay to plaintiff the costs of this action and reasonable attorneys' fees to be allowed to the plaintiff by the court.

(d) That the plaintiff have such other and further relief as to the court may seem just and proper.

BERKMAN & BOGUE
Attorneys for Plaintiff
Office and P. O. Address
15 Broad Street
New York 5, N. Y.

By


A member of the firm of
Attorneys of Record for
the plaintiff.

1213-48
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CLAYTON F. SUREY CO.,

Plaintiff,

-against-

PAUL FEIGAY and OLIVER SMITH,
Defendants.

K
COMPLAINT

BECKMAN & BOGUE
Attorneys for Plaintiff

15 BROAD ST.
BOROUGH OF MANHATTAN
NEW YORK 5, N. Y.

OK
U. S. DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EXHIBIT 58

NEWS of the THEATER

By BERT McCORD

'Happy Birthday' Trouble

The Hildegard sketch in "Angel in the Wings" calls for Grace and Paul Hartman to portray a couple of hayseeds celebrating a birthday in a New York club. A cake is brought on stage and "Happy Birthday" is sung. At least it was sung during the first days of rehearsal, until somebody piped up to say that he didn't think the song was in public domain and that they would probably have to pay royalties for the number at every performance. Thereupon the composers, Bob Hilliard and Carl Sigman, sat down and dashed off a little number called "Here's a Happy Birthday," which is the one that is used in the show.

Some delving into the background of "Happy Birthday," which must surely be as much a part of all our heritage as "Auld Lang Syne," disclosed the fact that it was written in the '90s by two of four sisters who were born in Louisville, Ky. Patty Smith Hill, who is responsible for the lyrics, and Mildred J. Hill, who conceived the melody, ran a kindergarten in Louisville and were considered pioneers in the field of modern pedagogy. In its original form, the song was written for their schoolchildren and was known as "Good Morning to You."

The Hill sisters had their song copyrighted in 1893 and renewed it in 1921. It will expire in 1949, but subsequent copyrights on certain arrangements will extend until 1965. Jessica Hill, the only surviving sister, is today a resident of New York City. Her attorney, Samuel Mann, who provided much of the above information, said yesterday that they had worked out a royalty arrangement with the motion picture companies. ASCAP collects these and other royalties emanating from radio, stage, night clubs etc. Mr. Mann also volunteered the information that the reason Western Union dropped the song as a singing telegram several years ago was because "they got tired of paying royalties."

Oddly enough, the song is not used in "Happy Birthday," the Anita Loos play starring Helen Hayes at the Broadhurst Theater. Instead, the words are merely

shouted at Addie Bemis by the crowd gathered in the Jersey Mecca cocktail bar.

Yes, Yes, Nanette

There has been much speculation as to who will play the feminine lead in "A Dish for the Gods," the Alan Jay Lerner-Kurt Weill musical to be produced here next fall by Cheryl Crawford. The authors first traveled to Boston to talk to Gertrude Lawrence about it and then went to Chicago to discuss it with Mary Martin. This department has reason to believe that they will wind up by offering it to Nanette Fabray, who scored a personal triumph this season in the hit musical, "High Button Shoes."

Myerberg to Rejoin League

Michael Myerberg has decided to rejoin the League of New York Theaters. Myerberg, who submitted his petition yesterday, explained his action by saying that he thought membership in the league was "the only way that a manager can be heard and I have been silent long enough in that respect." Asked if this meant that he would subscribe to the curtailed first-night list adopted by the league, the producer said, "I'm coming in after that," and added that he had every intention of continuing to adhere to his own list.

Myerberg's production of Marc Blitzstein's musical, "The Cradle Will Rock," which will begin a limited engagement of five weeks at the Mansfield on Dec. 26, is now in rehearsal. Howard da Silva, who directed the work when it was presented recently for two performances at the City Center, will come on from Hollywood to assist with the staging, although he will not appear in it this time. Also, Leonard Bernstein, who was announced to conduct the orchestra at the opening performance, has agreed to remain in the pit for two additional performances.

The producer held a reading of Vivian Connell's "The Nineteenth Hole of Europe" last night at the Mansfield. This play goes into rehearsal Jan. 15 and will open Feb. 16 in Washington. It is headed for the Mansfield but may be preceded by his production of "The

Marc Blitzstein



Author of "The Cradle Will Rock," which begins a five-week engagement at the Mansfield Theater on Dec. 26

Rape of Lucretia," Benjamin Britten's opera, to open Feb. 3.

Jessie Royce Landis Signed

Jessie Royce Landis has been signed by James Russo and Michael Ellis for the feminine starring role opposite Oscar Homolka in their forthcoming production of "A Friend of the Family," a free adaptation by Peter Goldbaum and Robin Short of Strindberg's "Dodsandencen," formerly known as "Strange Anniversary." Miss Landis made her last Broadway appearance last season in "Little A." "A Friend of the Family" will be staged by Peter Ashmore in actings by Ralph Alswang.

On and Off Broadway

Ninety-five per cent of the membership subscriptions to the Experimental Theater have already been taken and it was reported yesterday that the only memberships now available are for the Monday and Wednesday evening performances of the remaining five productions. . . . The repertory company called "Workshop '48" has leased the Studio Theater on West Sixteenth Street and will present as its initial offering Oscar Wilde's "Salome," opening Jan. 3 for a run of eight consecutive week ends. The leading roles will be taken by Pat

A Will radi port only list whe tene WA orh intc and Yoe teri the doir set on, the and indi the awa tible Dre:

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Ir ana:

METROPOLITAN OPERA

EXHIBIT 59

SEAL OF THE STATE OF ILLINOIS

OFFICE OF THE
SECRETARY OF STATE



To all to whom these Presents Shall Come, Greeting:

Whereas, Articles of amendment to the Articles of Incorporation duly signed and verified of

EDUCATIONAL MUSIC BUREAU

have been filed in the Office of the Secretary of State, on the 2nd day of June A. D. 19 48, as provided by "THE BUSINESS CORPORATION ACT" of Illinois, in force July 13, A. D. 1933.

Now Therefore, I, EDWARD J. BAPRETT, Secretary of State of the State of Illinois, by virtue of the powers vested in me by law do hereby issue this certificate of amendment and attach thereto a copy of the Articles of Amendment to the Articles of Incorporation of the aforesaid corporation.

In Testimony Whereof, I hereto set my hand and course to be affixed the Great Seal of the State of Illinois, I went the City of Springfield this 2nd day of June A. D. 19 48 and of the Independence of the United States the one hundred and 72nd.

(SEAL)

Edward J. Baprett

SECRETARY OF STATE

1948

DATE 6-2-48
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(File in Duplicate)

VOL. 1834 PAGE 142

ARTICLES OF AMENDMENT
TO THE
ARTICLES OF INCORPORATION
OF

EDUCATIONAL MUSIC BUREAU
(Exact Corporate Name)

To EDWARD J. BARRETT
Secretary of State
Springfield, Illinois

752 41

The undersigned corporation, for the purpose of amending its Articles of Incorporation and pursuant to the provisions of Section 55 of "The Business Corporation Act" of the State of Illinois, hereby executes the following Articles of Amendment:

PAID

ARTICLE FIRST: The name of the corporation is:

JUN 2 1948

EDUCATIONAL MUSIC BUREAU

Edward J. Barrett
Secretary of State

ARTICLE SECOND: The following amendment or amendments were adopted in the manner prescribed by "The Business Corporation Act" of the State of Illinois.

