

EXHIBIT 82

Ex. 82

FILED
Dec 29 1988 251848
SECRETARY OF STATE

ARTICLES OF AMENDMENT
OF
BIRCH TREE GROUP LTD.

To the Secretary of State
State of Wyoming

Pursuant to the provisions of Section 17-1-304 of the Wyoming Business Corporation Act, the corporation herein-after named does hereby adopt these Articles of Amendment.

1. The name of the corporation is BIRCH TREE GROUP LTD.

2. Article FIRST of the Articles of Incorporation of the corporation is amended to read as follows:

"FIRST: The name of the corporation is: SUMMY-BIRCHARD, INC."

3. The date of the adoption of the aforesaid amendment by the shareholders of the corporation is December 21, 1988.

4. The number of shares outstanding of the corporation is nine hundred and fifty three (953).

The number of shares outstanding of the corporation entitled to vote on the aforesaid amendment is 953.

5. The number of outstanding shares of the corporation voted for and against the aforesaid amendment, respectively, is as follows:

<u>NUMBER VOTED FOR</u>	<u>NUMBER VOTED AGAINST</u>
953	-0-

RECEIVED
DEC 29 1988
SECRETARY OF STATE

Executed in duplicate on December 21st, 1988.

BIRCH TREE GROUP LTD.

By: *W. Stuart Pope*
Its President, W. Stuart Pope

Lynn A. Sengstack
Its Secretary, Lynn A. Sengstack

STATE OF NEW JERSEY)
) SS.:
COUNTY OF)

I, _____, Notary Public, do hereby certify that on this _____ day of December, 1988, personally appeared before me W. Stuart Pope, who, being by me first duly sworn, declared that he is the President of BIRCH TREE GROUP LTD., that he signed the foregoing document as President of the corporation, and that the statements therein contained are true.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 21st day of December, A.D., 1988.

Janet F. James
Notary Public

Commission expires:

[notarial seal]

JANET F. JAMES
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires July 31, 1990

State of Wyoming



OFFICE OF THE SECRETARY OF STATE

CERTIFICATE OF AMENDMENT OF

. . . . SUMMY-BIRCHARD, INC. . . .
(Formerly: Birch Tree Group Ltd.)

I, KATHY KARPAN, Secretary of State of the State of Wyoming, hereby certify that the prerequisites for the issuance of this certificate have been fulfilled in compliance with law, and are found to conform to law.

ACCORDINGLY, the undersigned, by virtue of the authority vested in me by law, hereby issues this Certificate.



IN TESTIMONY WHEREOF, I have hereunto set my hand
and affixed the Great Seal of the State of Wyoming. Done
at Cheyenne, the Capital, this twenty-seventh day of
December A.D. 19 88

Kathy Karpan
Secretary of State

By *Jeanne Sawyer*

Ex. 82

**EXHIBIT 83 -
CONFIDENTIAL**

[PROVISIONALLY LODGED UNDER SEAL]

COPYRIGHT 1930 BY
DWIGHT & M. H. JACKSON
CHICAGO
PATENT PENDING

INCORPORATED UNDER THE LAWS OF THE STATE OF

WYOMING



SUBSER
2

SERIES
953

BIRCH TREE GROUP LIMITED

AUTHORIZED CAPITAL 953 SHARES \$100 PAR VALUE

This Certifies That

David K. Sengstack

Nine Hundred and Fifty-three

Shares of the Capital Stock of Birch Tree Group Limited

is the owner of
full paid and non-assessable

shares of the capital stock of the Corporation in person or by duly authorized attorney when
presented on the books of the Corporation as properly evidenced.

In Witness Whereof the said Corporation has caused this Certificate to be signed by its duly
authorized officers and sealed with the Seal of the Corporation.

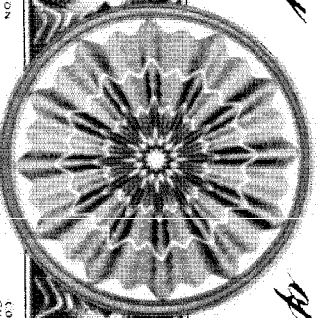
This 12th day

of February 24th 19 86

Lucian J. Sengstack
SECRETARY

[Signature]
PRESIDENT

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**EXHIBIT 84 -
CONFIDENTIAL**

[PROVISIONALLY LODGED UNDER SEAL]



STOCK POWER

FOR VALUE RECEIVED, I, David K. Sengstack

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE

hereby sell, assign and transfer unto _____

Warner/Chappell Music, Inc.

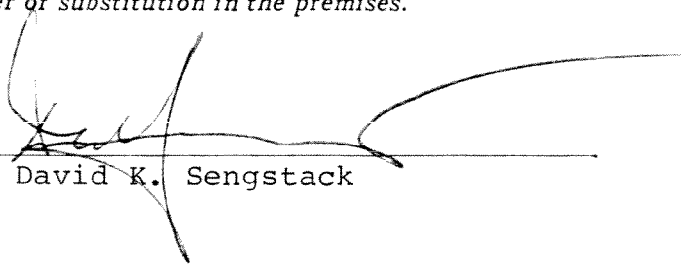
(953) Shares of the Common Capital Stock of Summy-Birchard, Inc.,
(formerly Birch Tree Group, Ltd.) a Wyoming corporation standing in my ~~(own)~~ name

on the books of said Corporation represented by Certificate No 2

herewith, and do hereby irrevocably constitute and appoint _____

_____ attorney to transfer the
said stock on the books of said Corporation with full power of substitution in the premises.

Dated January 3, 1989



David K. Sengstack

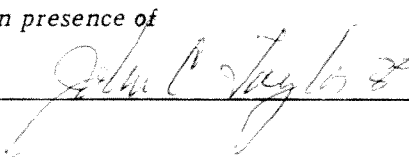
In presence of




EXHIBIT 85

ARTICLES OF MERGER

of

SUMMY-BIRCHARD, INC.

and

SUMMY-BIRCHARD, INC.

Pursuant to the provisions of the Wyoming Business Corporation Act, Wyo. Stat. §§ 17-16-101 *et seq.* (WBCA), the undersigned corporations adopt the following Articles of Merger.

ARTICLE I

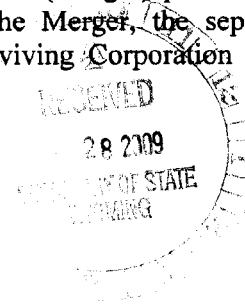
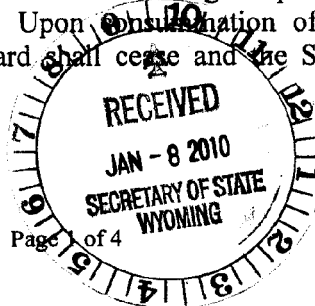
PLAN OF MERGER

Section 1. Parties to Merger.

- A. The party proposing to merge is Summy-Birchard, Inc. (Summy-Birchard). Summy-Birchard is a corporation duly organized under the WBCA and incorporated on March 8, 1976. Summy-Birchard was administratively dissolved on or about May 31, 2006, and this merger is undertaken as an act necessary to wind up and liquidate its business and affairs pursuant to Wyo. Stat. § 17-16-1404. The principal executive offices of Summy-Birchard are located in Los Angeles, California.
- B. The Surviving corporation shall be Summy-Birchard, Inc. (Surviving Corporation), a corporation duly organized pursuant to the WBCA and incorporated on September 14, 2009. The Surviving Corporation is in good standing under the laws of the State of Wyoming, with its principal executive offices located in Los Angeles, California.

Section 2. Terms and Conditions.

- A. The Merger. At the Effective Time (as defined in Paragraph E of this Section), in accordance with the applicable provisions of Wyoming law, Summy-Birchard shall be merged with and into the Surviving Corporation (Merger) pursuant to these Articles of Merger. Upon consummation of the Merger, the separate existence of Summy-Birchard shall cease and the Surviving Corporation shall continue.



Ex. 85

- B. Articles, Bylaws. The current Articles of Incorporation and Bylaws of the Surviving Corporation shall be those of the Surviving Corporation, as they are in effect immediately prior to the Effective Time of the Merger.
- C. Effect of the Merger. Following the Effective Time, the effect of the Merger shall be that (1) the Surviving Corporation shall possess all of the rights, privileges, immunities and franchises, of both a public and a private nature, of each of the corporations so merged; (2) all property, intangible, real, personal and mixed, and all debts due on whatever account, and all and every other interest of or belonging to or due to each of the corporations so merged shall be deemed to be transferred to and vested in the Surviving Corporation without further act or deed and the title to any real estate or any interest therein, vested in each of such institutions, shall not revert or be in any way impaired by reason of the Merger; and (3) the Surviving Corporation shall be liable for all liabilities of Summy-Birchard as well as those of the Surviving Corporation whether or not reflected or reserved against in the balance sheets, other financial statements, books or account or records of Summy-Birchard or the Surviving Corporation, in the same manner as if the Surviving Corporation had itself incurred such liabilities or obligations. Provided, however, that the liabilities of Summy-Birchard and the Surviving Corporation, or of their respective shareholders, directors, or officers, shall not be affected, nor shall the rights of the creditors thereof, or of any persons dealing with such corporations, be impaired by the Merger. Any claims existing, or action or proceeding pending, by or against either Summy-Birchard or the Surviving Corporation may be prosecuted to judgment as if the Merger had not taken place, or the Surviving Corporation may be proceeded against, or substituted, in place of Summy-Birchard.
- D. The notice of the meeting of shareholders to consider the proposed merger shall include notice of the rights of shareholders to dissent from the merger, to exercise their right to an appraisal, and to perfect their rights as dissenting shareholders pursuant to the provisions of Wyo. Stat. §§ 17-16-1301, *et seq.*
- E. Consummation Of The Merger. The effective time of this merger (Effective Time) shall be upon the filing of these Articles of Merger with the Wyoming Secretary of State.

Section 3. Manner and Basis of Converting Shares.

- A. At the Effective Time, without any action on the part of Summy-Birchard, the Surviving Corporation, or the holder of any of their respective shares, the Merger shall be effected in accordance with the following terms:
 - i. Summy-Birchard shares issued and outstanding immediately prior to the Effective Time (other than Dissenting Shares) shall be converted on a one-for-one basis to shares of the Surviving Corporation.

- ii. All such shares of Summy-Birchard shall no longer be outstanding and shall automatically be cancelled and retired and shall cease to exist.
 - iii. Each certificate previously representing any such Summy-Birchard shares shall thereafter represent only the right to exchange shares of Summy-Birchard into shares of the Surviving Corporation. Certificates previously representing shares of Summy-Birchard shall be surrendered in accordance with this Merger Agreement.
- B. The total merger consideration to be paid to holders of shares Summy-Birchard shall be that of the receipt of a corresponding number of shares of the Surviving Corporation.

ARTICLE II

SHAREHOLDER APPROVAL

- Section 1. The designation, number of outstanding shares, and number of votes entitled to vote on the plan for Summy-Birchard are 953.
- Section 2. The designation, number of outstanding shares, and number of votes entitled to vote on the plan for the Surviving Corporation are 953.


ARTICLE III

VOTES CAST APPROVING PLAN

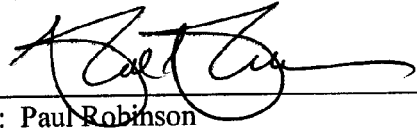
- Section 1. The total number of votes cast for the plan by the shareholders of Summy-Birchard was 953. There were no votes cast against the plan. The number of votes cast for the plan by such shareholders was sufficient for approval of the plan by shareholders of Summy-Birchard.
- Section 2. The total number of votes cast for the plan by the shareholders of the Surviving Corporation was 953. There were no votes cast against the Plan. The number of votes cast for the plan by such shareholders was sufficient for approval of the plan by shareholders of the Surviving Corporation.

Dated: December 9, 2009.

ATTEST:

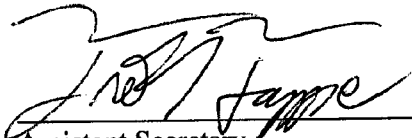

Assistant Secretary

SUMMY-BIRCHARD, INC.
(Summy-Birchard)

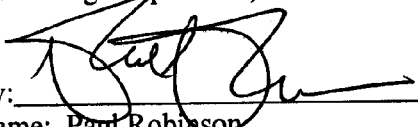
By: 
Name: Paul Robinson
Title: Vice President and Secretary

Dated: December _____, 2009.

ATTEST:


Assistant Secretary

SUMMY-BIRCHARD, INC.
(Surviving Corporation)

By: 
Name: Paul Robinson
Title: Vice President and Secretary

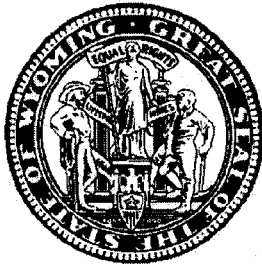
STATE OF WYOMING
Office of the Secretary of State

I, MAX MAXFIELD, Secretary of State of the State of Wyoming, do hereby certify that the filing requirements for the issuance of this certificate have been fulfilled.

CERTIFICATE OF MERGER

Summy-Birchard, Inc. (Wyoming) (Unqualified Non-survivor)
Merged into **Summy-Birchard, Inc. (Wyoming) (Qualified Survivor)**

I have affixed hereto the Great Seal of the State of Wyoming and duly executed this official certificate at Cheyenne, Wyoming on this **8th** day of **January, 2010**.



Filed Date: 01/08/2010

Max Maxfield

Secretary of State

By: _____ Jenny Kline

EXHIBIT 86

1 FRANCIS M. GREGOREK (144785)
 gregorek@whafh.com
 2 BETSY C. MANIFOLD (182450)
 manifold@whafh.com
 3 RACHELE R. RICKERT (190634)
 rickert@whafh.com
 4 MARISA C. LIVESAY (223247)
 livesay@whafh.com
 5 **WOLF HALDENSTEIN ADLER**
FREEMAN & HERZ LLP
 6 750 B Street, Suite 2770
 San Diego, CA 92101
 7 Telephone: 619/239-4599
 8 Facsimile: 619/234-4599

9 *Interim Lead Counsel for Plaintiffs and the [Proposed] Class*

10 **UNITED STATES DISTRICT COURT**
 11 **CENTRAL DISTRICT OF CALIFORNIA -**
 12 **WESTERN DIVISION**

13	GOOD MORNING TO YOU)	Lead Case No. CV 13-04460-GHK (MRWx)
14	PRODUCTIONS CORP., <i>et al.</i> ,)	
15	Plaintiffs,)	AFFIDAVIT OF JOEL SACHS IN
16	v.)	SUPPORT OF PLAINTIFFS' CROSS-
17)	MOTION FOR SUMMARY
18	WARNER/CHAPPELL MUSIC,)	JUDGMENT
19	INC., <i>et al.</i>)	
20	Defendants.)	Date: January 26, 2015
21)	Time: 10:00 a.m.
22)	Room: 650
23)	Judge: Hon. George H. King, Chief Judge

24 1. I am a graduate faculty member of The Juilliard School, where I have
 25 been a professor of Music History and Chamber Music for over 40 years. The focus
 26 of my academic study is 19th, 20th and 21st century music history and performance.

27 2. I earned my Bachelor of Arts degree in Music from Harvard University
 28 in 1961, my Master of Arts degree in Musicology from Columbia University in 1965
 and my Ph.D. in Musicology from Columbia University in 1968. In 2011, I was made

Ex. 86

1 an honorary member of the Phi Beta Kappa Society at Harvard University in
2 recognition of my work in contemporary music.