RESOLVED, that the aggregate number of shares which the corporation will have authority to issue will be 400 common shares of the par value of \$100 per share and the stated capital is hereby reduced from \$51,000 to \$40,000 by the cancellation of 110 preferred shares which have been reacquired by the corporation and are now held in the treasury. Said preferred shares were reacquired by the corporation for not less than \$100 per share.

(Disregard separation into classes if class voting does not apply to the amendment voted on.)

ARTICLE THIRD: The number of shares of the corporation outstanding at the time of the adoption of said amendment or amendments was _____
400 _____; and the number of shares of each class entitled to vote as a class on the adoption of said amendment or amendments, and the designation of each such class were as follows:

Class	Number of Shares
Common	400

Note: 110 Preferred shares are held in the treasury.

(Disregard separation into classes if class voting does not apply to the amendment voted on.)

ARTICLE FOURTH: The number of shares voted for said amendment or amendments was _____
400 _____; and the number of shares voted against said amendment or amendments was _____
-0- _____.
The number of shares of each class entitled to vote as a class voted for and against said amendment or amendments, respectively, was:

Class	Number of Shares Voted	
	For	Against
Common	400	-0-

(Disregard this Article where the amendments contain no such provisions.)

ARTICLE FIFTH: The manner in which the exchange, reclassification, or cancellation of issued shares, or the reduction of the number of authorized shares of any class below the number of issued shares of that class, provided for said amendment or amendments, shall be effected, is as follows:

(Disregard this Paragraph where amendments do not affect stated capital or paid-in surplus.)

ARTICLE SIXTH: Paragraph 1: The manner in which said amendment or amendments effecting a change in the amount of stated capital or the amount of paid-in surplus, or both, is effected is as follows:

The aggregate number of shares which the corporation will have authority to issue will be 400 common shares of the par value of \$100 per share and the stated capital is hereby reduced from \$51,000 to \$40,000 by the cancellation of 110 preferred shares which have been reacquired by the corporation and are now held in the treasury. Said preferred shares were reacquired by the corporation for not less than \$100 per share.

(Disregard this Paragraph where amendments do not reduce stated capital.)

Paragraph 2: The amounts of stated capital and of paid-in surplus as changed by said amendment or amendments are as follows:

	Before Amendment	After Amendment
Stated capital\$	51,000.00	\$ 40,000.00
Paid-in Surplus ...\$	None	\$ None

IN WITNESS WHEREOF, the undersigned corporation has caused these Articles of Amendment to be executed in its name by its _____ President, and its corporate seal to be hereto affixed, attested by its Secretary, this 1st day of June, 1948

EDUCATIONAL MUSIC BUREAU

(Exact Corporate Name)

PLACE
(CORPORATE SEAL)
HERE

By M. J. Hoover
President

Attest:

Fredrick Schneider
its Secretary

STATE OF ILLINOIS
COUNTY OF COOK ss.

I, L. G. Agezim a Notary Public, do hereby certify that on the 1st day of June, 1948, M. J. Hoover personally appeared before me and, being first duly sworn by me, acknowledged that he signed the foregoing document in the capacity therein set forth and declared that the statements therein contained are true.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year before written.

L. G. Agezim
Notary Public.

PLACE
(NOTARIAL SEAL)
HERE

Form 62-55

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Box

ARTICLES OF AMENDMENT

to the

ARTICLES OF INCORPORATION

of

EDUCATIONAL MUSIC BUREAU

Decrease number of authorized shares from 650 Shs. P.V. to 400 Shs. P.V. & Decrease state capital.

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JUN 1 1948

L. G. Agezim

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EXHIBIT 60

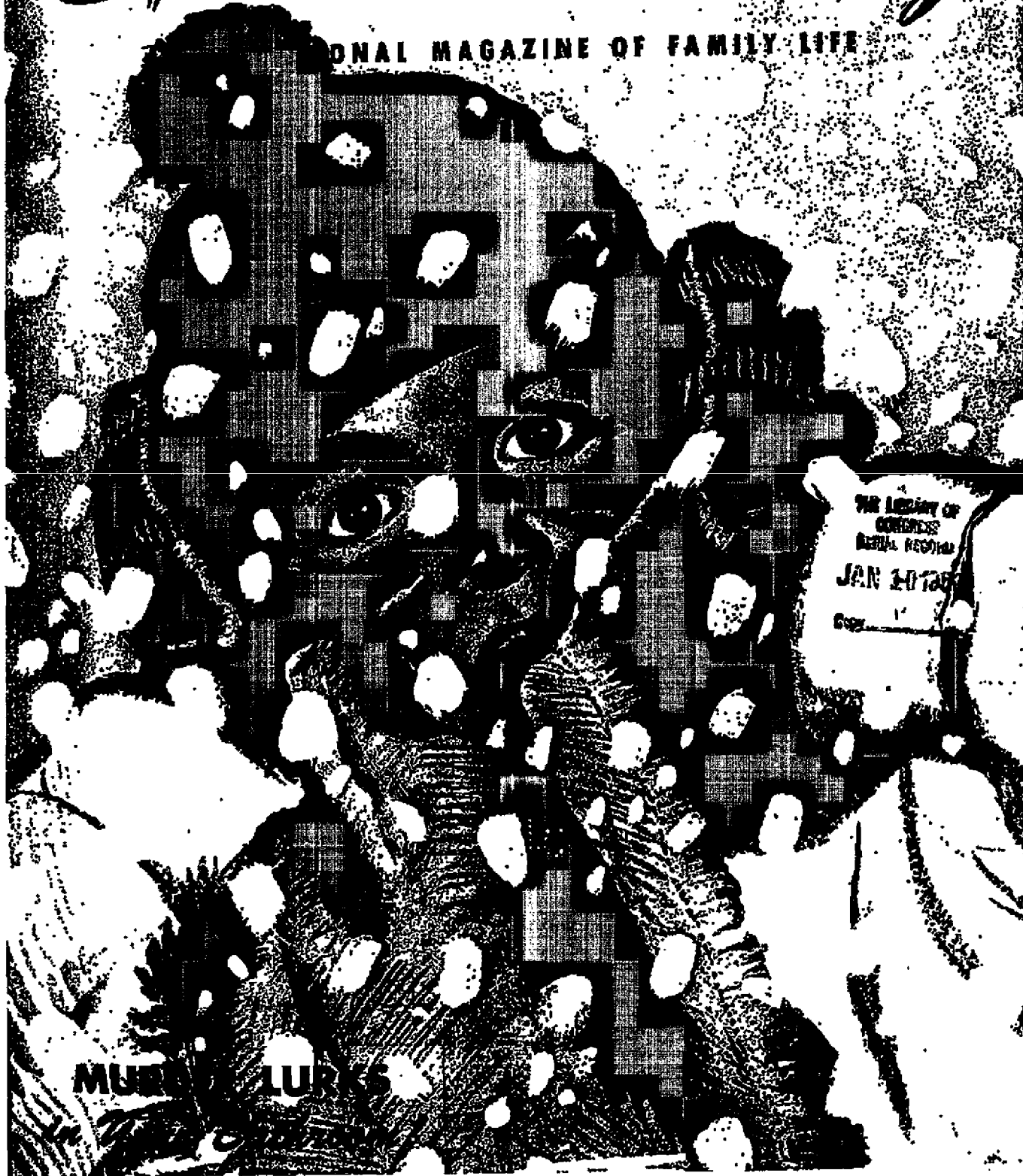
JANUARY, 1950

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The

American Family

MONTHLY MAGAZINE OF FAMILY LIFE



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The American Family

JANUARY, 1950

VOL. 2, NO. 1

NORMAN HOFELD, *Editor*
JAY J. HANSEN, *Art Director*

*Associate Editors: Lois Iida, Dorothy Sparks, Ethel Somers,
Jane Stuart Watson, Emil Jungell, Chester Holway*

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JANUARY, 1950



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By MARGOT GAYLE

The Birthday Song

Here's the true story of how this simple and beloved song spread from Miss Patty Hill's kindergarten to the nation's homes, movies and night clubs.

IN a Victorian living room, Miss Jessica Hill sat in a faded velvet chair, and told me how she happened to be the first person to sing "Happy Birthday to You." The frail, white-haired woman, now in her mid-seventies, confessed that even to her it has come to seem like a folk song.

The affectionate birthday ditty was written by her two sisters, Patty and Mildred Hill, fifty-seven years ago in Louisville, Kentucky. Neither, she says, ever regarded the song as of any importance. Yet today it is sung in nearly every language in the world. And whenever the tune is struck up, whether around a family table, in a night club, at the theater, or over the radio, it immedi-

ately denotes birthday good wishes to someone.

When the song was written, Miss Patty Smith Hill was in her early twenties, and was teaching kindergarten. Her supervisor, Miss Anna E. Bryan, director of the Louisville Free Kindergarten Training School, had recognized Patty's originality and gift for leadership, and given the soft-spoken girl almost free rein in applying her new ideas for teaching young children.

Patty had just graduated from the Training School in 1889 when Miss Bryan put her in charge of its demonstration kindergarten which, like the others in the city at that time, was supported by donations. Many considered Miss Patty's ideas

unsound, not to say downright radical, but Miss Bryan's faith was rewarded when visitors traveled from all parts of the country to observe the revolutionary methods of child teaching and care. As many as three thousand came in 1892, the year that she wrote the Happy Birthday song.

Miss Patty's kindergarten was located in the Helcombe Mansion, a dilapidated columned mansion that stood on Jefferson near Brook Street, not far from the Ohio River. The section was crowded and poor, and Miss Patty's pupils came to her ill-dressed and underfed. She not only taught them, but she saw that they got a square meal and on more than one occasion a bath.

Ex. 60

AMERICAN FAMILY



Pioneer Patty had little patience with the mawkish children's songs of that day. Finding no songs dealing with everyday experiences and adapted to the limitations of childish voices, she enlisted the help of her older sister Mildred, who was a music teacher, in creating a group of brand new songs for little children.

Patty made simple verses for jump-rope songs, weather songs, working songs, and animal songs. She especially wanted a "Good Morning" song with which to begin the day. She wanted one that she could sing to the "morning circle" of black-stockinged youngsters who sat in a ring of tiny chairs waiting expectantly for the day's activities to begin. She hoped it would be a song that they would like to sing back to her. So Patty wrote some childish words, and Miss Mildred took time off from giving music lessons and playing the organ at church to write a simple eight-note tune to go along with them.

THAT is how Happy Birthday, first known as "Good Morning to All," came to be written. Unless you are very young or very old, you are of a generation that daily sang the Good Morning song to your teacher as "Good morning, dear teacher, good morning to you."

When a child in Miss Hill's class had a birthday, she would substitute birthday words to the Good Morning song, and the youngsters would gleefully sing it. Your classmates probably did this same whenever a birthday was celebrated in your schoolroom. The Good Morning song was first published in 1893 in a book of eighty-three children's songs written by the Hill sisters for the use of teachers. It was called *Song Stories for the Kindergarten*, and in its own quiet way was a sheer trail blazer. Teachers of little

JANUARY, 1950



children rushed to buy it. Since it cost but a dollar, the little book soon appeared on every well-worn kindergarten piano from coast to coast. It was first copyrighted in 1893 by Clayton F. Summy of Chicago.

After Summy's death, an astute businessman, named Jolin F. Sengstack, came to control the Summy Publishing Company and its properties, one of the most valuable of which was the Good Morning song. Up to this time it had never been published as Happy Birthday although that was the way everyone sang it. In 1935 it was copyrighted as "Happy Birthday to You" and put out as sheet music by the Summy company. Now, for twenty-five cents you can buy "Happy Birthday" as a piano solo in the key of G in three-fourths time, words included. For a nickel more you can have it as a piano solo march, and for forty cents you can take your choice of arrangements for four hands, six hands or two pianos.

The copyright taken on Happy Birthday in 1935 extends for the customary twenty-eight years at the end of which time, according to law, it can be renewed for another twenty-eight years or until 1991.

Although the average person can sing "Happy Birthday" till the cows come home, without paying a cent for the privilege, this copyright is bad news for those who use the traditional birthday song commercially. They will continue to be liable for royalty payments when they perform it for profit.

How the little song, call it what you will, the "Good Morning Song" or "Happy Birthday" ever got out of the kindergarten and into the home, the movies, the stage, the radio and the night club nobody knows. To the Misses Hill it was always a profound mystery.

THE first time Happy Birthday was sung anywhere was on a winter evening in 1892 at the Hill residence. Miss Jessica, the youngest of the Hills, was at that time a bright-



faced girl of eighteen with a clear and pleasing voice. In accordance with their usual custom, she had called the family into the parlor for an after dinner concert.

Their mother had reared her six children in an atmosphere of good music, and they all enjoyed their nightly gathering about the piano.

That chilly evening they all stood around the piano waiting for Patty. She was doing the dinner dishes with faithful Minnie who had been a slave.

"Come on, Patty!" called Jessica. "We're ready to sing the new song."

Patty came into the parlor with its lace curtains and worn red plush sofa. She was untying a blue apron, the same color as her remarkably blue eyes.

"If you mean the 'Good Morning Song,' don't play it too fast, Mildred," she said to her sister seated at the piano of dark glazing wood that Mr. Charlie Dezza of New York had designed expressly to her order a few years earlier. It was the only elegant thing that the family had had since the Civil War when her father's school had been ruined because he refused to take sides in the conflict, and prominent citizens withdrew their children. The piano was Mildred's most cherished possession.

Mildred ran through the simple tune that is now familiar to everyone. Then she played it more slowly as Jessica sang for the first time what is now sung everywhere as "Happy Birthday to You."

MISS JESSICA had a far-away look in her eyes as she described this scene to me. She looks back affectionately on the days in Louisville where her family had been first affluent and then very poor. "We were so poor," she told me, "that Saturday nights one of us would go to the Jefferson Street market, across from Holcombe Mission, and buy the odds and ends of vegetables and meat that the vendors couldn't keep over the week-

(Continued on page 26)

11

HER NEXT ROLE

(Continued from page 23)

Annette nodded. "I have to be so careful," she apologized, "in this off-the-record appearance."

Then smiling above the roses, feet close together in slender blue pumps, she posed with Thelma and the rest of the committee from the Tuesday Study Club. With the Girl Scout. With the Mayor.

In the Mayor's car she was whisked away to the luncheon in the basement of the church.

THE LADIES Aid served creamed chicken, perfection salad, potato chips and vanilla ice cream.

"I bet this doesn't taste like the Brown Derby," said the Mayor.

"It's much better," said Annette.

The Mayor beamed. "That's mighty nice of you, Miss De Haven. I don't go to picture shows much myself, but I saw you in one fifteen years ago, 'On the Road to Brazil.' I remember it well. I guess everybody in Tunnel Springs want to see you."