3 3. I have received several professional awards and honors, including
4 Columbia University's Alice M. Ditson Conductor's Award, which recognizes
5 distinguished conductors for their contributions to American music. In 2011, I
6 received the Gloria Artis Medal, a decoration in Arts awarded by the Ministry of
7 Culture and National Heritage from the Republic of Poland for my contributions to
8 Polish music and culture.

9 4. In 1993, I founded the New Juilliard Ensemble, which celebrates
10 contemporary music and repertory of the last decade. I also produce and direct The
11 Juilliard School's annual FOCUS! Festival and, since 1993, have been the artistic
12 director of The Juilliard School's concerts at the Museum of Modern Art (MoMA). I
13 was a co-director of the Sonic Boom Music Festival, a joint project organized by
14 eight of New York's most prestigious contemporary music ensembles.

15 5. In June 2012, Oxford University Press published my book, *Henry*
16 *Cowell: A Man Made of Music*, the first complete biography of one of the most
17 influential figures in 20th century American music.

18 6. I have performed a variety of traditional and contemporary music as a
19 conductor and pianist in hundreds of performances throughout the United States
20 Europe, Asia, and Latin America and have guest-conducted orchestras and ensembles
21 in Austria, Brazil, Canada, China, El Salvador, Germany, Iceland, Mexico, Mongolia,
22 Poland, Switzerland, and Ukraine. I have held new music residencies in Berlin,
23 Germany; London, England; Salzburg, Austria; Curitiba, Brazil; Helsinki, Finland;
24 and Banff (Alberta), Canada.

25 7. In 2006, I conducted Continuum, the internationally-acclaimed
26 contemporary music ensemble, in Jakarta, Indonesia, including a performance of Tony
27 Prabowo's opera, *The King's Witch*, in full staging, Mr. Prabowo's piano concerto,
28 *Psalm* (both of which were composed for and premiered by the New Juilliard
Ensemble) and music by American composers. In 2007, I conducted a concert of

1 American music at the Shanghai Conservatory, including the Chinese premiere of
2 Ives's Symphony No. 3, and I conducted the Danube-Hudson Project, comprising
3 works by Juilliard and Liszt Academy composition students in Budapest, Hungary.

4 8. In 2012 and 2013, I conducted the Arthur Rubinstein Philharmonic, in
5 Lodz, Poland, in the prize-winners' concert of the Grazyna Bacewicz international
6 composition competition; and the Mongolian State Philharmonic Orchestra in Ulaan
7 Baatar, Mongolia. I also made my third, annual appearance conducting Camerata
8 Aberta, the distinguished São Paulo contemporary chamber orchestra,

9 9. My keyboard appearances include numerous performances of John
10 Cage's seminal work, *Sonatas and Interludes for Prepared Piano*, in Brazil, China,
11 and mixed recitals around the world, including a Beethoven and Hummel recital in
12 France.

13 10. My recordings appear on the Advance, CRI, Naxos, New Albion,
14 Nonesuch, and TNC labels. The Dorian Sono Luminus label released a CD of my
15 music with Camerata de las Américas, a leading chamber ensemble based in Mexico
16 City.

17 11. I have been a regular delegate to international music conferences and a
18 radio commentator on contemporary music.

19 12. My professional experience has included comparing various musical
20 works, including both musical compositions and lyrics, printed at different times to try
21 to determine the source and origin of the works in question.

22 13. I have examined a number of samples of music in this case, including in
23 particular two samples attached hereto. Exhibit A is a copy of sheet music entitled
24 "Happy Birthday to You!" It has the number "3075" printed in the lower left corner,
25 where the engraving plate number is usually printed. I have no first-hand knowledge
26 of when the number "3075" was added to Exhibit A or by whom it was added.

27 14. Exhibit B is a copy of different sheet music, also entitled "Happy
28 Birthday to You!" It has the number "3076" printed in the lower left corner. I have

Ex. 86

1 no first-hand knowledge of when the number "3076" was added to Exhibit B or by
2 whom it was added.

3 15. The two samples were printed in obviously different typeface.

4 16. The sample with the number 3075 in the lower left corner uses an
5 asterisk (*) in place of the celebrant's name, but the sample with the number in the
6 lower left corner 3076 uses a star (★) instead.

7 17. The samples use different musical notations. For example, the rest signs
8 in the first measure of each sample are different stylistically.

9 18. The sample numbered 3076 identifies Mrs. R.R. Forman as the arranger
10 of that musical composition. However, no arranger (such as Preston Ware Orem) is
11 identified in the sample numbered 3075.

12 19. The sample numbered 3075 has parentheses around the sub-title, thus:
13 "(Vocal or Instrumental)." The sample numbered 3076 does not have parentheses
14 around the sub-title, thus: "Unison Song."

15 20. The sample numbered 3075 includes fingering notations. The sample
16 numbered 3076 does not use fingering notations.

17 21. In my experience, had the same engraver prepared engraving plates for
18 these two pieces of sheet music consecutively, there would not be so many differences
19 between the engraving plates.

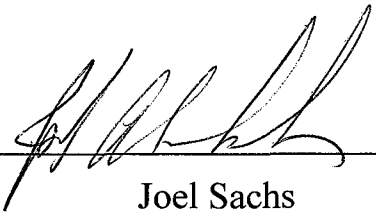
20 22. I have seen other samples of sheet music for the song "Happy Birthday!"
21 also published by Clayton F. Summy Co., which are attached as Exhibits C through F.
22 Those samples include elements in common with the sample marked as Exhibit B,
23 with the number 3076 in the lower left corner, such as the same notation for rest signs,
24 and they also include the name of the arranger of the musical composition.

25 23. Those same samples also have elements in common with the sample
26 marked as Exhibit A, with the number "3075" in the lower left corner, such as the
27 inclusion of fingering notations.

28

1 Dated: November 17, 2014

2 New York, NY



Joel Sachs

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EXHIBIT A



HAPPY BIRTHDAY



by

MILDRED J. HILL

Piano Solo with words....25 cents
Piano Solo-March.....30 cents
Four Hands.....40 cents
Six Hands.....40 cents
Second Piano Part.....40 cents
Unison Chorus.....08 cents

CLAYTON F. SUMMY CO.
CHICAGO NEW YORK

Ex. 86

WC0000977

969

HAPPY BIRTHDAY TO YOU!

(Vocal or Instrumental)

MILDRED J. HILL

Brightly

mf Hap-py Birth-day to you, Hap-py

The first system of music is in G major (one sharp) and 3/4 time. It consists of two staves: a treble clef staff and a bass clef staff. The treble staff begins with a treble clef, a key signature of one sharp (F#), and a 3/4 time signature. The melody starts on a half note G4, followed by quarter notes A4 and B4. The bass staff begins with a bass clef, a key signature of one sharp (F#), and a 3/4 time signature. The accompaniment starts with a half note G3, followed by quarter notes A3 and B3. The lyrics 'Hap-py Birth-day to you, Hap-py' are written below the treble staff. Fingerings are indicated by numbers 1-5 above the notes. A dynamic marking 'mf' is placed below the first note.

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

The second system of music continues the melody and accompaniment. The treble staff continues with quarter notes C5, B4, and A4. The bass staff continues with quarter notes C4, B3, and A3. The lyrics 'Birth-day to you, Hap-py Birth-day, dear' are written below the treble staff. Fingerings are indicated by numbers 1-5 above the notes.

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

The third system of music concludes the piece. The treble staff continues with quarter notes G4, F#4, and E4. The bass staff continues with quarter notes G3, F#3, and E3. The lyrics '* _____, Hap-py Birth-day to you!' are written below the treble staff, with a line for a name. The piece ends with a final note G4 in the treble staff and G3 in the bass staff. Fingerings are indicated by numbers 1-5 above the notes.

* Here insert the name of the one celebrating.

Copyright 1935 by Clayton F. Summy Co.
International Copyright

3075

Beethoven

Ex. 86

WC0000978

970

EXHIBIT B

SUPPLEMENTARY MUSIC FOR SCHOOLS

59. Glad Springtime. (Inter. & H.S.)	Ben. H. Price. .10
60. The Whiney Crow. (Inter. & H.S.)	Ben. H. Price. .06
61. Squirrel, You're a Saucy Fellow. (H.S.)	George B. Nevin. .06
62. The Flag Goes By. (Inter. & H.S.)	Nellie Poorman. .08
63. Children's Peace Anthem. (Inter.)	Katharine C. Baker. .08
64. A Life on the Ocean Wave. (Inter. & H.S.)	Howard G. Bennett. .06
65. To Daffodils (Inter. & H.S.)	Howard G. Bennett. .06
66. We're a Bunch of Jolly Good Fellows. (Inter. & H.S.)	Howard G. Bennett. .06
67. Work (Inter.)	Georgina McIntyre. .06
68. It Isn't Raining Rain to Me (Inter.)	Will A. Harding. .06
69. Winona (H.S.)	George Coburn. .08
70. Let Us Make A Garden (Prim.)	Jessie L. Gaynor. .06
71. Illinois (Unison or two-part chorus; also for mixed voices)	Ethelyn Mabry Newell. .06
72. The Call O'Spring (H.S.)	Irving Gingrich. .06
73. Li'l Boy (H.S.)	Hazzard-Holzworth. .06
74. Song of the Waves (Trio) (H.S.)	Joseph N. Moos. .06
75. Out Where the West Begins (Trio)(H.S.)	Philleo-Holzworth. .10
76. All for America. (Inter. & H.S.)	Clay Smith. .08
77. A Shepherd's Song (H.S.)	Joseph A. Michel. .06
78. The Cuckoo Clock (Three-part)(Inter. & H.S.)	Grant-Schaefer. .10
79. U. S. A. (Inter. & H.S.)	Ethelyn Mabry Newell. .08
80. Children's Easter Song (Inter.)	Rena S. Brush. .06
81. Mother, Chaste and Fair (Two-part. Inter.)	Sister Mary Verda B.V.M. .10
82. A Festive Song (Two-part. Inter.)	Joseph N. Moos. .08
83. He Away! (H.S.)	Pauline Penn Russell. .15
84. Chicago The Beautiful	Edna Winifred Cookingham. .06
85. Those Evening Bells (Part song)	David Nyvall, Jr. .08
86. The Slumber Boat (Two-part)	Jessie L. Gaynor. .10
87. The Fiddler (Two-part)	G.A. Grant-Schaefer. .08
88. The Cuckoo Clock (Two-part)	G.A. Grant-Schaefer. .10

Prim. stands for Primary Grades. Inter. for Intermediate Grades. H. S. for High Schools.

Chicago
CLAYTON F. SUMMY CO.
429 So. WABASH AVE.

SCHOOL CHORUS MUSIC

DEC -9 1935
Oct pub. 51988

No.		Price
51	SONG OF GREETING (SATB)	.10
6	THE CURFEW (SATB)	.10
92	COME THE HOURS ARE FLEETING (SSA)	.12
86	THE SLUMBER BOAT (SA)	.10
26	THE SLUMBER BOAT (SSA)	.10
86	TO DAFFODILS (SSA)	.06
88	THE CUCKOO CLOCK (SA)	.10
78	THE CUCKOO CLOCK (SSA)	.10
68	IT ISN'T RAINING RAIN TO ME (Unison)	.06
94	THE MAN IN THE MOON (Unison)	.10
52	CARMENA (SSA)	.12
55	A SONG OF CHEER (SA)	.08
56	THE TROUT (SA)	.08
91	WHEN THE REGIMENT GOES MARCHING (SA)	.06
96	A SAILOR DEAR (SSA)	.10
96	HAPPY BIRTHDAY (Unison)	.08

M 1198
H

CLAYTON F. SUMMY COMPANY
CHICAGO NEW YORK

Happy Birthday to You!

Unison Song

Arr. by Mrs. B. R. Forman

MILDRED J. HILL

Lively
mf

Musical notation for the first system of the song. It consists of a treble and bass staff joined by a brace. The treble staff contains the melody, and the bass staff contains the accompaniment. The lyrics "Hap - py birth - day to you, Hap - py birth - day to" are written below the treble staff. The key signature has one sharp (F#) and the time signature is 3/4. The dynamic marking *mf* is present.

Musical notation for the second system. The treble staff has the lyrics "you, Hap - py birth - day, dear * Hap - py birth - day to". The bass staff continues the accompaniment. The asterisk indicates a place where the name of the celebrant should be inserted.

Musical notation for the third system. The treble staff has the lyrics "you; May your birth - day be bright, Full of cheer and de -". The bass staff continues the accompaniment.

Musical notation for the fourth system. The treble staff has the lyrics "light, Hap - py birth - day, dear * Hap - py birth - day to you.". The bass staff continues the accompaniment. The asterisk indicates a place where the name of the celebrant should be inserted.

* Here insert the name of the one celebrating.

3076

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Aug 6 1935

EXHIBIT C



HAPPY BIRTHDAY

by
MILDRED J. HILL

- Large Size with words... 25 cents*
- Large Size March... 30 cents*
- Small Size... 40 cents*
- Large Size... 40 cents*
- Second Piano Part... 40 cents*
- Unison Chorus... 10 cents*

CLAYTON F. SUMMY CO.
CHICAGO NEW YORK

4881

MUSIC
SECTION

Happy Birthday!

MARCH

Arranged by
Freston Ware Green

MILDRED J. HILL
& PATTY S. HILL

Allegretto M.M.

The image shows a musical score for piano accompaniment of the 'Happy Birthday!' march. It consists of four systems of music. Each system has a treble clef staff on top and a bass clef staff on the bottom. The music is written in a simple, rhythmic style suitable for a piano accompaniment. The tempo is marked 'Allegretto M.M.'.

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Printed in U.S.A.

Ex. 86

WC0000120 976

3882

The image shows a page of musical notation, likely a manuscript or a printed score. It features five systems of staves, each consisting of a treble clef staff and a bass clef staff. The notation includes various notes, rests, and dynamic markings such as *mf* (mezzo-forte). The paper is aged and shows signs of wear, including three circular punch holes on the left side. The number '3882' is printed in the upper right corner of the page.

Ex. 86

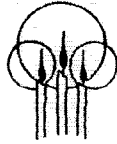
WC0000121

977

EXHIBIT D



HAPPY BIRTHDAY



by

MILDRED J. HILL

Piano Solo.....30 cents
Four Hands.....40 cents
Six Hands.....40 cents
Second Piano Part.....40 cents

CLAYTON F. SUMMY CO.
CHICAGO NEW YORK

T

"HAPPY BIRTHDAY!" MARCH

Arranged by
Preston Ware Orem

MILDRED J. HILL

Secondo

Allegretto M.M. ♩ = 96

3027-4

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"HAPPY BIRTHDAY!"

MARCH

Arranged by
Preston Ware Orem

MILDRED J. HILL

Primo

Allegretto M. M. ♩ = 96

ff *mf*

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3027-4

Secondo

The first system of the piano score consists of two staves. The right-hand staff (treble clef) features a sequence of chords and notes, with fingerings 4, 5, and 8 indicated. The left-hand staff (bass clef) provides a harmonic accompaniment with notes and rests. A dynamic marking of *p* (piano) is placed in the middle of the system.

The second system continues the piece. The right-hand staff shows chords with fingerings 4, 3, 2, 1, 2, 3, 4, 5, and 8. The left-hand staff has a steady accompaniment. Dynamic markings of *mf* (mezzo-forte) and *f* (forte) are present.

The third system features a crescendo in the right-hand staff, indicated by a wedge-shaped hairpin and a *mf* dynamic marking. The left-hand staff continues with its accompaniment.

The fourth system concludes the piece. The right-hand staff has chords with fingerings 5, 4, 4, 5, and 5. The left-hand staff provides the final accompaniment.

8027-4

Primo

First system of musical notation. It consists of two staves. The upper staff has a treble clef and a key signature of one sharp (F#). The lower staff has a bass clef and the same key signature. The music is in 4/4 time. The first measure contains a half note G4 with a fermata. The second measure contains a half note A4 with a fermata. The third measure contains a half note B4 with a fermata. The fourth measure contains a half note C5 with a fermata. The fifth measure contains a half note B4 with a fermata. The sixth measure contains a half note A4 with a fermata. The seventh measure contains a half note G4 with a fermata. The eighth measure contains a half note F#4 with a fermata. The dynamic marking *p* is placed below the fifth measure, and *mf* is placed below the seventh measure.

Second system of musical notation. It consists of two staves. The upper staff has a treble clef and a key signature of one sharp (F#). The lower staff has a bass clef and the same key signature. The music is in 4/4 time. The first measure contains a half note G4 with a fermata. The second measure contains a half note A4 with a fermata. The third measure contains a half note B4 with a fermata. The fourth measure contains a half note C5 with a fermata. The fifth measure contains a half note B4 with a fermata. The sixth measure contains a half note A4 with a fermata. The seventh measure contains a half note G4 with a fermata. The eighth measure contains a half note F#4 with a fermata. The dynamic marking *f* is placed below the third measure.

Third system of musical notation. It consists of two staves. The upper staff has a treble clef and a key signature of one sharp (F#). The lower staff has a bass clef and the same key signature. The music is in 4/4 time. The first measure contains a half note G4 with a fermata. The second measure contains a half note A4 with a fermata. The third measure contains a half note B4 with a fermata. The fourth measure contains a half note C5 with a fermata. The fifth measure contains a half note B4 with a fermata. The sixth measure contains a half note A4 with a fermata. The seventh measure contains a half note G4 with a fermata. The eighth measure contains a half note F#4 with a fermata. The dynamic marking *mf* is placed below the third measure.

Fourth system of musical notation. It consists of two staves. The upper staff has a treble clef and a key signature of one sharp (F#). The lower staff has a bass clef and the same key signature. The music is in 4/4 time. The first measure contains a half note G4 with a fermata. The second measure contains a half note A4 with a fermata. The third measure contains a half note B4 with a fermata. The fourth measure contains a half note C5 with a fermata. The fifth measure contains a half note B4 with a fermata. The sixth measure contains a half note A4 with a fermata. The seventh measure contains a half note G4 with a fermata. The eighth measure contains a half note F#4 with a fermata.

8027-4

Feb. 15, 1935

Successful Six Hand Piano Pieces

Price, 50c
 Arr. by Preston Ware Orem

THE BAND

PART I N. LOUISE WRIGHT

M.M. ♩ = 90

ff marc.

Price, 50c
 Arr. by Preston Ware Orem

VALE OF SONG

PART I WALTER ROLFE

Waltz

mf

Price, 50c
 Arr. by Preston Ware Orem

CHIEF BIGWIG

PART I JUAN MASTERS

Moderato M.M. ♩ = 132-160

mf well marked throughout

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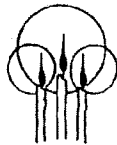
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EXHIBIT E



HAPPY BIRTHDAY



by

MILDRED J. HILL

Piano Solo.....30 cents

Four Hands.....40 cents

Six Hands.....40 cents

Second Piano Part.....40 cents

CLAYTON F. SUMMY CO.
CHICAGO NEW YORK

Ex. 86

986

WC0000990

HAPPY BIRTHDAY!

MARCH

Arranged by
Preston Ware Orem

MILDRED J. HILL &
PATTY S. HILL

Allegretto M.M. ♩. 96 **Secondo**

The 'Secondo' section consists of four systems of piano accompaniment. Each system has a treble and bass clef staff. The first system starts with a dynamic marking of *ff*. The second system starts with *mf*. The music is in 4/4 time and features a simple, rhythmic melody with accompaniment. Fingerings and articulation marks are clearly indicated throughout the piece.

Terzo

Allegretto M.M. ♩. 96

The 'Terzo' section consists of two systems of piano accompaniment. The first system is in bass clef and starts with a dynamic marking of *ff*. The second system is in bass clef and starts with a dynamic marking of *mf*. The music is in 4/4 time and features a simple, rhythmic melody with accompaniment. Fingerings and articulation marks are clearly indicated throughout the piece.

C. F. S. Co. 3034-4

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HAPPY BIRTHDAY!

3

Arranged by
Preston Ware Orem

MARCH

MILDRED J. HILL &
PATTY S. HILL

Allegretto M.M. ♩: 96

Primo

The 'Primo' section consists of four systems of piano accompaniment. Each system has a treble and bass staff. The first system starts with a forte (*ff*) dynamic and includes fingering numbers 1, 2, 3, 4, and 5. The second system is marked mezzo-forte (*mf*) and includes fingering numbers 1, 2, 3, 4, 5, and 1. The third system includes fingering numbers 1, 2, 3, 4, 5, and 1. The fourth system includes fingering numbers 1, 2, 3, 4, 5, and 1. The music is in 4/4 time and G major.

Terzo

The 'Terzo' section consists of two systems of piano accompaniment. Each system has a treble and bass staff. The first system includes fingering numbers 1, 2, 3, 4, 5, and 1. The second system includes fingering numbers 1, 2, 3, 4, 5, and 1. The music is in 4/4 time and G major.

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Ex. 86

988

WC0000992

Secondo

Musical score for the 'Secondo' section, consisting of four systems of piano accompaniment. Each system has a treble and bass staff. The first system includes a piano (*p*) dynamic marking. The second system includes mezzo-forte (*mf*) and forte (*f*) markings. The third system includes a mezzo-forte (*mf*) marking. The fourth system concludes the section with a double bar line.

Terzo

Musical score for the 'Terzo' section, consisting of two systems of piano accompaniment. Each system has a treble and bass staff. The first system includes a piano (*p*) dynamic marking. The second system includes mezzo-forte (*mf*) and forte (*f*) markings.

C.F.S.Co. 3034-4

Primo

First system of musical notation for the Primo section. It consists of two staves: a treble staff and a bass staff. The treble staff contains a melodic line with various fingerings (e.g., 5, 3, 3, 2, 1, 5, 4, 2, 3, 1, 2, 3, 4, 5) and dynamics including *p*. The bass staff provides a harmonic accompaniment with fingerings (e.g., 1, 2, 3, 4, 5) and a *p* dynamic.

Second system of musical notation for the Primo section. It consists of two staves: a treble staff and a bass staff. The treble staff contains a melodic line with fingerings (e.g., 3, 1, 2, 5, 3, 4, 3, 2, 3, 1, 1) and dynamics including *mf* and *f*. The bass staff provides a harmonic accompaniment with fingerings (e.g., 4, 3, 2, 3, 2, 4) and a *f* dynamic.

Third system of musical notation for the Primo section. It consists of two staves: a treble staff and a bass staff. The treble staff contains a melodic line with fingerings (e.g., 2, 3, 4, 5, 2, 3, 1, 5) and dynamics including *mf*. The bass staff provides a harmonic accompaniment with fingerings (e.g., 2, 3, 3, 2, 2) and a *mf* dynamic.

Fourth system of musical notation for the Primo section. It consists of two staves: a treble staff and a bass staff. The treble staff contains a melodic line with fingerings (e.g., 4, 1, 5, 3, 3, 2, 1, 5, 4, 2, 3, 3) and dynamics including *mf*. The bass staff provides a harmonic accompaniment with fingerings (e.g., 1, 2, 3, 1, 2, 3, 4) and a *mf* dynamic.

Terzo

First system of musical notation for the Terzo section. It consists of two bass staves. The upper bass staff contains a melodic line with fingerings (e.g., 4, 2, 1, 3) and dynamics including *mf*. The lower bass staff provides a harmonic accompaniment with fingerings (e.g., 2, 5, 1, 5) and a *mf* dynamic.

Second system of musical notation for the Terzo section. It consists of two bass staves. The upper bass staff contains a melodic line with fingerings (e.g., 1, 2, 5, 4, 4, 3, 3, 4, 1) and dynamics including *mf*. The lower bass staff provides a harmonic accompaniment with fingerings (e.g., 1, 2, 1, 4) and a *mf* dynamic.

C. F. S. Co. 3034-4

April 2, 1925

Successful Six Hand Piano Pieces

THE BAND N. LOUISE WRIGHT

Price, 50c
Arr. by Preston Ware Orem
M.M. ♩ = 96

PART II PART I

PART III PART III

VALE OF SONG WALTER ROLFE

Price, 50c
Arr. by Preston Ware Orem
Waltz 5
M.M. ♩ = 132-160

PART II PART I

PART III PART III

CHIEF BIGWIG JUAN MASTERS

Price, 50c
Arr. by Preston Ware Orem
Moderato M.M. ♩ = 132-160

PART II PART I

PART III PART III

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EXHIBIT F



HAPPY BIRTHDAY



by
MILDRED J. HILL

Piano Solo.....30 cents
Four Hands.....40 cents
Six Hands.....40 cents
Second Piano Part.....40 cents

CLAYTON F. SUMMY CO.
CHICAGO NEW YORK

T

HAPPY BIRTHDAY!

MARCH

Arranged by
Preston Ware Orem

MILDRED J. HILL
& PATTY S. HILL

Allegretto M. M. J.-96

I *ff*

II *ff*

mf

mf

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C. F. S. Co. 3035-4



The first system of musical notation consists of two grand staves. The upper grand staff has a treble clef and a key signature of one sharp (F#). The lower grand staff has a bass clef and the same key signature. The music is in 4/4 time. The first four measures are shown. Fingerings are indicated by numbers 1-5 above or below notes. The first measure has a half note G4 with fingering 5, and a half note A4 with fingering 1. The second measure has a half note B4 with fingering 5, and a half note C5 with fingering 1. The third measure has a half note D5 with fingering 4, and a half note E5 with fingering 1. The fourth measure has a half note F#5 with fingering 3, and a half note G5 with fingering 1. The fifth measure has a half note A5 with fingering 2, and a half note B5 with fingering 1. The sixth measure has a half note C6 with fingering 4, and a half note D6 with fingering 1. The seventh measure has a half note E6 with fingering 5, and a half note F#6 with fingering 1. The eighth measure has a half note G6 with fingering 5, and a half note A6 with fingering 1.

The second system of musical notation consists of two grand staves. The upper grand staff has a treble clef and a key signature of one sharp (F#). The lower grand staff has a bass clef and the same key signature. The music is in 4/4 time. The first four measures are shown. Fingerings are indicated by numbers 1-5 above or below notes. The first measure has a half note G4 with fingering 6, and a half note A4 with fingering 1. The second measure has a half note B4 with fingering 6, and a half note C5 with fingering 1. The third measure has a half note D5 with fingering 4, and a half note E5 with fingering 1. The fourth measure has a half note F#5 with fingering 3, and a half note G5 with fingering 1. The fifth measure has a half note A5 with fingering 2, and a half note B5 with fingering 1. The sixth measure has a half note C6 with fingering 4, and a half note D6 with fingering 1. The seventh measure has a half note E6 with fingering 5, and a half note F#6 with fingering 1. The eighth measure has a half note G6 with fingering 5, and a half note A6 with fingering 1.

The third system of musical notation consists of two grand staves. The upper grand staff has a treble clef and a key signature of one sharp (F#). The lower grand staff has a bass clef and the same key signature. The music is in 4/4 time. The first four measures are shown. Fingerings are indicated by numbers 1-5 above or below notes. The first measure has a half note G4 with fingering 5, and a half note A4 with fingering 1. The second measure has a half note B4 with fingering 6, and a half note C5 with fingering 1. The third measure has a half note D5 with fingering 4, and a half note E5 with fingering 1. The fourth measure has a half note F#5 with fingering 3, and a half note G5 with fingering 1. The fifth measure has a half note A5 with fingering 2, and a half note B5 with fingering 1. The sixth measure has a half note C6 with fingering 4, and a half note D6 with fingering 1. The seventh measure has a half note E6 with fingering 5, and a half note F#6 with fingering 1. The eighth measure has a half note G6 with fingering 5, and a half note A6 with fingering 1.

C. F. S. Co. 8085

Musical score for piano, consisting of four systems of two staves each. The first system shows a melodic line in the right hand with dynamics *p*, *mf*, and *f*, and a bass line with fingerings 1, 2, 5, 3, 1, 2, 5. The second system continues the melody with dynamics *p*, *mf*, and *f*, and bass line with fingerings 1, 2, 3, 4, 5. The third system features a more active right hand with dynamics *mf* and *mf*, and bass line with fingerings 5, 1, 5, 1, 4, 2, 5, 1. The fourth system concludes with dynamics *mf* and *mf*, and bass line with fingerings 4, 1, 2, 4, 5, 1, 2.

C. F. S. Co. 3085

The first system of music consists of two staves: a treble clef staff and a bass clef staff. The treble staff contains a sequence of chords and notes with fingerings: 4, 5 1, 4, 2 1, 3 1, 5 1, and 1. The bass staff contains a sequence of notes with fingerings: 4, 1, 5, 3, 1, 5.

The second system of music consists of two staves: a treble clef staff and a bass clef staff. The treble staff contains a sequence of chords and notes with fingerings: 4 1, 5 1, 4 1, 2 1, 3 1, 5 1, and 5 1. The bass staff contains a sequence of notes with fingerings: 3, 1, 5, 2, 1, 5.

C. F. S. Co. 8085

April 3, 1905

For Four Hands at One Piano

Collections of Original Pieces and Arrangements

by American Composers

Song Stories For Two Young Players

by FRANCES FROTHINGHAM
Price 75 Cents.

By far, the best and easiest four hand pieces that we have seen, astonishing in the fine results accomplished by such simple means.

These are for very young players; the PRIMO and SECONDO parts being of about equal difficulty. Some times the players use "hands in alternation"; again "hands together."

There are but few signatures, all the more difficult keys having the Sharps and Flats appear as Accidentals.

Favorite Nursery Rhymes and Melodies

arranged as Piano Duets for Beginners

by PEARL MARIE BARKER
Price 75 Cents.

In these very characteristic little four hand numbers, the PRIMO part consists of a single line of Notes, played by alternate hands (the Melody). The SECONDO part consists entirely of the accompaniments, made up of foundational harmonics. The whole thing is exceedingly well done. All very easy. Texts are given for each melody.

Graded Studies for Four Hands Book I

by MRS. CROSBY ADAMS
Price \$1.00.

An interesting presentation of the beginning of ENSEMBLE playing, graded to meet the requirements of those just starting out.

The First Section consists of Teacher and Pupil Duets, with the PRIMO part in the Five-Finger Position. The Second Section has the Pupil's Part, all in the Bass (Five-Finger Position.) The Third Section is for two pupils (very easy.) The Fourth Section comprises Folk Song arrangements; also for two pupils.

Nineteen Short Piano Duets for Teacher and Pupil

(The Pupil's Part on Five Notes)

by ELIZABETH GARNSEY
Price \$1.50

Very musical duets, with a particularly effective part throughout for the Teacher. All of the pieces are characteristic in style, with appropriate and suggestive titles.