"Don't remind me," smiled Annette. "It was such a small part; a bit, really."

"I saw it too," Thelma said. "You sat at a table in a restaurant, as natural as life. 'There's Annie,' I said, the minute you came on. I don't follow your career the way I'd like to, Annie. Our theater raises everything worth seeing and in Indianapolis there's so many shows a body can't keep up with them. What'll your next picture be?"

"I'm not at liberty to say. There's a contract pending and frankly I'm holding out for more money." She

passed her thumb over the soft cushions of her finger tips and smiled. "Hollywood is awfully up-er these days. My next role hasn't been decided definitely."

The Mayor scraped back his folding chair. A lady from the Aid snatched the bottle of blossoms in front of Annette. "Folks can't see Miss De Haven," she whispered.

The Mayor announced the program in honor of "our distinguished guest from Hollywood-Tunnel Springs' own star of stage and screen, Miss Annette De Haven."

A small girl tap danced. A smaller girl sang, "Jesus loves me, That I Know." A boy and girl tap danced. A boy, given a rousing introduction as "the Heifetz of Tunnel Springs," arose and said woodenly, "I failed to bring my violin so I cannot play for you." A tense young girl crashed through a Chopin polonaise on the upright piano and a tenor, hands trembling, mooded softly, "Moonlight and Roses."

Like years ago, thought Annette dreamily. She had a strong sense of having lived this before, when she, like the tense girl, had been only a kid, waiting behind scenes, her heart on fire, her hands frozen, before she made an entrance.

Then the Mayor was making another speech. He paused and Annette knew this was the Big Moment, the reason for the roses from Indianapolis, the extra chairs from the undertaker, the flurry, the expectancy. "Folks," said His Honor, "I give you Annette De Haven."

How they clapped. They stood
(Continued on page 31)

BIRTHDAY SONG

(Continued from page 22)

end for lack of refrigeration." Then she added, with a hint of a smile, "Many's the Sunday dinner we built around a fifteen-cent leg of lamb."

Miss Jessica lives in the same apartment near Columbia University that she shared for many years with her sister Patty, who died at the age of seventy-eight in May, 1946.

Miss Jessica, the only surviving member of the Reverend William and Martha Jane Hill's six children, is to a considerable extent supported by the royalties from "Happy Birthday."

As the composer of the "Happy Birthday" tune, Mildred never earned anything from it during her lifetime, except the small royalties on the dollar songbook for teachers, published in 1893. Patty realized that it probably had commercial value after sound movies and radio became important, but she continued to regard the little classic as a trifle, and often said she considered it common property with the public.

SOMEONE who knew her in later life, when she was one of the nation's leaders in childhood education, and a full professor at Columbia University, once showed her the cover of a well-known magazine that bore a scene revolving around her song "Happy Birthday." Miss Hill glanced at it and said, "Oh, that song again. Take it away!"

It was only after her friends and her attorney prodded her to protest Western Union's constant use of "Happy Birthday," the best seller among their singing telegrams, that Miss Hill agreed to seek legal protection against performance of the song for profit, without payment of a fee. A suit was filed against Western Union in 1939, claiming that royalties were owed on over five hundred thousand singing telegrams, of which "Happy Birthday" had been the subject. Because of the extended litigation it would have involved, Patty and Jessica Hill finally dropped the suit.

An earlier suit brought by Miss Jessica in August of 1934 had also failed. It was against Sam Harris, producer of the sensationally successful Broadway revue "As Thousands Cheer." Miss Jessica charged plagiarism of the melody of the Good Morning song in a scene in which the younger Rockefellers of
(Continued on page 44)

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LESS THAN



A SERVING FOR THIS DELICIOUS CEREAL

A Giant in Nutrition, Value, Flavor!

BIRTHDAY SONG

(Continued from page 25)

for the then-brand-new Radio City to John D. Rockefeller Sr. (played by Clifton Webb) on his ninety-fourth birthday. *Time* magazine estimated that if Sam Harris paid the penalty of two hundred and fifty dollars for each performance he would have forked over better than \$100,000, or more than one-third of the earning of "As Thousands Cheer". The suit was thrown out on a technicality and the song stayed in the show. So the Hill sisters never found protection in the law suits which they found so distasteful.

THEIR greatest protection against unlicensed commercial use of the song has come from ASCAP. In 1916, the estate of Miss Mildred Hill, as that of the composer, became a member of ASCAP which is the American Society of Composers, Authors, and Publishers, founded to protect the performing rights of its members. ASCAP reports that "Happy Birthday" is very valuable to the ASCAP repertory. By tradition, it fits certain occasions in much the same way as "Auld Lang Syne", "Sweet Adeline", and "Hail, Hail, the Gang's All Here."

When a radio producer wants to indicate by music that a birthday is at hand what can he play but "Happy Birthday"? Or when a motion picture includes a birthday celebration sequence "Happy Birthday" is about the only thing that seems suitable for the sound track.

A long list of motion picture companies have paid for the use of "Happy Birthday". Fox Films paid two hundred and fifty dollars for using the song both in Shirley Temple's "Baby Takes a Bow" and in a newsreel showing President Roosevelt on his fifty-second birthday. That this sum was modest is shown by the fact that eight bars from "Alabama Bound" recently brought seven hundred and fifty dollars, while "Me and My Gal" is reputed to have brought ten thousand dollars, and songs that have provided titles for films have brought as much as twenty-thousand.

In the play "Happy Birthday" which opened early in 1947, starring Helen Hayes, the words of "Happy Birthday to You" were spoken, not sung, when it was discovered that the well-known birthday song was not in the public domain and that it must be paid for when used for profit.

ONE of the most unexpected uses of "Happy Birthday" is the "cake organ." This Swiss music box device, small enough to fit into the palm of a hand, is inserted in a depression scooped from the bottom of a birthday cake. When the cake is cut, the knife trips a lever that sets the tiny music box to tinkling "Happy Birthday". The Cake Master, a famous cake-making concern in New York City, introduced cake organs ten years ago. This company will make you a cake that will sing "Happy Birthday," "Hail, Hail, the Gang's All Here," or the "Wedding March" from Lohengrin. "Happy Birthday," they report, far outsells the other two. Cake organs cost less than five dollars and come from Switzerland. Their makers have never paid royalties to the Hills.

A variation of the cake organ is the cake plate, which costs in the neighborhood of twelve dollars. A circular, metal, white, enamel disc, eleven inches in diameter, fits onto



a music box. The birthday cake is set on the metal disc or plate. When the candles are lighted a simple touch on a hidden lever sets the plate to revolving, and the music box to tinkling "Happy Birthday."

Miss Jessica told me, with amusement, how Patty never failed to be startled when she came across such uses for the little song, which to her was always a kindergarten tune.

Miss Jessica went on, "My sister was the best teacher I ever knew! Her classes at Columbia University were always jammed. And no wonder. She was so stimulating and original. For instance Patty was one of the first to use mental tests in the kindergarten, and to have the youngsters given a daily medical once-over to keep down infection in the classroom. And she surprised everyone by giving the children individual drinking cups and using paper handkerchiefs. Also Patty realized that the tiny play materials designed years before by Froebel, founder of the kindergarten system, were hard for little children to manage. She created larger play

materials including large, rather heavy blocks, such as you find in every kindergarten today."

MISS JESSICA, who herself was an instructor in English at Columbia University until her retirement, warmed to her task of telling me about Professor Patty Hill's attitudes toward childhood education. Her hands played with the folds of the skirt of her dark printed crepe dress as she spoke.

"Patty even let the children 'talk back' to her—give free expression to their opinions and feelings. And sixty years ago, you know, that was unheard of. But Patty knew that children should have a chance for give-and-take with adults as well as with other children. They also needed creative outlets Patty said, so she provided discussions and dramatizations, drawing, painting, and modeling. What kind of a school would it be today that did not do the same thing?" Miss Jessica eyed me challengingly.

Then she hurried on, "Patty used to say that she could tell you at any moment what every kindergarten in Louisville was doing. She hated that sort of standardization.

"Patty came to lecture at Columbia in 1905," said Miss Jessica, "at the invitation of the Dean of Teacher's College, Dr. James E. Russell. She planned to return to Louisville at the end of a year, but she stayed for thirty."

FOR years Miss Patty had been a full professor and Director of the Department of Kindergarten and First Grade Education when she resigned from Teacher's College in 1933. Although she was sixty-seven at the time, she promptly enrolled as a volunteer worker with young children at the Hilltop Community Center in New York City. Professor Hill was one of the few women to receive an honorary degree from Columbia University.

Miss Hill has been called "a pioneer educator of the century", and educators everywhere honor her as a leader in the field of childhood education. Yet of all of this work, the public has singled out for immortality, a kindergarten song that captures the simplicity and good spirits of childhood.

In the same way that brilliant mathematician Lewis Carroll, is best known for "Alice In Wonderland"—so Patty Smith Hill will never be forgotten as long as children and grown-ups all over the world sing "Happy Birthday to You!"

AMERICAN FAMILY

**EXHIBIT 61 -
[ORIGINAL EXHIBIT MANUALLY LODGED
& FILED PURSUANT TO L.R. 11-5.4]**

[Copy of Original Exhibit Attached]

Additional Certificate of Registration of a Claim to Copyright

This is to certify that the statements set forth
in the attached have been made a part of the
records of the Copyright Office with claim
of copyright registered under number

In testimony whereof, the seal of this office
is affixed hereto on



R 90447

June 12 2014

Maria A. Pallante

Register of Copyrights and
Associate Librarian for Copyright Services

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6. Name _____ Address _____

APPLICATION FOR REGISTRATION OF A CLAIM TO THE RENEWAL OF A COPYRIGHT

REGISTRATION NO.

FORM

R 90447

R

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INSTRUCTIONS.—Fill in the applicable items on pages 1 and 1a. Page 1 should be an original copy either printed with pen and ink or typewritten. Page 1a will be returned to you as your Certificate of Registration and therefore should be filled in with care to agree with page 1. Carbon paper may be used for page 1a, but as most carbons will smudge, the Certificate will look neater if typed separately. Mail all pages to the Register of Copyrights, Library of Congress, Washington 25, D. C., together with the registration fee of \$2. Make your remittance payable to the Register of Copyrights. See page 2a for full instructions.

1. NAME OF CLAIMANT OR CLAIMANTS OF THE RENEWAL COPYRIGHT:

The Sunday School Board of the Southern Baptist Convention, 127 Ninth Avenue, N.,
(a) Baptist Convention, Nashville, Tenn.

claiming as Proprietor of the Composite work

(See instructions on page 2a)

(b) _____
(Name) (Address)

claiming as _____

(c) _____
(Name) (Address)

claiming as _____

2. COMPLETE TITLE OF WORK HARVEST HYMNS (for piano)

(Including specific instrumentation in the case of music)

3. NAMES OF ALL AUTHORS OF RENEWABLE MATTER:

Individual songs - authors and copyright owners noted on the
pages (Compiled and edited) by Robert H. Coleman

4. FACTS OF ORIGINAL REGISTRATION:

Original registration number. CLASS A xxc. No. 777586

If registered as published March 4, 1924
(Give date of publication)

If registered as unpublished _____
(Give date)

Original copyright claimant Robert H. Coleman
(Name of claimant in original registration)

5. SEND CERTIFICATE TO: (If refund or other communications are to be sent to another person, give his name in space 6.)

Sunday School Board of Southern Baptist
Name Convention

Address 127 Ninth Avenue, North
(Number and street)
Nashville 3, Tennessee
(City) (Zone) (State)

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APPLICATION RECEIVED	
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FEE RECEIVED	

16-03890-1

6. Name _____ Address _____

EXHIBIT 62

01-10-56

**CERTIFICATE OF AMENDMENT
OF
CERTIFICATE OF INCORPORATION**

CLAYTON P. SUMMY CO., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware, hereby certifies as follows:

FIRST: That the Board of Directors of said corporation, at a meeting duly convened and held, adopted a resolution proposing and declaring advisable the following amendment to the Certificate of Incorporation of said corporation:

RESOLVED that the Certificate of Incorporation of Clayton P. Summy Co. be amended by striking out all of Article First of the Certificate of Incorporation, as amended, and inserting in lieu thereof a new Article First to be and read as follows:

"FIRST: The name of the corporation is Summy Publishing Company."

SECOND: That the said amendment has been consented to and authorized by the holders of all the issued and outstanding stock, entitled to vote, by a written consent given in accordance with the provisions of Section 228 of Title 8 of the Delaware Code of 1953, and filed with the corporation on the 25th day of November, 1955.

THIRD: That the aforesaid amendment was duly adopted in accordance with the applicable provisions of sections 222 and 228 of Title 8 of The Delaware Code of 1953.

IN WITNESS WHEREOF the said CLAYTON P. SUMMY CO. has caused its corporate seal to be hereunto affixed and this certificate to be signed by John F. Songstuck, its President, and David K. Songstuck, its Secretary this 8th day of January, 1956.



CLAYTON P. SUMMY CO.
By *[Signature]*
By *[Signature]*

STATE OF New York }
COUNTY OF New York } ss:

BE IT REMEMBERED, That on this 9th day of January, A.D. 1946, personally came before me, Edith M. Williams, a Notary Public in and for the County and State aforesaid, John F. Bengtack, President of Clayton F. Summy Co., a corporation of the State of Delaware, the corporation described in and which executed the foregoing certificate, known to me personally to be such, and he, the said John F. Bengtack as such President duly executed said certificate before me and acknowledged the said certificate to be his act and deed and the act and deed of said corporation; that the signatures of the said President and of the Secretary of said corporation to the said foregoing certificate are in the handwriting of the said President and Secretary of said corporation respectively and that the seal affixed to said certificate is the common or corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office the day and year aforesaid.

Edith M. Williams
Notary Public

EDITH M. WILLIAMS
Notary Public, State of New York
No. 4426-47
Qualified in Queens County
and with this term expires on
September 15, 1948



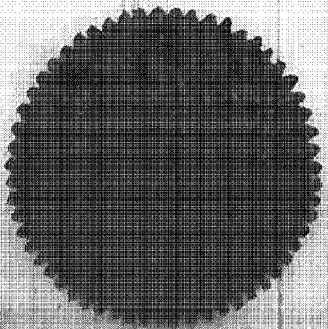
VOL. 1834 PAGE 105

State of DELAWARE

Office of SECRETARY OF STATE

I, Glenn C. Kenton Secretary of State of the State of Delaware,
do hereby certify that the above and foregoing is a true and correct copy of
Certificate of Amendment of the "CLAYTON F. SUMMY CO.", as received and filed in this
office the twenty-third day of January, A.D. 1956, at 9 o'clock A.M.

In Testimony Whereof, I have hereunto set my hand
and official seal at Dover this twenty-ninth day
of February in the year of our Lord
one thousand nine hundred and eighty.