In the latter portion of the book, the Pupil takes the SECONDO part (again very easy). Good practice.

Seven Little Pieces for Four Hands

by GERTRUDE MADEIRA SMITH
Price \$1.00.

These duets are for two pupils of about equal attainments; beginning in the Second Grade and presented in progressive order. They are entirely original, and the ENSEMBLE character is preserved very carefully. These will make acceptable recreations or program numbers.

Twelve Little Duets for the Piano for Teacher and Pupil

by L. LESLIE LOTH

In Two Books. Price 90 Cents Each.

In these duets the pupil's part, although very easy, does NOT remain in the Five Finger Position. The numbers are carefully graded in the two books. All the numbers are interesting; the Teacher's Part throughout, especially so.

Published by

CLAYTON F. SUMMY CO.

429 South Wabash Avenue
CHICAGO, ILL.

9 East Forty Fifth Street
NEW YORK, N. Y.

EXHIBIT 87

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
JESSICA M. HILL,

Plaintiff,

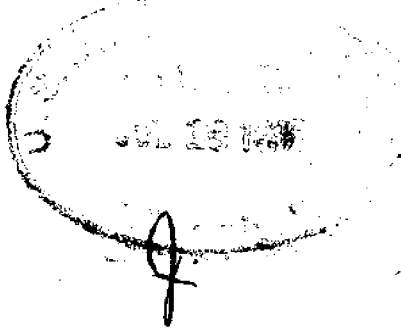
- against -

E 78 - 350

SAM H. HARRIS, SAM H. HARRIS THEATRICAL
ENTERPRISES INC., IRVING BERLIN and
MOSS HART,

Defendants.
----- X

DEPOSITIONS DE BENE ESSE



Mc KERCHER & LINK
ATTORNEYS AT LAW
17 JOHN STREET
NEW YORK

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK.

----- x
JESSICA M. HILL,

Plaintiff,

-against-

SAM H. HARRIS, SAM H. HARRIS THEATRICAL
ENTERPRISES INC., IRVING BERLIN and
MOSS HART,

Defendants.
----- x

APPEARANCES;

Miss Patty S. Hill
Miss Jessica M. Hill,
Witnesses on behalf of plaintiff.
MCKERCHER & LINK
(Malcolm B. Stark, Esq., of Counsel),
Attorneys for Plaintiff.

OBRIEN, DRISCOLL & RAFTERY,
(Benjamin Pepper, Esq., of Counsel),
Attorneys for Defendant.

The examination of witnesses de bene esse beginning on the 1st day of July, 1935, on behalf of the plaintiff before me, Alfred S. Forsyth, Esq., a Notary Public, for the County of Westchester, my certificate being filed in the County of New York, at my office at 70 Pine Street, City of New York, in the Southern District of New York in a certain suit now pending and undetermined in the District Court of the United States for the Southern

District of New York in the district aforesaid, wherein JESSICA M. HILL is Plaintiff and Sam H. Harris, Sam H. Harris Theatrical Enterprises Inc., Irving Berlin and Moss Hart are defendants.

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the parties herein that all objections except as to form are reserved to the time of trial.

IT IS FURTHER STIPULATED that this testimony may be taken down in shorthand and transcribed by Miss Gertrude Esterhaus.

PATTY S. HILL, produced on behalf of the plaintiff, being first duly sworn, deposes and says as follows:

Q. Miss Hill, are you a citizen of the United States?

A. I am.

Q. And where do you reside?

A. 21 Claremont Avenue, New York City. That is my home address. My professional address is Teachers College, Columbia University.

Q. What is your present occupation?

A. Professor of education, though I am retiring today.

Q. And where are you a professor of educa-

tion?

A. Teachers College, Columbia University.

Q. And how long have you been associated with Columbia University?

A. 1905 and 1906.

Q. That is from 1905 to 1906?

A. I went first for a short series of lectures because I did not want to leave my Louisville work and they called me back again, and it took three times to make me willing to give up my work in Louisville - it was 1905 and 1906 when I came to stay.

Q. And you have been associated with Columbia University since 1905 and 1906.

A. Yes.

Q. What were your educational associations before that time?

A. I was principal of the Training School for Teachers in Louisville, Kentucky.

Q. When was that?

A. From 1887 when I entered the training school and graduated in 1889 and took over the principalship in 1893. And the organization was called the Louisville Free Kindergarten Association.

Q. And how long were you associated there?

A. From 1887, when I entered the training

class until 1905 and 1906, when I finally came here.

Q. Where did you study for your musical education?

A. My sister Mildred, who wrote the music, was the musician, and I was the writer of the words of the songs.

Q. I mean where did you take your musical education itself?

A. Well, what musical education I had -- I did not call myself a musician or a composer.

Q. Did you write the music for the song "Good Morning To All".

A. I wrote the words to the song "Good Morning To All".

Q. Who wrote the music for the song?

A. Mildred J. Hill, my older sister.

Q. When did she write the music?

A. About 1889 or 1890. We were writing songs from 1889 to 1893. Now, just a minute -

Q. Where was it written?

A. Louisville, Kentucky.

Q. Do you recall the address?

A. 1109 Second Street.

Q. Was that your home at that time?

A. That was my home.

Q. And who lived there at the time that Miss Mildred Hill was composer of this song?

A. The whole family with the exception of my father who was dead. All the rest of the family were living there at that time. My Mother and five sisters and brothers.

Q. And these five sisters and brothers included Miss Jessica M. Hill?

A. Yes.

Q. Was the tune original with Miss Mildred Hill.

MR. PEPPER: I object to the form of the question.

A. Yes, absolutely.

Q. Will you state the circumstances surrounding the origination of the tune.

A. The songs for children at that time were of two types. One group came over from Germany collected by Froebel himself which were so poor both musically and judged from the standpoint of the ability of the child to sing, that it was necessary to discard them. The ~~second~~^{first} attempt to improve upon that was by a German family by the name of Hailmann, if I remember correctly. They did

not create their songs. They tried to get good music but it was not fitted to the idea and the emotions in the song nor fitted to the musical ability of young children. When my sister Mildred and I began the writing of these songs (referring to "Song Stories for the Kindergarten") we had two motives. One was to provide good music for children. The second was to adapt the music to the little child's limited ability to sing music of a complicated order. Also, we wished the song to express the idea and the emotions embodied in the words and these two things were absolutely new at that time. Now, does that answer all you want to know?

Q. You haven't as yet told us, Miss Hill, the date at which this took place.

A. My memory is a little vague as to the particular year but it was bound to be between 1889 and 1893, when these songs were demanded by the public for publication. We did not write them for publication. We wrote them for the group of children I was teaching and they were so superior to any other music in the market at the time that the public demanded the publication and they were published and put on exhibit in the World's Fair in Chicago in 1893.

Q. Was that the World's Fair in 1893 or 1895?

A. 1893.

Q. How long would you say that you and Miss Mildred Hill worked on the particular song "Good Morning To All" before it was completed.

A. It was one of the earliest of the group and for that reason took longer to work out with the children. It would be written and I would take it into the school the next morning and test it with the little children. If the register was beyond the children we went back home at night and altered it and I would go back the next morning and try it again and again until we secured a song that even the youngest children could learn with perfect ease and while only the words "Good Morning To All" were put in the book we used it for "Good-bye to you", "Happy Journey to You", "Happy Christmas to You" and "Happy New Year to You", "Happy Vacation to You" and so forth and so on.

Q. Did you also use the words "Happy Birthday to You".

A. We certainly did with every birthday celebration in the school.

Q. Did you write the words for this particular tune of "Good Morning To All", Miss Hill?

A. I did.

Q. Had you at that time also written many other verses in conjunction with the words which appear

in the edition of "Song Stories for the Kindergarten", published in 1893.

A. Yes, we were writing them practically every day.

Q. Now, Miss Hill, did you write the words before the music was written for the particular song?

MR. PEPPER: I object to the form of the question.

A. I did. I was at work with the children. I was a teacher. My sister was a composer and a musician. I would write the words of the song and then, we would go home and sit down together and work out the music that fitted the needs of little children.

Q. And with particular reference to the song "Good Morning To All", after you had written the words did you work on the music with your sister?

A. Yes.

Q. And is this a copy of the music as you finally prepared it for the particular song "Good Morning To All"?

A. Yes, this is the final form (referring to "Song Stories for the Kindergarten", published in 1893).

MR. STARK: I ask that this book "Song Stories for the Kindergarten" be marked Exhibit "A" for

identification.

Q. And during the time that this particular song was being written, did you use the various lyrics in conjunction with the tune while you were working with the children?

MR. PEPPER: I object to the form of question.

A. We certainly did.

Q. Miss Hill, did these defendants or any of them ever request or procure your consent to the public rendition of the tune "Good Morning To All" in a production known as "As Thousands Chaer"?

A. Never.

Q. Did you ever ratify or consent to such rendition by the defendants or any of them?

A. I did not.

Q. Do you receive royalties for the public presentation of your copyrighted song from the defendants or any of them?

A. I did not.

Q. Do you receive royalties for the public presentation of your copyrighted song from others than the defendants?

MR. PEPPER: I most certainly object to that question as not coming within the scope of this examination.

A A. I have not personally received it. I can not speak for the publishers.

Q. Miss Hill, when you were working on the manuscript with your sister Mildred and you would suggest to her that an interval was not particularly apt for the children, would she then work out another interval on the piano and present it to you for your O.K.?

A. She did, to be followed by trying the revision with the children the next morning.

Q. And then, you would go back if it was not particularly good and do the same thing over again?

A. Yes.

Q. And your sister Mildred wrote the music on the manuscript as she went along?

A. Yes, she did.

Q. And the final manuscript as you prepared it is the music that appears in this exhibit (referring to the new edition, revised, illustrated and enlarged "Song Stories for the Kindergarten", Renewal Registration No. 25771).

MR. PEPPER: I object to the form of the last question.

A. Yes.

CROSS EXAMINATION BY MR. PEPPER:

Q. Miss Hill, you were asked before where your sister Mildred received her education. I do not think you answered the question. Would you tell us now?

A. My sister Mildred? She received her musical education first in my father's own school, which was one of the early educational efforts for advanced education for women ^{near} ~~at~~ Louisville, Kentucky. The name of the institution was Bel^{le}wood Seminary, just outside of Louisville, Ky., in a little place called Anchorage, Ky. Her teacher was the professor of the Department of Music in my father's college and his name was Kohnhorst. Later, she studied with various musical institutions, particularly with two outstanding leaders in music in Chicago, Illinois, one was Calvin Cady, and the other Mr. William Tomlins, who had charge of the music chorus of the children in the World's Fair in Chicago in 1893. She received her diploma from there. And the other many places where she studied harmony and counterpoint are too varied for me to give here but those two were the outstanding teachers that she had.

Q. Then, Mildred Hill was your sister, was she not?

A. My older sister.

Q. And what is the relation between Mil-

dred Hill, yourself and Jessica M. Hill?

A. Sisters.

Q. Also a sister?

A. Yes.

Q. When this song that we will refer to as "Good Morning to All" was written, it is your testimony that it was written some time between 1889 and 1893 and, as I understand it, you wrote the words first.

A. I wrote the words first.

Q. And those words were:

"Good Morning to You,
Good Morning to You,
Good Morning Dear Teacher,
Good Morning to All."

A. Yes.

Q. And, having written those words, you requested your sister Mildred to devise some kind of correct tune to go with these songs, is that right?

A. To express those words and emotions and ideas fitted to the limited musical ability of a young child.

Q. And she did write something after that, is that right?

A. Yes.

Q. And it was tried out in the classroom?

A. Yes.

Q. And we believe that you testified that you made some contribution to the revision of that music?

A. To the what?

Q. Revision of the music.

A. Out of my experience with the children, if the register was too complex or too great for the young child, then, we went back at night and revised and experimented, and revised and experimented.

Q. And that went on for a considerable length of time?

A. Yes.

Q. So that the final work that resulted was the product of your combined efforts?

A. Yes, it was.

Q. And, it would not be unfair, would it, to say that your experience with the children contributed as much to the final tune that was available as your sister's musical training?

A. Yes, though she was the musician and I, if it is not using too pretentious a word, was the poetess.

Q. And what has been your field at Teachers College, Miss Hill?

A. I have been serving as Director of the

Nursery School Kindergarten and First Grade Education since I think about 1908, when I was made director.

Q. I believe you have the title of professor?

A. Yes, and now, I am retiring. This morning I retired with the emeritus, which has only been given to a very few ^{or women} men connected with the college.

Q. Now, did your song "Good Morning To All" achieve any popularity in this country?

MR. STARK: I object to the form of the question.

A. It did. The whole book did, because of its simplicity as compared with preceding efforts for songs for children.

Q. Well, now, did it obtain any extensive popularity - that particular song?

A. Yes, because it was one of the simplest.

Q. And has it been sung very much in this country?

A. All over the country.

Q. Were you as one of the joint authors interested in noting its popularity?

MR. STARK: I object to the form of the question.

A. Well, I was never a money grabber. I

was more interested in education than I was in the money side of the thing but I was interested insofar as it absolutely met little children's needs and was used universally and pedagogically.

Q. I am sure you were. And it came to be sung practically in all kindergartens?

A. Absolutely.

Q. And the children of the past thirty years, shall we say, who have grown up have been singing "Good Morning to All" ever since the book was written?

A. Yes.

Q. And it has also been sung by others than children, Miss Hill?

A. Well, always in our teachers' conferences, or if we had a dinner, and at teachers' festivities it was sung by the adults even if the children were not present.

Q. And has it ever come to your attention in the past thirty years where it was sung at some, shall we say, some celebrations, municipal celebrations, or any other kinds of celebrations?

A. At our teachers' conferences, yes.

Q. No, but I mean at others.

A. I don't think I ever heard it sung myself except when I heard it sung in "As Thousands Cheer". I would read in the newspaper that on President Roosevelt's

Birthday it was sung, and I know it has been sung at dinners for adults, but I never heard it personally sung that I can remember for anything except educational conferences except when I heard it sung -

Q. Irrespective of whether you had heard it personally or not, did you know that it was being sung generally at various kinds of celebrations?

MR. STARK: I object to the form of the question.

A. I knew it was being sung but I did not consider it my own affair. I expected the publisher to look after that end of it.

A. And you knew that it was being sung just as extensively before 1921 as it has been since?

MR. STARK: I object to the question.

A. I don't think it was sung except with children and at educational conferences until after that date.

Q. Until after what date?

A. Until 1921. I don't know why but I know that after all large conferences of teachers as we broke up the meeting we would sing "Good ^{Bye} ~~Time~~ to You".

Q. Well, has the song achieved any greater popularity since 1921 than it had prior to 1921?

A. Outside of education I think that is true.

As far as use with children and teachers was concerned, no; always popular with the children and the teachers.

Q. Do you know of any occasion prior to 1921 at which the song with any variation of words was sung, any kind of festivity, celebration, for entrance to which an admission charge was made?

A. That is a question I can not answer; I do not know.

Q. Did you know that prior to 1921 your song had been published in many song books?

MR. SPARK: I object to the form of that question.

A. As nearly as I can answer that, I go back to the statement that I was much more interested in the education than I was in any use that would be made of my song and for that reason if a publisher would write me and say that somebody wished to use this song in China or Japan and said he was willing if credit was given at the bottom of the page for the publishers and authors, I was more than willing.