Glenn C. Kenton

Glenn C. Kenton, Secretary of State

Ex. 62

762

EXHIBIT 63

"HAPPY BIRTHDAY TO YOU"

**TWICE 55
COMMUNITY SONGS**

"THE BROWN BOOK"
Revised Edition

ORIGINATED BY
CLARENCE C. BIRCHARD
PETER W. DYKEMA, WILL EARHART
HOLLIS DANN AND OSBOURNE McCONATHY

C. C. BIRCHARD CO.

Sole Selling Agent
SUMMY PUBLISHING COMPANY, EVANSTON, ILLINOIS

COPYRIGHT © 1957 BY C. C. BIRCHARD & COMPANY
B-5099 PRINTED IN U.S.A.

Ex. 63

P005997 764

THE C.C. BIRCHARD COMPANY 1957 PRINTING:

15. Happy Birthday to You!

Traditional

Mildred J. Hill

The musical score is written on two staves in G major and 3/4 time. The first staff contains the melody for the first line of the song, with lyrics 'Hap-py Birth-day to you, Hap-py Birth-day to you, Hap-py'. The second staff contains the melody for the second line, with lyrics 'Birth-day, dear _____, Hap-py Birth-day to you!'. Chord symbols G, D7, C, and G are placed above the notes on both staves.

Hap-py Birth-day to you, Hap-py Birth-day to you, Hap-py
Birth-day, dear _____, Hap-py Birth-day to you!

EXHIBIT 64

In The Matter Of:

GOOD MORNING TO YOU PRODUCTIONS CORP.

v.

WARNER/CHAPPELL MUSIC, INC.

SACHS, Ph.D., JOEL - Vol. 1

September 9, 2014

MERRILL CORPORATION

LegalLink, Inc.

20750 Ventura Boulevard
Suite 205
Woodland Hills, CA 91364
Phone: 818.593.2300
Fax: 818.593.2301

Ex. 64

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

-----x

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

Plaintiffs,
Lead Case No.

-against-

CV 13-04460-GHK

WARNER/CHAPPELL MUSIC, INC.,
et al.,

Defendants.

-----x

September 9, 2014
9:32 a.m.

Videotaped Deposition of JOEL SACHS, Ph.D.
taken by Defendants, pursuant to Notice, at the
offices of Paul, Weiss, Rifkind, Wharton &
Garrison, 1285 Avenue of the Americas, New
York, New York, before William Visconti, a
Shorthand Reporter and Notary Public within and
for the State of New York.

1 A P P E A R A N C E S:

2 WOLF HALDENSTEIN ADLER FREEMAN & HERZ LLP

3 Attorneys for Plaintiff

4 270 Madison Avenue

5 New York, NY 10016

6 BY: MARK C. RIFKIN, ESQ.

7 rifkin@whafh.com

8 MUNGER, TOLLES & OLSON LLP

9 Attorneys for Defendants

10 560 Mission Street

11 San Francisco, California 94105-2907

12 BY: MELINDA LE MOINE, ESQ.

13 melinda.lemoine@mto.com

14 ADAM I. KAPLAN, ESQ.

15 adam.kaplan@mto.com

16 ALSO PRESENT:

17 WILLIAM PACE, VIDEOGRAPHER

1	E X H I B I T S	
2	DESCRIPTION	PAGE
3	(Sachs Exhibit 45 for	14
4	identification, Deposition Notice	
5	for Professor Sachs.)	
6	(Sachs Exhibit 46 for	43
7	identification, letter from	
8	Mr. Rifkin to Professor Sachs.)	
9	(Sachs Exhibit 47 for	45
10	identification, Expert report of	
11	Professor Sachs.)	
12	(Sachs Exhibit 48 for	45
13	identification, CV of Professor	
14	Sachs dated November, 2012.)	
15	(Sachs Exhibit 49 for	74
16	identification, Binder.)	
17	(Sachs Exhibit 50 for	110
18	identification, document.)	
19	(Sachs Exhibit 51 for	140
20	identification, document.)	
21	(Sachs Exhibit 52 for	142
22	identification, document reflecting	
23	Irving Berlin's Pretty Girl Is Like	
24	A Melody.)	
25		

1	E X H I B I T S	
2	DESCRIPTION	PAGE
3	(Sachs Exhibit 53 for	144
4	identification, document.)	
5	(Sachs Exhibit 54 for	226
6	identification, document.)	
7	(Sachs Exhibit 55 for	267
8	identification, document.)	
9	(Sachs Exhibit 56 for	272
10	identification, document.)	
11	(Sachs Exhibit 57 for	275
12	identification, document.)	
13		
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1 THE VIDEOGRAPHER: This is the 09:32:34
2 video operator speaking, William Pace, for 09:32:38
3 Merrill Court Reporting of Los Angeles. Today 09:32:42
4 is September 9th, 2014 and the time is 9:32 09:32:47
5 a.m. We are at the offices of Paul, Weiss, 09:32:51
6 Rifkind, Wharton & Garrison LLP, 1285 Avenue Of 09:32:52
7 The Americas, New York, New York to take the 09:32:57
8 video deposition of Joel Sachs in the matter of 09:32:59
9 Good Morning To You Productions, et al., versus 09:33:02
10 Warner/Chappell Music Inc. et al. In the 09:33:04
11 United States District Court, Central District 09:33:07
12 of California Western Division. Case number CV 09:33:10
13 1304460. 09:33:13
14 Will counsel please identify 09:33:14
15 yourselves and state whom you represent. 09:33:17
16 MS. LE MOINE: Melinda LeMoine and 09:33:19
17 Adam Kaplan on behalf of Warner/Chappell from 09:33:20
18 Munger, Tolles & Olson. 09:33:23
19 MR. RIFKIN: Marc Rifkin, Wolf 09:33:25
20 Haldenstein on behalf of the Plaintiffs. 09:33:26
21 THE VIDEOGRAPHER: The court 09:33:28
22 reporter today is Bill Visconti for Merrill 09:33:30
23 Court Reporting of Los Angeles, and you may 09:33:32
24 swear in the witness.
25

1 We see evidence and we try to 11:02:17
2 decide what it means. It could mean various 11:02:20
3 things but sometimes it seems so clear what it 11:02:23
4 means that you sort of accept it. You know you 11:02:26
5 don't have the absolute proof of it. We are 11:02:30
6 not alive in 1901 so we don't immediately know 11:02:32
7 that someone sang Happy Birthday. But this 11:02:35
8 certainly suggests very strongly that they did. 11:02:37
9 Q. So the absence of the additional 11:02:41
10 lyrics suggests to you that the lyrics were 11:02:42
11 well known? 11:02:44
12 A. That people knew the words. 11:02:55
13 Q. You didn't survey materials other 11:02:57
14 than what Mr. Rifkin provided you to confirm 11:02:58
15 that belief? 11:03:01
16 A. Frankly it probably would have taken 11:03:05
17 me a couple of years to locate the materials if 11:03:07
18 they even exist. This could be unique. 11:03:09
19 Q. That is not my question. My 11:03:10
20 question is you did not? 11:03:12
21 A. I did not. I did not feel that I 11:03:12
22 could do that. 11:03:19
23 Q. Do you know whether Clayton F. 11:03:24
24 Summy authorized the publication of Good
25 Morning To You lyrics in the Inland Educator