Q. Well, is it true, Miss Hill, that this song "Good Morning to All" was published in song books for children by various publishers, crediting you and your sister as the author and composer without any permission and without any correspondence with you, or your

publishers?

MR. STARK: I object to the form of the question.

A. Now, that I can not answer. It would naturally only come to me when they asked permission, which I readily granted.

Q. You, as a person interested in the education of children - you were interested in the education of young children, I assume - did you make it your business to be familiar with song books published for young children?

A. Yes, especially those in this country.

Q. And did you state that you did not find song books published by publishers other than by Clayton F. Summy & Company which contained this song, "Good Morning to All"? Well, let me ask it more simply: Did you or did you not come across song books published by publishers other than by Clayton F. Summy which contained the song "Good Morning to All"?

A. With my permission, no - I should think you would have to refer that to the publishers because they kept a very close track on it personally so that I can't tell you that.

Q. And the fact of the matter is that you were not interested in that?

A. I was not interested in anything except the real welfare of children educationally. That was my main delight.

Q. And you were pleased so to see and know that your song was being used?

A. With the children, yes, and at teachers' conferences. But, otherwise, I did not know anything of it.

Q. And you were entirely willing that it should be used as extensively as possible with children?

A. In training only with permission and for educational use, yes - where the children were simply singing it.

Q. My question is that you were pleased that it should be used as extensively as possible with the children.

A. With the children, yes.

Q. Did your sister Jessica M. Hill participate in the writing of this song?

A. She would often be present when it was being revised, but she was much younger than my sister Mildred and myself and though she was a singer at the time she was not either a teacher or a composer and could only enter into the general interest of the family in improving music for young children.

Q. Prior to 1893 had these songs that you wrote been reduced to writing, Miss Hill?

A. In manuscript, yes.

Q. Manuscript form?

A. Yes.

Q. Now, at that time, between 1887 and 1893, you were principal of some school?

A. In 1887 I entered the training class and I became director of that same school immediately after my graduation in 1889. Then I became principal of the whole training school in 1893.

Q. Now, this was a school in which at least one department was devoted to the training of young ladies to become kindergartners, and this song was one of the songs that was used in connection with the training of kindergartners?

A. Yes.

Q. And this song was taught to the young ladies in training.

A. Yes.

Q. How was it taught to them.

A. Verbally and by note, both.

Q. Were they furnished with any copies of it?

A. No. They could only get it verbally

until it was published in 1893.

Q. What did you expect them to do with it after you had taught it to them?

MR. STARK: I object to the form of the question.

A. Why, I expected them to use it for educational purposes with young children.

Q. You anticipated that they would do that, didn't you?

A. I did.

Q. And, in fact, didn't you intend that they should do that? Teach it to other children in their other classes?

A. I wrote it for that purpose - for the use of young children of the kindergarten age level.

Q. Now, these young ladies whom you were training - when they graduated went out to different schools, didn't they?

A. Yes, but by that time the book had been published.

Q. Well, now, you became director of this particular department in 1889.

A. 1889.

Q. I think that this was one of the first songs that you wrote, and it was a two year course?

A. It was a fifteen months course and then it became a two year course.

Q. So that some of these young ladies were leaving the school about 1891, weren't they?

A. Yes.

Q. And they knew the song?

A. Yes.

Q. And it was your expectation and intention that they should teach it to the children in the schools where they became teachers?

A. It was my expectation, yes. It was written to help to do a piece of educational work.

Q. About how many teachers in training for kindergarten work would you say graduated from this school between 1889 and prior to the fall of 1893?

A. The training classes were very small.

Q. Yes, I would imagine so.

A. I was a member of a class of six. And the class^{es} did not become large until after the World's Fair. An educational exhibit which was made at the World's Fair made that training school quite famous. The classes were very small - I doubt if we ever had more than ten or twelve. That could be looked up, but I don't -

Q. Well, would you say that before the fall of 1893, not more than fifty, probably thirty-five?

A. As nearly as I can remember.

Q. Now, these young ladies who graduated from the school, did they go out and become kindergartners?

A. Yes.

Q. When you taught them this song in your class you taught it as one of the songs that you had devised particularly excellent for the use of children, is that right?

A. Yes.

Q. What restrictions did you place upon its use when you taught them?

MR. STARK: I object to the form of that question.

A. They did not possess the manuscript.

Q. Well, they knew that?

A. They knew they had to depend on their own ear for the use of it.

Q. Of course, it is not a tune which is difficult to remember.

A. No, not at all.

Q. But they then thought there was no restriction placed upon their use?

MR. STARK: I object to the form of the question.

A. Provided it was with children and teach-

ers.

Q. Well, now, Miss Hill, I just want to be sure that we get the answers to my questions, and I want to know whether you had in the course of your teaching actually said to any of your young ladies there, "Now this song is to be used only with children"?

MR. STARK: I object to the form of the question.

A. They were told specifically that it must never appear in print, that the book would be published and that they could not even from memory write it down and publish it. It was purely a matter of their musical memory.

Q. They had the unrestricted right to teach it, didn't they?

MR. STARK: I object to the form of the question.

A. It is hard to answer that because we were not trying to protect ourselves in any way except as to publication at that time.

REDIRECT EXAMINATION BY MR. STARK:

Q. Miss Hill, on or about January 3, 1927, did you, through your publisher, Clayton F. Summy Company, file a renewal registration for copyright re-

gistration No. 20441 with the Register of Copyrights, Washington, D.C., under Renewal No. 36618 for the work described as a book entitled "Song Stores for the Sunday School"?

A. I did, as far as I remember that is my memory.

Q. And are you now the owner of that copyright?

A. Yes.

MR. STARK: I will ask that this registration certificate certified by the Congressional Library of America be marked Exhibit "B" for identification.

MR. STARK: I will ask that the copy of song book entitled "Song Stories for the Sunday School" be marked Exhibit "C" for identification.

Q. Miss Hill: Who actually transcribed onto the manuscript the music for the particular song "Good Morning to All" as it was written?

A. My sister Mildred J. Hill.

Q. Do you know where the manuscript is?

A. I do not, for the simple reason that when my old home was broken up, when my two sisters died, June and September 1916, we destroyed untold numbers of manuscripts, letters and papers.

Q. Miss Hill: Did you see the show called "As Thousands Cheer"?

A. I saw the last matinee performance in New York.

Q. And is this a program of that particular show?

A. Yes, it is.

MR. STARK: I ask that this program be marked Exhibit "D" for identification.

Q. Do you recall in that performance a certain skit which was called on the program "World's Wealthiest Man Celebrates Ninety-Fifth Birthday"?

A. I do.

Q. Do you remember the date on which you saw and heard the performance?

A. I can't give you the exact date but I know it was closing in New York that night and I went to the matinee performance that afternoon.

Q. Do you remember the month?

A. I do not.

Q. With reference to this particular skit I have just referred to, did you hear any songs sung during the performance of that skit?

A. I did.

Q. At what part of the skit was it sung?

A. It was sung when the little model of Radio City was presented to the person impersonating John D. Rockefeller the elder.

Q. Did you recognize the song that was sung?

A. I certainly did.

Q. Do you remember the words that were sung from the stage at that time?

A. The "Happy Birthday to You", etc., were the words.

Q. Did you recognize the tune?

A. I certainly did.

Q. Will you tell us what the tune and the music was that was sung from the stage.

A. It was the music as it appears in this song book (referring to Exhibit "A" for identification).

Q. And was that music as sung from the stage exactly the same in tune as the song which was originally written by Miss Mildred J. Hall?

A. It was.

Q. And as published in that particular Exhibit "A" for identification?

A. It was.

Q. Did you buy a ticket in order to view the performance.

A. I did.

Walter S. Hill

Sworn to before me this 16th day

of July, 1935.

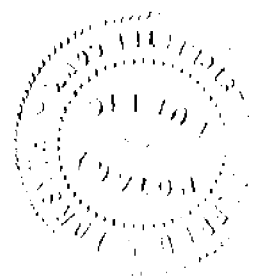
Alfred S. Forsyth

WFF

start

Rec

ALFRED S. FORSYTH
NOTARY PUBLIC, Westchester County
N. Y. Co. Clerk No. 848 Reg. No. 6F484
Term expires March 30, 1936



Miss JESSICA M. HILL, a witness produced on behalf of the plaintiff, being first duly sworn, deposes and says as follows:

Q. Miss Hill, are you the plaintiff in this action?

A. I am.

Q. Are you a citizen of the United States?

A. Yes.

Q. Where do you reside?

A. 21 Claremont Avenue, New York City.

Q. Do you reside with your sister Miss Patty S. Hill?

A. I do.

Q. What is your present occupation?

A. I have just ~~been~~ retired from Teachers College, Columbia University, one year, retiring last June.

Q. And for how long had you been associated with Columbia University?

A. I had been teaching there since 1912, and a student there for about three years before that.

Q. What subject did you teach?

A. I taught English literature and composition.

Q. Were you associated with any other educational institutions as a teacher or professor prior to the time that you so became associated with Columbia University.

A. No, that was my first teaching, first professional work.

Q. Where were you living during the years of 1889 to 1893?

A. At 1109 Second Street, Louisville, Ky.

Q. And in the same house with you were your two sisters Mildred J. Hill and Patty S. Hill?

A. Yes.

Q. And other members of your family?

A. Yes.

Q. Do you recall at that time seeing and hearing your sister Mildred J. Hill working on music for children.

A. Very distinctly.

Q. Do you recall in particular the song "Good Morning to All"?

A. I do.

Q. Will you state the circumstances as far as you can remember surrounding the origination of that tune?

A. Yes. Now, you must remember I was only fifteen at the time, fourteen or fifteen, and that I

was not interested in education and that therefore I had no connection with it whatever except as a sister who was immensely interested in the success of her two sisters in writing a book. I remember very distinctly that this particular song had a great deal of attention. They wanted to make it so simple that the smallest children could learn it and learn it rather quickly and they wanted to make it express this greeting, this courteous greeting just as clearly as they could for small children, and a great deal of work was to be done with that song, often I being present not in an advisory capacity but unofficially standing at the piano and singing it to see if it was a good simple song for small children.

Q. Did you sing many lyrics to the tune?

A. I remember particularly "Good Morning To All" And I remember "Happy Birthday to ^{You} ~~me~~". These are the two that impressed me most. I may have sung, you know, these others, but those are the two that I remember.

Q. Will you describe to us if you remember any one of the incidents during which you saw your two sisters working on this particular song.

A. I saw it so often, Mr. Stark, it was so often worked over to make it simple enough. It would have been easy to make it complex but to get it down so

simply that little bits of children could learn it caused a good deal of work on it.

Q. Well, will you describe to us one particular incident or one particular hour of work during which your two sisters were at work, that is, tell us what Miss Mildred Hill did and what Miss Patty Hill did.

A. Well, my sister would be at the piano playing it and my sister Patty would often say to her that the children did not sing that interval well. I can remember that. Naturally, I don't remember any one hour because I was fifteen and that is, how many years ago? You can tell how far back, about forty-one or forty-two years. Well, naturally, I was a youngster. I was not interested in the educational aspect but I was immensely interested that my two sisters were writing songs. That was a tremendous event to me.

Q. Well, when Miss Patty Hill would tell your sister Mildred that a particular interval was not particularly apt for the children, what would Miss Mildred then do?

A. She would write ^{out} ~~back~~ the notes in an even simpler fashion and they would try it right then and pass upon it as to whether that was a more childlike thing - the whole thing was to get it childlike.

Q. Will you tell us what is an interval?

A. From a to b, b to c, c to d, e to f, f to g, referring to the notes on the musical scale, not to the letters of the alphabet.

Q. On or about September 3, 1921, did you through Clayton F. Summy Company file a renewal registration for a copyright No. 5997 with the Register of Copyrights, Washington, D.C. under Renewal No. 19043?

A. Yes, I remember signing it.

Q. Are you now the owner of that copyright?

A. I am.

MR. STARK: I ask that this renewal registration for a copyright No. 5997 with the Register of Copyrights, Washington D.C. under Renewal No. 19043 be marked Exhibit "E" for identification.

Q. On or about the 9th day of January, 1924, did you through Clayton F. Summy Company file a renewal registration for Copyright No. 34260 with the Register of Copyrights, Washington, D.C., under Renewal No. 25771?

A. I remember signing it.

Q. Are you now the owner of said copyright?

A. Yes.

MR. STARK: I ask that this renewal registration for Copyright No. 34260 with the Register of Copyrights, Washington, D.C., under Renewal No. 25771, be marked Exhibit "F" for identification.

Q. Did the defendants or any of them request or procure your consent to the public rendition of the tune "Good Morning to All" in the production "As Thousands Cheer"?

A. No.

MR. PEPPER: Mr. Stark, isn't that covered by the pleadings?

MR. STARK: No it is not.

Q. Did you ever ratify or consent to such rendition by the defendants or any of them.

A. No.

Q. Do you receive royalties for the public presentation of your copyrighted song from the defendants or any of them?

A. No.

Q. Do you receive royalties for the public presentation of your copyrighted song from others than the defendants?

A. You mean that particular song? I receive royalties regularly from my sister's songs for adults. They are popular and I receive royalties from those adult songs from the publishers.

Q. Do your publishers receive royalties for the public presentation of this copyright?

MR. PEPPER: I object to the form of the question.

A. I don't know.

Q. Did you see the show "As Thousand Cheer"?

A. No, I did not. I don't know whether I should say this or not, but I really would like to say I would not go to see it because I knew that my sister Mildred had written that in such good faith to be sung by small children in educational institutions and I did not want to see it sung in this connection and I had been told that it was being sung, and when my sister went, I refused to go with her.

CROSS EXAMINATION BY MR. PEPPER:

Q. You described before, Miss Hill, how your sister Mildred and your sister Patty were working on this song that we were calling "Good Morning to All". Miss Patty would comment upon the interval that was not quite right and they would then together sit down and work out a new interval?

A. Yes, may I add to that, that my sister Mildred often went into the kindergarten and heard the children sing it, using her own judgment.

Q. Yes, but what I am asking you, Miss Hill,

is that you saw both sisters sitting, or one sitting and one standing at the piano together working and reworking on the chords, is that correct?

A. I did - for simplicity.

Q. And you are prepared to state are you not that this melody was the combined work of both sisters?

A. In this sense, that my sister Patty wrote the words, my sister Mildred wrote the music, and that they worked together on it in trying to get it suited for the voices of children.

Q. Well, what I am trying to get is a simple answer to my question. It is a fact then that this melody that we are talking about is the combined product of the efforts of Miss Mildred Hill and Miss Patty Hill?

MR. STARK: I object to the form of the question on the ground that it has already been answered.

A. It is.

Q. Isn't it also a fact, Miss Hill, that a song "Happy Birthday to you" has for many years been sung generally at all birthday celebrations?

MR. STARK; I object to the form of the question.

A. I have no way of knowing.

Q. Haven't you heard it frequently sung?

A. In kindergartens, yes, but, as I was not a kindergartner I did not hear it sung at the conventions and conferences at which my sister attended and at which she did hear it. I have heard it sung in kindergartens, often.

Q. Did your sister Mildred Hill leave a will?

MR. STARK: I object to the form of the question and as not coming within the scope of this particular examination.

A. My brother wallace attended to all that and I can not remember as he took care of everything.

Q. Your sister died in 1917?

A. 1916.

Q. What month?

A. June 5, 1916, that is, Mildred.

Q. And where did she die?

A. In Chicago, at the home of my brother Wallace.

Q. Do you know in what manner or legal form her property was disposed of?

MR. STARK: I object to the form of the question, and further, it does not come within the scope of this examination.

A. I do not because my brother Wallace attended to everything until just before his death.

Q. Do you recall the address of your brother Wallace in Chicago at the time of your sister Mildred's death?

MR. STARK: I object to the form of the question.

A. I can tell you his business address because that is where I wrote.

Q. Did you know his residence address?

A. Yes, but it has slipped my memory. I have to - 2931 Calumet Avenue, Chicago. But I always wrote to his office. I can give you that number.

Q. And his business address?

A. 105 So. LaSalle Street, Hill, Joiner & Company. That is where I always wrote.

Q. And were these addresses the same at the time of his death.

A. Yes.

Q. And when did he die?

A. He died in 1923, April 5th.

.....

MR. STARK: I will ask that a copy of the new edition, revised, illustrated and enlarged "Song

Stories for the Kindergarten*, referred to as Renewal
Registration No. 25771 be marked Exhibit "G" for
identification.

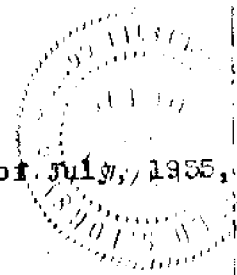
Jessica M. Hill

Sworn to and subscribed before me this 16th day
of July, 1935.

Alfred S. Forsyth

Read

ALFRED S. FORSYTH
NOTARY PUBLIC, Westchester County
N. Y. Co. Clk's. No. 548 Reg. No. 5F464
Term expires March 30, 1936



AD JOURNMENT taken to the 16th day of July, 1935,
at 10:30 A.M.

STATE OF NEW YORK

SS:

COUNTY OF NEW YORK

I, Alfred J. Forsyth, a Notary Public, in and for the County of Westchester, State of New York, my certificate being filed in New York County, duly commissioned and qualified and authorized to administer oaths, and to take and certify depositions, do hereby certify that pursuant to the notice dated June 17, 1935, issued and served in the civil cause depending in the District Court of the United States for the Southern District of New York, wherein Jessica M. Hill is plaintiff, and Sam H. Harris, Sam H. Harris Theatrical Enterprises Inc., Irving Berlin and Moss Hart, are defendants, I was attended at my office, No. 70 Pine Street, in New York City, by McKercher & Link (Malcolm B. Stark, Esq., of Counsel), attorneys for said plaintiff, and also by O'Brien, Driscoll & Raftery (Benjamin Pepper, Esq., of Counsel), Attorneys for Defendants Sam H. Harris and Sam H. Harris Theatrical Enterprises, Inc., on the said days and dates hereinbefore stated: that the aforementioned witnesses Patty S. Hill and Jessica M. Hill, who were of sound mind and lawful age and were by me first carefully examined and cautioned and duly sworn, did testify the truth, the whole truth, and nothing but the truth; and they thereupon testified as is above shown and that the depositions both subscribed as above set forth were reduced to writing by Miss Gertrude Esterhaus in the presence of the witnesses themselves and from the statements of them, and were subscribed by the said witnesses in my presence, and were taken at the place in the aforesaid notice specified and at the times as set forth, adjournments being had or taken from day to day as provided for in said notice, and that all was so done, written and signed in the presence of said counsel for said plaintiff and defendants.

I further certify that the reason for taking said depositions was and is, and the fact was and is, that both of the deponents live in New York City and are ancient and infirm. That I am neither of Counsel nor attorney to either of the parties to said suit, nor interested in the event of said cause, and that it being impracticable for me to deliver said depositions with my own hand into the court for which they were taken, I have retained the same for the purpose of being sealed up and directed with my own hand and speedily and safely

transmitted to the said court for which it was taken, and to remain under my seal until they are opened.

As witness my hand and seal as such Examiner at New York City on this 16th day of July, 1935.

(Also)

APF Alfred S. Forsyth (L.S.)
(Attorney)

ALFRED S. FORSYTH
NOTARY PUBLIC, Westchester County
N. Y. Co. Clk's No. 948 Reg. No. 6F494
Term expires March 30, 1936

EXHIBIT 88

"STRANGE INTERLUDE"

REEL 8 SCENE NO. 15

FADE IN - CU - Birthday cake on table - little
sail-boat on top of cake - writing on sail reads:
Happy
Birthday
to
Gordon

CAMERA PULLS BACK - showing Gordon and children
seated around table - Nina standing by Gordon -
children clap their hands - Butler enters left
f.g. - carrying ice cream boat -
Another butler removes birthday cake from table -
(Children singing - "Happy Birthday to You"
composer unknown - Nursery Rhymes by Casini - Sc.
15 to 19 inclusive.)

Children singing

Happy birthday to you -
Happy birthday to you -
Happy birthday dear Gordon -
Happy birthday to you -

Nina

Now take a deep breath, Gordon, and see if you
can blow them all out at once.
(Children ad lib -- oh - oh look at the ice cream -
etc.)

EXHIBIT 89

FILE COPY

Date July 14, 1932.

Production No.: 1608

Total No. Compositions: _____

Music Rights Department,
Electrical Research Products Inc.,
New York, N. Y.

Notification is hereby given of our intention to use the following musical compositions in connection with ^{Photoplay} ~~xxx~~ entitled "STRANGE INTERLUDE"

To be recorded at (Studio) Metro-Goldwyn-Mayer on or about (date) _____
(Location) Culver City, California.

Please secure domestic licenses as indicated.
Please secure foreign licenses as indicated, if and when picture is exported.

Signed Metro-Goldwyn-Mayer
By _____
Musical Director

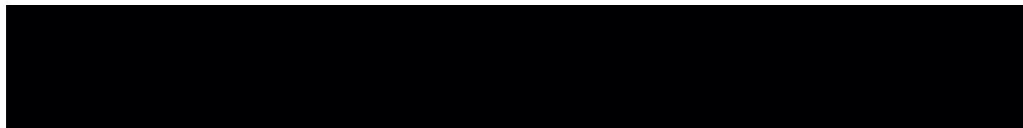
Remarks:

1. Title of Composition: ROMANCE
Composer: Rubinstein
Publisher: Public Domain
Secure domestic license: Yes _____ No x
Extent of use: P x E _____ P. D. Abroad
How used: Inst. x Voc. _____
Secure foreign license: Yes _____ No x
2. Title of Composition: WEDDING MARCH
Composer: Mendelssohn
Publisher: Public Domain
Secure domestic license: Yes _____ No x
Extent of use: P x E _____ P. D. Abroad
How used: Inst. x Voc. _____
Secure foreign license: Yes _____ No x
3. Title of Composition: HAPPY BIRTHDAY TO YOU
Composer: UNKNOWN
Publisher: Public Domain
Secure domestic license: Yes _____ No x
Extent of use: P x E _____ P. D. Abroad
How used: Inst. _____ Voc. x
Secure foreign license: Yes _____ No x
4. Title of Composition: NURSPRY RHYMES
Composer: Casini
Publisher: Photoplay
Secure domestic license: Yes x No _____
Extent of use: P x E _____
How used: Inst. x Voc. _____
Secure foreign license: Yes x No _____
5. Title of Composition: PROMENADE
Composer: Rapee-Axt
Publisher: Robbins
Secure domestic license: Yes x No _____
Extent of use: P x E _____
How used: Inst. x Voc. _____
Secure foreign license: Yes x No _____
6. Title of Composition: TENDER MEMORIES
Composer: Rapee-Axt
Publisher: Robbins
Secure domestic license: Yes x No _____
Extent of use: P x E _____
How used: Inst. x Voc. _____
Secure foreign license: Yes x No _____
7. Title of Composition: DEAR LITTLE BOY OF MINE
Composer: Ball
Publisher: Witmark
Secure domestic license: Yes x No _____
Extent of use: P x E _____
How used: Inst. x Voc. _____
Secure foreign license: Yes x No _____
8. Title of Composition: OLD PAL
Composer: Van Alstyne
Publisher: Remick
Secure domestic license: Yes x No _____
Extent of use: P _____ E x
How used: Inst. x Voc. _____
Secure foreign license: Yes x No _____
9. Title of Composition: THERE'S LOVE IN THE AIR
Composer: McHugh
Publisher: Unpub. perm. grant.
Secure domestic license: Yes _____ No x
Extent of use: P x E _____
How used: Inst. x Voc. _____
Secure foreign license: Yes _____ No x

WB042

Ex. 89

EXHIBIT 90



[Back to Article](#) [Click to Print](#)

TIME

Monday, Aug. 27, 1934

Music: Good Morning

When she was 25 Patty Smith Hill was running a model kindergarten in Louisville, Ky. Grover Cleveland was President and Lillian Russell was the talk of Broadway. One day, Patty Hill's sister, Mildred, wrote a jingling little tune to which Patty fitted words. They published the song, copyrighted it, and sometimes Patty Hill would sing thus to her kindergarten children:

Good morning to you,
 Good morning to you,
 Good morning, dear children,
 Good morning to all.

From Louisville the ditty and the tune spread far and wide throughout the land. By a process of corruption it became a schoolroom classic which moppets sang as follows:

Good morning, dear teacher
 Good morning to you!

When she was 66, Patty Smith Hill was professor of Education at Teachers College, Columbia, a recognized authority on child education. Franklin D. Roosevelt was in the White House and *As Thousands Cheer*, starring Marilyn Miller (later, Dorothy Stone) and Clifton Webb, had Broadway by the ears. In one of this revue's most popular skits Clifton Webb appears as John D. Rockefeller Sr. while his children and grandchildren dance about him offering him a birthday cake and Rockefeller Center as a birthday present. They sing:

Happy birthday to you
 Happy birthday to you
 Happy birthday, dear grandpa
 Happy birthday to you.

Because the tune of "Happy Birthday to You" sounds precisely like the tune of "Good Morning to All," Sam H. Harris, producer of *As Thousands Cheer*, last week found himself the defendant in a Federal plagiarism suit asking payment of \$250 for each and every performance of the song. If *As Thousands Cheer* closes on schedule the first week in September the grand total demanded will be \$100,750 for 403 performances. Lyricist Patty Hill, who will share in the damages, if any, had no complaint to make on the use of the words because she long ago resigned herself to the fact that her ditty had become common property of the nation.

Fox Film Corp. used the same song in Shirley Temple's *Baby, Take a Bow* and in a newsreel shot of President Roosevelt's last birthday. For permission to use it Fox paid a total of \$250.

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<http://content.time.com/time/magazine/article/0,9171,747783,00.html>

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EXHIBIT 91

DW 20-439
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
Civil Action No. 20-439

THE HILL FOUNDATION, INC.,
Plaintiff,

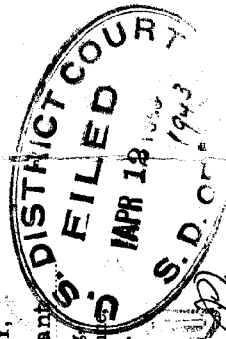
-vs-

POSTAL TELEGRAPH-CABLE COMPANY,
Defendant.

A N S W E R

DARBY & DARBY,

Attorneys for Defendant
Chrysler Building
405 Lexington Avenue
New York, N. Y.



APR 12 1943

SAMUEL MANN
Att. for Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
THE HILL FOUNDATION, INC., :
 :
 Plaintiff, : Civil Action
 :
 -vs- : No. 20-439.
 :
 POSTAL TELEGRAPH-CABLE COMPANY, :
 :
 Defendant. :
-----X

A N S W E R

Defendant for answer to the complaint herein, or to as much thereof as it is advised is material or necessary to be answered, says:

1. Defendant admits the allegations of Paragraph 1 of the complaint.

2. Defendant admits the allegations of Paragraph 2 of the complaint.

3. Defendant admits the allegations of Paragraph 3 of the complaint.

4. Defendant admits the allegations of Paragraph 4 of the complaint.

5. Defendant, on information and belief, denies the allegation of Paragraph 5 of the complaint.

6. Defendant denies each and every allegation of Paragraph 6 of the complaint, except that it admits the entry of the songs collectively entitled "Song Stories for the Kindergarten" in the Office of the Register of Copyrights of the United States on the 13th day of October,

1893 under Copyright No. 45,997.

7. Defendant denies each and every allegation of Paragraph 7 of the complaint, except that it admits the entry of the songs collectively entitled "Song Stories for the Kindergarten" in the Office of the Register of Copyrights of the United States on the 8th day of June, 1896 under Copyright No. 34,260; but defendant avers, on information and belief, that the said work was not duly copyrighted thereby.

8. Defendant denies each and every allegation of Paragraph 8 of the complaint, except that it admits that one of the songs contained in the collection of songs described in Paragraphs 6 and 7 was entitled "Good Morning to All"; but defendant avers that the words of the song "Happy Birthday to You" are entirely different from the words of the song "Good Morning to All".

9. Defendant denies each and every allegation contained in Paragraph 9 of the complaint, except that it admits that the song "Happy Birthday to You" has acquired a nationwide popularity and that performances thereof have been given vocally, orchestrally, and over the radio.

10. Defendant is without knowledge or information sufficient to form a belief as to the matters alleged in Paragraph 10 of the complaint and therefore denies them, except that defendant admits the allegations as to the renewal registration of the alleged copyrights therein referred to; but defendant denies that copyright in the song "Happy Birthday to You" was included in the renewal copyright registrations in said paragraph of the complaint mentioned.

11. Defendant admits the allegations of Paragraph 11 of the complaint.

12. Defendant admits the allegations of Paragraph 12 of the complaint that it transmitted and delivered birthday greetings by the use of the song "Happy Birthday to You"; but denies that the said song was copyrighted. Defendant kept no record of the number of such birthday greetings transmitted and delivered by it commencing in February 1938 and therefore is without knowledge sufficient to form a belief that it transmitted and delivered the number of said birthday greetings as set forth in the said paragraph of the complaint.

13. Defendant admits that its use of the song "Happy Birthday to You" was without the consent or authority of plaintiff's assignors, but avers, on information and belief, that the consent and authority of the said plaintiff's assignors were unnecessary in that they were not then the owners and proprietors of the said song or any copyrights thereto; and further denies that the said song was copyrighted; and further denies that defendant's use of the said song, as alleged in the said paragraph of the complaint was in infringement of any copyrights owned by plaintiff.

14. Defendant admits the allegation in Paragraph 14 of the complaint of the assignment to plaintiff dated June 2, 1942 and the recording thereof in the Copyright Office of the United States on June 8, 1942 in Copyright Office Book 485 at pages 242-243; but defendant denies that the said assignment was in conformity with the laws of the United States concerning copyrights, and denies that plaintiff by virtue of the said assignment became and was or is the owner of the alleged copyright.

15. Defendant admits the allegations of Paragraph 15 of the complaint, but denies that it was under any obligation to render the accounting demanded of it.

FIRST DEFENSE

16. The complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

17. The defendant avers that a copy of the book entitled "Song Stories for the Kindergarten", said book containing a song entitled "Good Morning to All", was deposited and registered in the Copyright Office of the United States on October 13, 1893, under Entry No. 45,997, and that said book deposited in the Copyright Office bears the following notice of copyright: "Copyright, 1893, Clayton F. Summy Co."