1 Journal here? 11:03:28

2 A. I have no idea. 11:03:30

3 Q. Do you have any idea whether 11:03:33

4 Clayton F. Summy knew that the lyrics were 11:03:34

5 reprinted in this book? 11:03:36

6 A. I don't know. There is no evidence 11:03:37

7 based on what I have. 11:03:39

8 Q. How about the Hill sisters, do you 11:03:43

9 have any evidence that they knew this was 11:03:45

10 printed in the Inland Educator Journal? 11:03:47

11 A. There is no evidence. Since they 11:03:51

12 were both educators and apparently very dedicated 11:03:54

13 educators, I think there is a reasonable possibility 11:03:54

14 that they read this journal. 11:03:56

15 Q. But you don't have any evidence of 11:03:56

16 that? 11:03:57

17 A. I don't have any evidence of that. 11:04:01

18 Q. Do you have any evidence that they 11:04:04

19 authorized the reprinting of the lyrics in this 11:04:04

20 journal? 11:04:05

21 A. Neither that they did or they 11:04:09

22 didn't. But if they authorized the reprint of 11:04:10

23 the Good Morning To You, why would they not 11:04:14

24 have wanted them also to print Happy Birthday

25 To You to be sure that people knew those words.

1 That was the question that I asked myself. 11:04:20

2 Q. You don't know whether they 11:04:20

3 authorized -- 11:04:21

4 A. I don't, no. 11:04:23

5 Q. Do you have a opinion either way as 11:04:25

6 to whether they authorized this printing of 11:04:26

7 Good Morning To You in this journal? 11:04:28

8 A. I don't. There is no way to form 11:04:41

9 an opinion based on what is here. 11:04:42

10 Q. Look at paragraph 18. 11:04:43

11 A. 18 did you say? 11:04:52

12 Q. Yes, sir. Paragraph 18 some of 11:04:54

13 these questions are going to be the same but I 11:04:56

14 want to make sure that your testimony is the 11:04:56

15 same. 11:04:56

16 A. Right. 11:04:59

17 Q. This is with regard to material 11:05:02

18 called "Tell Me A True Story Tales Of Bible 11:05:04

19 Heros For The Children Of To-day" which 11:05:10

20 includes a birthday service. Again, we have 11:05:14

21 here and that is at tab C; correct? 11:05:14

22 A. That's right. 11:05:16

23 Q. If we look at tab C? 11:05:18

24 A. Page 250.

25 Q. Page 250 the last line says "Sing

1 Q. I said C. I'm still at Tell Me A 11:11:32
2 True Story. 11:11:32
3 A. Okay. 11:11:36
4 Q. Do you have any knowledge of 11:11:39
5 whether the Clayton F. Summy Corporation 11:11:46
6 authorized the reprinting of Good-Bye To You? 11:11:47
7 A. There is no evidence in this. 11:11:48
8 Q. Do you have any evidence that the 11:11:51
9 Hill sisters authorized the reprinting of 11:11:53
10 Good-Bye To You? 11:11:54
11 A. There is no evidence. 11:11:58
12 Q. How about whether they knew that it 11:11:59
13 was reprinted in this book? 11:12:00
14 A. There is no evidence. 11:12:02
15 Q. That is true for both the Hill 11:12:04
16 sisters and the Summy Corporation; correct? 11:12:06
17 A. Based on what we have in front of 11:12:19
18 us there is no evidence of any of that. However, 11:12:25
19 sorry to just continue that. I think the same 11:12:29
20 probability exists that as admired apparently 11:12:32
21 and busy educators that this is the kind of 11:12:36
22 volume that they probably would have seen and 11:12:40
23 they might have gotten very angry. So it is 11:12:42
24 possible that they did authorize it.
25 Q. Do you have any basis for that

1 statement? 11:12:47

2 A. No. No, it is just the inference 11:12:50

3 that it seems to be intended for teachers and 11:12:54

4 they were teachers and lots of teachers who are 11:12:57

5 very diligent would keep up on the journals 11:12:59

6 about teaching and try to be abreast of what is 11:13:01

7 going on. So I think it is possible that they 11:13:01

8 saw it. 11:13:03

9 Q. Do you have any evidence that they 11:13:03

10 saw it? 11:13:04

11 A. No. 11:13:07

12 Q. Are you opining today that they did 11:13:07

13 see it? 11:13:09

14 A. I'm opining that they may have seen 11:13:12

15 it. I would not say they did see it because I 11:13:13

16 don't know. I think they might have seen it. 11:13:16

17 It is the kind of thing that might have crossed 11:13:19

18 their vision. 11:13:21

19 Q. What are you relying on for that 11:13:22

20 statement other than the fact that they were 11:13:23

21 teachers? 11:13:24

22 A. That is all and that this is 11:13:26

23 intended for teachers. 11:13:29

24 Q. Did you read any biographies of the

25 Hill sisters in preparation of your report?

1 A. No, I haven't. 11:13:38

2 Q. Have you done any study of what the 11:13:40

3 Hill sisters did or how they prepared or what 11:13:41

4 kind of things they read at all? 11:13:43

5 A. No, I only know the fact that they 11:13:46

6 were educators that had a very good reputation. 11:13:47

7 Q. How do you know that? 11:13:51

8 A. Marc probably informed me of that 11:13:54

9 and it seemed like a reasonable supposition 11:13:57

10 since he seemed to have done his research. I 11:13:58

11 could have duplicated the research, but I think 11:14:00

12 the main point was that I knew they were 11:14:02

13 educators and that was the market. 11:14:04

14 Q. The only fact that you're relying 11:14:06

15 on to conclude that they may have seen this is 11:14:06

16 something that you learned from Mr. Rifkin; is 11:14:11

17 that correct? 11:14:12

18 A. The only thing that led me to this 11:14:15

19 conclusion is that I knew they were educators. 11:14:17

20 That I did know. I looked them up. But I 11:14:20

21 didn't see any elaborate biography and didn't 11:14:22

22 after that. I just needed to know they were 11:14:27

23 composer and a writer pair who were educators. 11:14:30

24 And since I know many educators who

25 routinely read all the journals, it seems to me

1 possible that they did the same. 11:14:37

2 Q. Because you know today that 11:14:40

3 educators read journals you're concluding that 11:14:42

4 it is possible that the Hill sisters read this 11:14:44

5 journal in the early 20th century? 11:14:46

6 A. No, I know that educators in the 11:14:52

7 late 19th early 20th century also read journals. 11:14:52

8 Q. How do you know that? 11:14:55

9 A. From my research into Henry Cowell 11:14:56

10 and his mother. 11:14:57

11 Q. But again, just to be clear, you 11:14:59

12 don't have any evidence, this is speculation? 11:15:07

13 A. This is purely speculation. 11:15:19

14 Q. Go to paragraph 19 which refers to 11:15:33

15 Exhibit D or tab D of Exhibit 47, correct? 11:15:36

16 This is an excerpt from something called 11:15:38

17 Program For Beginners' Department? 11:15:38

18 A. Yes. 11:15:41

19 Q. This does include the lyrics to 11:15:42

20 Happy Birthday as we understand them. 11:15:43

21 A. That's right. 11:15:45

22 Q. And you say that that leads you to 11:15:51

23 conclude that the words were widely known at 11:15:51

24 that time, correct?