18. That a later edition of the said book entitled "Song Stories for the Kindergarten" containing a copy of the identical song entitled "Good Morning to All" was deposited and registered in the Copyright Office by Clayton F. Summy Co., on June 8, 1896, under Entry No. 34,260. That the said book bears a copyright notice reading: "Copyright, 1896, Clayton F. Summy Co.", but that the said work fails to give notice of the copyright registered on the said work by Clayton F. Summy Co. in 1893.

19. That a later work entitled "Song Stories for the Sunday School", containing a copy of the identical song entitled "Good Morning to All", was deposited and registered in the Copyright Office by Clayton F. Summy Co., on March 20, 1899, under Entry No. 20,441. That said book bears a

copyright notice reading: "Copyright 1899, Clayton F. Summy Co.", but that said work fails to give notice of the copyright registered by Clayton F. Summy Co. in 1893.

20. That the identical song entitled "Good Morning to All" was again deposited and registered for copyright in the name of Clayton F. Summy Co., February 7, 1907, under Entry No. C:142648. The said work deposited bears a copyright notice reading: "Copyright 1907, Clayton F. Summy Co.", but fails to give notice of the copyright registered on the said work in 1893 or 1899.

21. Defendant avers that the successive republications of the said song entitled "Good Morning to All" with notices of copyright in 1896, 1899 and 1907 as described therein, and the successive registrations of claims of copyright in the said song by the said Clayton F. Summy Co. in 1896, 1899 and 1907 as described in Paragraphs 18, 19 and 20 hereof, caused a forfeiture of the alleged copyright secured in this work in 1893; that by reason of said successive republications and re-registrations the claimed copyright of 1893 became void, and that the said song entitled "Good Morning to All" or "Happy Birthday to You" became dedicated to public use and is now a part of the public domain.

THIRD DEFENSE

22. On information and belief defendant avers that one, Jessica M. Hill, filed application in the Copyright Office for a renewal of the copyright alleged to have been secured on the 13th day of October 1893, and that said renewal application was filed on September 3, 1921 by the said Jessica M. Hill as "next-of-kin" of Mildred J. Hill,

the alleged composer of the music of the song entitled "Good Morning to All". That at the time of the said filing of the said application for renewal of the alleged copyright Patty S. Hill, one of the alleged authors of the said song, was living. That, in consequence, the renewal copyright claimed by Jessica M. Hill was void in that the said Jessica M. Hill was not a person authorized by law to renew the said copyright and in that the copyright sought to be renewed had theretofore become invalid.

FOURTH DEFENSE

23. Defendant avers that prior to June 2, 1942, the date of assignment from Patty S. Hill and Jessica M. Hill to plaintiff, The Hill Foundation, Inc., as alleged in Paragraph 14 of the complaint, the said Patty S. Hill and Jessica M. Hill had sold, assigned, transferred and conveyed to Clayton F. Summy Co., a Delaware corporation, with its principal office at 321 South Wabash Avenue, Chicago, Illinois, their entire right, title and interest in and to their said copyrights and their then renewals and extensions thereof; and of all other right, title and interest of every kind and character and in and to any rights, claims, demands and causes of action which the said Patty S. Hill and Jessica M. Hill, or either of them, had or might have had against any person or persons who had theretofore infringed any of the alleged copyrights; that the said assignment was dated September 2, 1939 and, on the 21st day of September, 1939, was duly recorded in the assignment records of the Copyright Office of the United States in Volume 425, pages 36, 37 and 38 thereof, all as appears from a copy of the said assignment hereto attached and

made a part hereof; and that the records of the Copyright Office disclose no subsequent assignment from Clayton F. Summy Co. to Patty S. Hill and Jessica M. Hill, wherefore plaintiff is without title to maintain this action.

FIFTH DEFENSE

24. Defendant avers that prior to February 1938 Clayton F. Summy Co. was and since then has continued to be a member of the American Society of Composers and Publishers (generally known as ASCAP), which was and is vested by the copyright owning members thereof (and specifically by Clayton F. Summy Co.) with the right to grant permission and license to use and reproduce works, the copyrights to which are owned by its members. That defendant was expressly licensed by ASCAP to use the words and music of the song "Happy Birthday to You" in the delivery of birthday greetings; that defendant's utilization of the song "Happy Birthday to You" in the delivery of birthday greetings complained of in Paragraphs 11 and 12 of the complaint was under said license from ASCAP.

SIXTH DEFENSE

25. Defendant avers that the utilization of the song "Happy Birthday to You" in delivering birthday greetings was not a public performance and, in consequence, was not in infringement of any copyright.

WHEREFORE defendant denies that plaintiff is entitled to the relief prayed for, or to any relief, and therefore prays that the complaint be dismissed with defendant's costs sustained in connection therewith, together with attorneys' fees, as prescribed by law.

Harby St. Darby
Attorneys for Defendant
405 Lexington Av., New York, N.Y.
Samuel H. Darby, Jr.
Of Counsel.

POSTAL TELEGRAPH-CABLE COMPANY

By F. J. Toque
Its
Vice President

STATE OF NEW YORK)
) SS:
COUNTY OF NEW YORK

F. J. Logue, being duly sworn, deposes and says:

That he is *Vice President* of POSTAL TELEGRAPH-CABLE COMPANY, the defendant named in the foregoing bill of complaint; that he has read the same and knows the contents thereof and that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true. That the reason why this verification is not made by the defendant personally is that the defendant is a corporation.

F. J. Logue

Sworn to and subscribed before me this 12 day of April, 1943.

William J. Dallas
Notary Public.

Notary Public for the State of New York
Commission Expires March 30, 1945

EXHIBIT 92

THIS AGREEMENT made and entered into at Chicago, Illinois, this 7th day of August, A. D. 1931, between CLAYTON F. SUMMY of Chicago, Illinois, (hereinafter for convenience designated "Summy"), and JOHN F. SENGSTACK of Philadelphia, Pennsylvania (hereinafter for convenience designated "Sengstack"), WITNESSETH:

WHEREAS, Summy owns or controls the entire issued capital stock of Clayton F. Summy Company, a corporation organized and existing under and by virtue of the laws of the State of Illinois, (hereinafter for convenience designated the "Old Company") which company is now engaged in the business of dealing in and publishing music; and

WHEREAS, Summy is planning to cause a reorganization of said Old Company in pursuance of the following plan of reorganization:

(a) Among the assets of the Old Company are certain securities carried on its books as of the close of business on December 31, 1930, at a valuation of Forty-three Thousand Seven Hundred Seven Dollars and Fifty Cents (\$43,707.50), (not including accrued interest) a list of said securities showing the valuation thereof at which they are carried on the books of the Old Company is attached hereto marked Exhibit "A" and made a part hereof. It is the intention of Summy to cause these securities to be distributed to

the stockholders of the Old Company either by a dividend in kind or by a sale of the securities and the declaration of a dividend equal to the price received from the sale thereof, and in addition, to distribute to the stockholders of the Old Company a cash dividend of Five Thousand Eight Hundred Dollars (\$5,800.00).

(b) Summy intends to cause to be incorporated a new company under the laws of the State of Delaware, under the name of Clayton F. Summy Company (hereinafter for convenience called the "New Company"), with a capitalization consisting of One Hundred Fifty Thousand Dollars (\$150,000) Preferred Stock, being 1500 shares of the par value of One Hundred Dollars (\$100) a share, and 50 shares of Common Stock of no par value. The charter will provide that the Preferred Stock shall be entitled to dividends at the rate of six per cent per annum and that the same shall be cumulative, and that said Preferred Stock shall be redeemable at any time at the option of the New Company, at par and accrued dividends upon thirty days' notice. In the event of the liquidation of the said New Company said Preferred Stock shall receive par per share and accrued dividends before any payment is made on the Common Stock. No dividends shall be paid on the Common Stock until the Preferred Stock is retired. The Preferred Stock is to have no voting rights except in the event of the failure of the New Company to pay dividends at the rate of at

least three per cent on the par value of the preferred stock in each of the first two years from the date of the issuance of such preferred stock, and at least six per cent in each year thereafter. In the event of the failure to pay dividends on said preferred stock as above specified, the preferred stock shall thereupon have full voting rights and the common stock shall thereupon have no voting rights. However, after all such accrued dividends on the preferred stock shall have been paid, the voting rights of said preferred stock shall thereupon cease and said common stock shall again have full voting rights. The charter of said New Company will also provide that so long as any of the preferred stock is outstanding the New Company shall not be consolidated or merged with or the business sold to any other company without the consent of at least two-thirds of the then outstanding preferred stock. Said New Company will have such other charter powers and its charter will contain such provisions not inconsistent with the foregoing as may be deemed necessary or desirable by counsel for Sengstack.

(c) Summy will cause to be effectively transferred to said New Company all the assets of the Old Company, including all good-will, patents, copyrights and rights of every kind and character, and the said New Company shall assume the liabilities of the Old Company (except tax liability, if any, resulting from

the transfer of the assets of the Old Company to the New Company) in exchange for all the capital stock of the New Company.

(d) Summy will immediately cause said New Company to be qualified to do business in the State of Illinois, and in order that the New Company may be so qualified, will cause the name of the Old Company to be changed.

(e) In pursuance of such plan of reorganization Summy will immediately cause the stock in the New Company to be distributed among the stockholders of the Old Company,

and

WHEREAS, Sengstack is willing to purchase from Summy the common no par stock in such New Company, as and when the same is received by Summy, and Summy is willing to sell such stock, on the terms and conditions hereinafter contained,

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10) each to the other in hand paid, and in consideration of other good and valuable considerations, receipt of which is hereby acknowledged by the parties hereto, and in further consideration of the mutual covenants and agreements hereinafter contained, it is hereby stipulated, covenanted and agreed by and between the parties hereto as follows:

1. Summy agrees to cause a reorganization of the Old Company immediately by the formation of the New Company

Ex. 92

and the effective transfer of the assets of the Old Company to the New Company as hereinabove recited.

2. Summy agrees to sell and Sengstack agrees to purchase said 50 shares of common stock of said New Company, and to pay Summy therefor, in cash, the sum of Five Hundred Dollars (\$500).

3. Sengstack agrees that immediately on the purchase of the common stock of said New Company he will cause the capitalization of said New Company to be increased so that said New Company will have a total authorized capitalization of 1500 shares of no par value stock, and will subscribe for and purchase from the New Company the additional 1450 shares of the increased no par value common stock at Ten Dollars (\$10) per share, and will pay therefor in cash to the New Company.

4. Sengstack agrees to cause himself to be elected president of said New Company and until said preferred stock is retired agrees to devote all of his time and efforts to the management of said New Company in active charge of its operations. Sengstack agrees further to endeavor to secure for said New Company the services of Preston W. Orem of Philadelphia, Pennsylvania, who will until said preferred stock is retired devote all of his time to the business of said New Company as musical reader and such other duties as he may be required to perform. Sengstack agrees that the aggregate salaries paid by the New Company to Sengstack and said Orem shall not without the prior written consent of Summy or his legal representative, exceed the following schedule:

(a) Until at least 25% of the preferred stock is retired, \$15,000 per annum.

(b) After 25% but not less than 50% of said preferred stock is retired, \$20,000 per annum.

(c) After 50% but not less than 75% of said preferred stock is retired, \$25,000 per annum.

(d) Thereafter, until all of said preferred stock is retired, \$30,000 per annum.

Sengstack agrees that in the event of the death, resignation or refusal of said Orem to serve as an officer or employee of said New Company, that the aggregate salaries of himself and whoever is employed by said New Company to perform the duties of musical reader of said New Company shall not exceed the schedule of salaries hereinabove set forth for Sengstack and said Orem; and agrees further that in the event of the death, resignation or refusal of said Orem to act as musical reader for said New Company, if no one is employed by the said New Company to perform the duties contemplated to be performed by said Orem, that the salary of Sengstack shall not exceed seventy-five per cent (75%) of the aggregate salaries provided in the foregoing schedule for Sengstack and Orem.

Sengstack agrees further that on incorporation of the New Company and as part consideration of the purchase by said Sengstack of said no per value common stock from said

New Company, that Sengstack will cause said New Company to enter into a contract with Summy, which agreement shall provide among other things that the salary of the president and general manager of the New Company and said Orem or whoever is employed to perform the duties contemplated to be performed by said Orem shall not exceed the schedule of salaries hereinabove set forth.

5. Sengstack agrees immediately upon the acquisition by him of all or part of the common stock of the New Company to apply for and, if the application is accepted, take out Fifty Thousand Dollars (\$50,000) insurance on his life payable to said New Company, it being understood that the premiums on such insurance policy shall be payable by said New Company. Sengstack may in his discretion take out an additional One Hundred Thousand Dollars (\$100,000) insurance on his life under the same plan as above.

6. Sengstack agrees that so long as any of the preferred stock is outstanding no property or assets of the New Company will be sold or disposed of, except in the ordinary course of business, and that the New Company will on its incorporation pursuant to the foregoing plan of reorganization enter into an agreement with Summy adopting and agreeing to the provisions contained in this agreement and the plan of reorganization and agreeing and covenanting to do or not to do any of the matters or things which by this agreement Sengstack has agreed he will cause said New Company to do or refrain from doing.

7. It is understood that the expenses of the reorganization shall be paid by the New Company, but that counsel

fees in connection with such reorganization shall not exceed the sum of Five Hundred Dollars (\$500).

8. Summy hereby represents to Sengstack that the financial statement attached hereto marked Exhibit "B" and made a part hereof is a true and correct statement of the assets and all of the liabilities of the Old Company as of December 31, 1930, as shown by the audit of the Company's auditor, and that Summy believes it to be correct and true; that since December 31, 1930, there have been no changes either in said assets or said liabilities except as occasioned in the usual, normal and customary course of the carrying on of the business of the Company. Summy further represents to Sengstack and covenants that from the date of the execution of this agreement to the date of the completion of the reorganization and the formation of the said New Company and the delivery to Sengstack of the common stock in the New Company to be purchased by Sengstack, no assets shall be removed or taken away from the Old Company or from said New Company other than as provided in paragraph (a) of the recitals and paragraph 9 in this agreement; that no dividends at all shall be declared or paid other than as provided in said recitals and no obligations shall be incurred other than in the ordinary, usual and customary course of business, and except as herein provided.

9. According to the financial statement of the Old Company as of close of business December 31, 1930 (Exhibit B)

there was due as of that date from the Old Company to officers and stockholders thereof the sum of Three Thousand Three Hundred Twenty-two Dollars and Thirty-eight Cents (\$3,322.38). Summy represents that as of the date of this contract the said sum of Three Thousand Three Hundred Twenty-two Dollars and Thirty-eight Cents (\$3,322.38) remains due and unpaid. It is agreed that all of said sum of Three Thousand Three Hundred Twenty-two Dollars and Thirty-eight Cents (\$3,322.38) shall be part of the obligations assumed by the New Company, but that said sum of Three Thousand Three Hundred Twenty-two Dollars and Thirty-eight Cents (\$3,322.38) shall be payable by the New Company to the holder of said claim in the manner following:

Sixty Dollars (\$60.00) a week commencing with Saturday, September 5, 1931, and Sixty Dollars (\$60.00) a week thereafter until the entire sum is paid, said deferred payments to bear no interest.

Summy hereby agrees to acquire whatever part, if any, of said indebtedness of Three Thousand Three Hundred Twenty-Two Dollars and Thirty-eight Cents (\$3,322.38) which is not owned by him, so that said payments of \$60.00 per week shall be payable by the New Company as above specified to said Summy.