25 A. It leads me to conclude that they

1 and the Clayton F. Summy Company since, as Marc 11:28:59
2 pointed out, we don't actually know whether the 11:29:01
3 words to Happy Birthday To You were included in 11:29:03
4 the volume that referred to Song Stories For 11:29:06
5 The Sunday School. We simply don't know that. 11:29:07
6 But something in the text of this 11:29:10
7 program for the Beginner's Department I think 11:29:13
8 clearly provoked the publisher of it to make 11:29:16
9 contact with Summy because Summy is referred to 11:29:17
10 here. 11:29:18
11 Q. Song Stories For The Sunday School 11:29:20
12 is referred to here in note 2? 11:29:21
13 A. Song Stories For The Sunday School 11:29:25
14 and Clayton F. Summy is given as the publisher. No, it isn't 11:29:26
15 actually. 11:29:27
16 Q. It isn't? 11:29:27
17 A. It isn't, yes. 11:29:30
18 Q. So let's try again. Do you have 11:29:33
19 any evidence -- let's start very generally. 11:29:37
20 You pointed me to the note and I want to start -- I'm 11:29:39
21 taking it from the top, very general. 11:29:39
22 A. Okay. 11:29:41
23 Q. Are you aware of any evidence that 11:29:43
24 the Clayton F. Summy Co. authorized the
25 printing of the lyrics to Happy Birthday To You

1 in Program For Beginners' Department? 11:29:48

2 A. No. 11:29:50

3 Q. Are you aware of any evidence that 11:29:55

4 the Hill sisters authorized printing of Happy 11:29:57

5 Birthday To You in Program For Beginners' 11:29:57

6 Department? 11:29:57

7 A. No. 11:29:59

8 Q. Are you aware of any evidence that 11:30:03

9 they are even aware of the printing of Happy 11:30:05

10 Birthday To You in this volume, either the Hill 11:30:07

11 sisters or the Clayton F. Summy Co.? 11:30:08

12 A. There is no direct evidence of 11:30:08

13 that. To that I might add, however, that the 11:30:17

14 confusion in my mind about Song Stories came 11:30:21

15 from Exhibit A which is Song Stories For The 11:30:22

16 Kindergarten Published by Clayton F. Summy 11:30:24

17 Corporation which strikes me as probably 11:30:32

18 related to Song Stories For The Sunday School 11:30:35

19 because the title is the same. 11:30:37

20 So it strongly suggests that it is 11:30:40

21 Clayton F. Summy Company who is referred to in 11:30:43

22 footnote 2. But it does not imply that Happy 11:30:46

23 Birthday is in the collection Song Stories. 11:30:49

24 Q. Nor does it imply, does it, that

25 Clayton F. Summy Co. authorized the printing of

1 Happy Birthday To You in this volume; is that 11:30:54
2 right? 11:30:56

3 A. No, it does imply that Clayton F. 11:30:59
4 Summy may have authorized the publication of 11:31:01
5 something in this volume, but it doesn't refer 11:31:02
6 specifically to Happy Birthday To You. 11:31:04

7 Q. So just to be totally clear, you're 11:31:08
8 not offering any opinion that this is an authorized 11:31:11
9 publication of Happy Birthday To You by Clayton 11:31:14
10 F. Summy Co. or by the Hill sisters; correct? 11:31:27

11 A. Not on the basis of any evidence. 11:31:29

12 Q. Let's talk about paragraph 20. In 11:31:33
13 paragraph 20 and it is referring to tab E, 11:31:38
14 Exhibit E. We are discussing a song book 11:31:45
15 entitled "The 101 Best Songs For Home School 11:31:50
16 And Meeting." And you note that this print has 11:31:59
17 no copyright date, correct? Do you know when 11:32:02
18 this was published, tab E? 11:32:05

19 A. Well, I don't. This was the first 11:32:08
20 of the compositions to provoke me to write 11:32:11
21 Nicholas Bell about the backwards based clef on 11:32:14
22 page 23. Because that struck me as a very old 11:32:17
23 form of musical notation that one almost never 11:32:21
24 sees. And it happened that there was one song
25 in the Julliard Library that was published in

1 experience. You have to be careful about it 11:48:57
2 because you don't want to draw conclusions 11:48:59
3 based on experience that might not prove to be 11:49:00
4 valid. 11:49:02

5 Q. What I'm trying to define is what 11:49:04
6 is it about your experience that you're relying 11:49:06
7 on when you make some of these inferences? 11:49:07

8 A. Exactly, in this case it is from 11:49:10
9 looking at a lot of music that's comes out in 11:49:13
10 multiple editions and having some sense of the 11:49:15
11 time span they covered and therefore some sense 11:49:19
12 of perhaps a publisher's instinct about when it 11:49:21
13 is time to do a new edition. 11:49:27

14 Q. Just to clarify. You haven't done 11:49:30
15 any actual study of how frequent editions were 11:49:32
16 issued of music collections in the early 20th 11:49:33
17 century in America? 11:49:39

18 A. That's correct. 11:49:46

19 Q. In tab E this Good Morning To You 11:49:51
20 printing referred to as number 23 it says under 11:49:54
21 that Good-Bye To You, Happy Birthday To You, my 11:49:56
22 questions are going to be similar to those that 11:49:58
23 we already covered. 11:50:00

24 Do you have any evidence that the
25 Clayton F. Summy Co. was aware of this edition

1 of the printing of Good Morning To You? 11:50:08

2 A. There is no evidence of that. 11:50:13

3 Q. How about the Hill sisters, do you 11:50:15

4 have any evidence that they knew about this 11:50:17

5 version of Good Morning To You and Happy 11:50:17

6 Birthday To You? 11:50:19

7 A. There is no evidence of that. And 11:50:23

8 if I may add there is no evidence that they 11:50:23

9 wrote the thing. 11:50:24

10 Q. There is no evidence that they 11:50:25

11 wrote what? 11:50:28

12 A. Good Morning To You. Number 23 in 11:50:29

13 that publication. 11:50:38

14 Q. What about tab A? 11:50:40

15 A. That is the one that we talked 11:50:44

16 about before. Where it credits Mildred J. Hill 11:50:46

17 composing and arranging and Patty Hill with 11:50:49

18 writing and adapting. And that is a publication 11:50:53

19 only of Good Morning To You which we know is by 11:50:54

20 them. 11:50:56

21 Q. Why would you say the song Good 11:50:57

22 Morning To You there is no evidence that they 11:50:58

23 wrote the thing? 11:51:01

24 MR. RIFKIN: He said in tab E.

25 A. In tab E there is no evidence that

1 song there that only occupied two staves, but 11:53:30
2 he didn't or she didn't do that. 11:53:32

3 Again, it implied to me that people 11:53:36
4 knew what the words of Happy Birthday were, 11:53:38
5 they didn't have to be printed. And perhaps 11:53:43
6 one might say the reasons why Good Morning To 11:53:45
7 You is printed is because that was copyrighted, 11:53:46
8 we know that. 11:53:48

9 Q. You said you don't have any 11:53:52
10 evidence that this is authorized or they knew 11:53:52
11 about it? 11:53:55

12 A. No, but the implication is whoever 11:53:59
13 put this together felt that there was no need 11:54:01
14 to put the words of Happy Birthday in there. I 11:54:04
15 think one can go on to say that since the words 11:54:09
16 of Good Morning To You are in there, Good 11:54:10
17 Morning To All along with the music, whether 11:54:14
18 this is a pirated edition, whoever put it 11:54:16
19 together seems to have respected the 11:54:19
20 association of those two which were 11:54:22
21 copyrighted. And it may be that there was no 11:54:22
22 association in mind between the Happy Birthday 11:54:25
23 words and anything else, but that so many 11:54:27
24 people knew them that there was no point in
25 fiddling around with the layout of this page in