10. As of March 1, 1931, the salaries of certain employes of the Old Company were reduced to the amount now being paid said employes, and the said Summy stated to the said employes that when the business of the company improved he would endeavor to have the company make up to them the

difference between their former salaries and the amount they are now being paid. Such differences in salaries are not to be paid by the Old Company prior to the reorganization and so far, if at all, as this statement by Summy constitutes an obligation of the Old Company, it is not an obligation to be assumed by the New Company, and Summy agrees to indemnify and hold harmless the Old Company and the New Company against any claims of the aforementioned employes for any difference between salaries formerly received by them and salaries paid them since March 1, 1931. Summy hereby agrees to enter into a binding covenant with said New Company, providing for the carrying out of the above obligation on his part to be performed.

11. It is understood by and between the parties hereto that the benefits derived hereunder and the obligations and conditions set forth in this agreement shall inure to and be binding upon the parties hereto and their heirs, executors, administrators and assigns.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly executed the day and year first above written.

Blayton Summy (SEAL)
John A. Bengtson (SEAL)

EXHIBIT 93



Home • Departments • Archives • Databases • Illinois Statewide Death Index

ILLINOIS STATE ARCHIVES

Illinois Statewide Death Index

Search Criteria: summy and clayton

Death certificates filed after 1947 are not currently available in the Illinois State Archives Reference Room. For deaths occurring after 1947, the death date will appear in BOLD

Last Name	First Name	Middle Name	Sex/Race	Age	Cert No.	Death Date	County	City	Date Filed
SUMMY	CLAYTON	F	MW	UNK	0220062	1932-02-10	DU PAGE	HINSDALE	32-02-11

[Return to Search](#)

EXHIBIT 94

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9 *Interim Lead Counsel for Plaintiffs and the [Proposed] Class*

10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA -**
12 **WESTERN DIVISION**

13 GOOD MORNING TO YOU) Lead Case No. CV 13-04460-GHK (MRWx)
14 PRODUCTIONS CORP., *et al.*,)
15 Plaintiffs,) **PLAINTIFFS' REQUESTS FOR**
16 v.) **PRODUCTION OF DOCUMENTS TO**
17) **DEFENDANTS – SET NO. ONE**
18 WARNER/CHAPPELL MUSIC,)
19 INC., *et al.*)
20 Defendant.)
21)

22 **PROPOUNDING PARTIES: PLAINTIFFS GOOD MORNING TO YOU**
23 **PRODUCTIONS CORP., ROBERT SIEGEL,**
24 **RUPA MARYA, AND MAJAR PRODUCTIONS,**
25 **LLC**

26 **RESPONDING PARTIES: DEFENDANTS WARNER/CHAPPELL MUSIC,**
27 **INC. AND SUMMY-BIRCHARD, INC.**

28 **SET NO.: ONE**

Ex. 94

1 Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, plaintiffs
2 GOOD MORNING TO YOU PRODUCTIONS CORP., ROBERT SIEGEL, RUPA
3 MARYA, AND MAJAR PRODUCTIONS, LLC (“Plaintiffs”), by and through their
4 undersigned counsel, hereby propound the following interrogatories upon defendants
5 WARNER/CHAPPEL MUSIC, INC. and SUMMY-BIRCHARD, INC.
6 (“Defendants”). Defendants shall identify and produce the requested documents and
7 things for inspection and copying within thirty (30) days—or such other time as the
8 parties may agree or the Court may order—during normal business hours, at the
9 offices of Wolf Haldenstein Adler Freeman & Herz LLP, 750 B Street, Suite 2770,
10 San Diego, California 92101.

11 **DEFINITIONS**

- 12 1. “Defendants” means Warner/Chappell Music, Inc., and Summy-
13 Birchard, Inc. (or each individually, as context requires).
- 14 2. “Warner/Chappel,” means Warner/Chappell Music, Inc., its subsidiaries
15 and predecessors in interest, including without limitation Summy-Birchard, Inc.
- 16 3. “Summy-Birchard” means Summy-Birchard, Inc., its subsidiaries and
17 predecessors in interest, including without limitation Summy-Birchard, Inc.
- 18 4. “CFSC” refers to the Clayton F. Summy Co. identified as copyright
19 owner in the applications for Copyright E51988 and Copyright E51990.
- 20 5. “ASCAP” refers to the American Society of Composers, Authors and
21 Publishers.
- 22 6. “You” or “Your” refers to each Defendant served with these requests.
- 23 7. “*Happy Birthday to You*” means the song *Happy Birthday to You*.
- 24 8. “Copyright Office” refers to the United States Copyright Office.
- 25 9. “Copyright” means statutory copyright.
- 26 10. “Right” means an interest, including license and Copyright, in or to a
27 work.

1 5. All documents shall be produced as they are kept in the usual course of
2 business or the documents shall be organized and labeled to correspond to the
3 categories in these requests.

4 6. Documents shall be produced in their original folders, binders, covers or
5 containers, or facsimile(s) thereof.

6 7. In Your response to each request, identify by Bates Number, including
7 prefix, or otherwise, the identity of the person, department, branch, division or office
8 from whose files the document(s) are being produced.

9 8. The fact that a document has been or shall be produced by one party or
10 entity does not relieve any other party or entity from the obligation to produce its
11 copy of the same document, even if the two documents are identical in all respects.

12 9. All documents that originated in electronic form shall be produced in
13 their native electronic form, with metadata. These documents shall be produced with
14 an accompanying index, to the extent one exists, that lists:

- 15 Beg doc # - Document first Bates number;
- 16 End doc # - Document last Bates number;
- 17 Secondary begin doc # - First Bates number of unit;
- 18 Secondary end doc # - End Bates number of unit (last
19 page of last attachment to doc);
- 20 Owner – Name of person whose files the document
21 comes from;
- 22 Doc date – date of file;
- 23 File size – number of bytes in the file;
- 24 File name – name of the file;
- 25 Document type – document type;
- 26 Doc title – re: line of document;
- 27 Author – Author;
- 28 Recipient – recipients;
- cc- carbon copies; and
- bcc – blind copies.

10 10. All other documents shall be produced in searchable PDF format to the
11 extent they are available, or can be made available, in that format.

1 11. All electronic mail shall be provided in native e-mail format (e.g., pst,
2 nsf, .xls, and .doc), with metadata, with the following fields combined in an
3 accompanying index:

4 Owner – Name of person whose e-mail file or other e-
5 files are being provided;
6 File Name – Name of file;
7 File Date – Date of file; and
8 File Size – Size of file.

9 12. For those paper documents which have been created digitally but
10 executed with a hand-written signature or physical seal, then both the digital version
11 and the signed paper copy should be produced.

12 13. You are instructed to produce each document in response to this
13 document request in its entirety, without deletion or excision, regardless of whether
14 You consider the entire document to be relevant or responsive. If any requested
15 document cannot be produced in full, produce it to the extent possible, indicating
16 which document, or portion of that document, is being withheld, and the reason that
17 document or portion is being withheld.

18 14. If You object to any request in this document request on the ground that
19 it is overly broad, You are instructed to produce documents in response to the request
20 as narrowed to conform to Your objection within the period allowed for a response
21 and to state in Your responses: (1) how You narrowed the request, and (2) the reason
22 why You claim the request is overly broad. Plaintiffs do not waive the right to
23 compel the production as originally sought from Defendant.

24 15. If You assert any claim of privilege in objecting to any document
25 request herein, and withhold any responsive document pursuant to that objection,
26 identify each document being withheld by providing a date, title and brief description
27 of same.

28 16. If a document responsive to a document request has been destroyed or
discarded, identify the document.

1 17. If no documents responsive to a particular document request exist or are
2 within Your possession, custody, or control, You must so state in Your response to
3 the request.

4 18. These requests are continuing such that they require supplemental
5 production pursuant to Rule 26(a) of the Federal Rules of Civil Procedure if You
6 discover, obtain possession of, or create varying or additional documents responsive
7 to a document request between the time of the original response and the time set for
8 trial. In that event, notice of such supplemental documents and copies thereof shall
9 be served on Plaintiffs' counsel no later than thirty days after the discovery of any
10 such documents, but in no event later than one week before the first day of trial.

11 **REQUESTS FOR PRODUCTION**

12 **REQUEST FOR PRODUCTION NO. 1:**

13 All documents constituting, creating, describing, or relating to each Right You
14 claim to *Happy Birthday to You*, including, for the following listing of Copyrights
15 and every other Right You claim to *Happy Birthday to You*, applications for
16 Copyright, Copyright registration documents, certificates of registration, Copyright
17 renewal documents, Deposit Copies, correspondence with the Copyright Office, and
18 business records:

19

Registration Number	Registration Date	Renewal Number	Renewal Date
E45655	Dec. 29, 1934	R289194	Jan. 22, 1962
E46661	Feb. 18, 1935	R291287	Feb. 19, 1962
E47439	Apr. 5, 1935	R293413	Apr. 4, 1962
E47440	Apr. 5, 1935	R293412	Apr. 4, 1962
E51988	Dec. 9, 1935	R306185	Dec. 6, 1962
E51990	Dec. 9, 1935	R306186	Dec. 6, 1962
45997	Oct. 16, 1893	R19043	Sep. 3, 1921

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Registration Number	Registration Date	Renewal Number	Renewal Date
34260	Jun. 18, 1896	R25771	Jan. 9, 1924
20441	Mar. 20, 1899	R36618	Jan. 3, 1927
142468	Feb. 7, 1907	R34877	Jan. 2, 1935
E513745	Jul. 28, 1921		
286958	Feb. 14, 1942		
EP26375	Apr. 13, 1948		
EP32204	Dec. 9, 1948		
EP45486	Apr. 13, 1950		
EP72792	Jun. 18, 1953	RE103939	Oct. 20, 1981
EP108379	Apr. 26, 1957	RE243304	Mar. 25, 1985
PA66009	Apr. 16, 1980		
PA140843	Jun. 17, 1982		

REQUEST FOR PRODUCTION NO. 2:

All documents constituting, creating, describing, or relating to Your acquisition of each Right You claim to *Happy Birthday to You*, including documentation of all assignment(s) or transfer(s) of such Rights.

REQUEST FOR PRODUCTION NO. 3:

Pertinent publications of *Happy Birthday to You*, including the scores, lyrics, arrangements, notes on arrangements, Deposit Copies, and other documents related to *Happy Birthday to You* and *Good Morning to All*.

REQUEST FOR PRODUCTION NO. 4:

All documents constituting, evidencing, describing or relating to the origin of *Happy Birthday to You* or any part thereof.

1 **REQUEST FOR PRODUCTION NO. 5:**

2 The closing binder and all other documents constituting, memorializing, or
3 relating to Warner/Chappell's acquisition of Birchtree Limited in or around 1988.

4 **REQUEST FOR PRODUCTION NO. 6:**

5 The due diligence file and all other documents including without limitation,
6 reports, opinion letters, audit documents and representations of warranty in
7 connection with Warner/Chappell's acquisition of Birchtree Limited in or around
8 1988.

9 **REQUEST FOR PRODUCTION NO. 7:**

10 All documents constituting, evidencing, describing or relating to the Rights of
11 the following persons and entities to *Happy Birthday to You* or *Good Morning to All*:

- 12 a. Clayton F. Summy
- 13 b. Clayton F. Summy Co. (incorporated 1895, Ill.)
- 14 c. Clayton F. Summy Co. (incorporated 1925, Ill.)
- 15 d. Clayton F. Summy Co. (incorporated 1931, Del.)
- 16 e. John F. Segenstack
- 17 f. Mildred Hill
- 18 g. Patty Hill
- 19 h. Jessica Hill
- 20 i. The Hill Foundation

21 **REQUEST FOR PRODUCTION NO. 8**

22 All documents constituting, evidencing, describing or relating to litigation over
23 Rights (including infringement of any Right) to *Happy Birthday to You* or *Good*
24 *Morning to All*, including without limitation docket sheets, pleadings, motions,
25 briefs, affidavits, declarations, memoranda, transcripts, opinions, settlement
26 agreements, orders and judgments.

27 ///

28 ///

1 **REQUEST FOR PRODUCTION NO. 9**

2 All documents describing the corporate structure, relationship and revenue
3 sharing agreements and policies concerning *Happy Birthday to You* between and
4 among Warner/Chappell and Summy-Birchard.

5 **REQUEST FOR PRODUCTION NO. 10**

6 All documents constituting, evidencing, describing or relating to ASCAP's
7 Right(s) to license *Happy Birthday to You*.

8 **REQUEST FOR PRODUCTION NO. 11**

9 All documents constituting, evidencing, describing or relating to Mildred
10 Hill's induction into ASCAP.

11 **REQUEST FOR PRODUCTION NO. 12**

12 All documents constituting, evidencing, describing or relating to CFSC's
13 induction into ASCAP.

14
15 Dated: February 12, 2014

**WOLF HALDENSTEIN ADLER
FREEMAN & HERZ LLP**

16
17 By: 

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Ex. 94

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8 Warner/Chappell Music, Inc. and
Summy-Birchard, Inc.
9

10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12 **WESTERN DIVISION**

13 GOOD MORNING TO YOU
PRODUCTIONS CORP., et al.,
14
15 Plaintiffs,
16 v.
17 WARNER/CHAPPELL MUSIC, INC.,
et al.,
18 Defendants.

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

**DEFENDANTS' OBJECTIONS AND
RESPONSES TO PLAINTIFFS'
FIRST SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS**

1 Pursuant to Federal Rule of Civil Procedure 34, Defendants Warner/Chappell
2 Music, Inc. and Summy-Birchard, Inc. (jointly “Warner/Chappell”) hereby submit
3 the following objections and responses to Plaintiff’s First Set of Requests for
4 Production of Documents (“Requests”).

5 **GENERAL OBJECTIONS**

6 The following General Objections are incorporated by reference into each
7 response to each specific Request, whether or not such General Objections are
8 expressly incorporated by reference in such response.

9 1. Warner/Chappell objects to the Requests to the extent they purport to
10 impose on Warner/Chappell any obligation that is different from or greater than any
11 imposed by the Federal Rules of Civil Procedure, the Local Rules of the United
12 States District Court for the Central District of California, or any other applicable
13 law, rule or order.

14 2. Warner/Chappell objects to the Requests to the extent they request
15 production of documents subject to the attorney-client privilege, the attorney work
16 product doctrine, or any other applicable privilege or protection from disclosure,
17 including without limitation any joint privilege relating to the same.
18 Warner/Chappell claims such privileges and protections to the extent implicated by
19 each Request, and excludes privileged and protected information from its responses
20 to the Requests. Any disclosure of such protected or privileged information is
21 inadvertent, and is not intended to waive those privileges or protections.

22 3. Warner/Chappell objects to the Requests to the extent they seek
23 documents not in Warner/Chappell’s possession, custody or control; or documents
24 or information that are equally available to Plaintiffs and Warner/Chappell; or
25 documents or information that could be derived or ascertained by Plaintiffs with
26 substantially the same effort that would be required of Warner/Chappell.

27 4. Warner/Chappell objects to the Requests to the extent they seek
28 documents that contain any confidential, proprietary, trade secret information, **Ex. 95**

1 and/or competitively sensitive material. Warner/Chappell will produce responsive,
2 non-privileged documents containing such information only upon the entry of, and
3 in accordance with the terms of, an appropriate protective order.

4 5. Warner/Chappell's responses are necessarily preliminary and are made
5 without prejudice to its right to produce, introduce or rely upon documents that may
6 be later discovered or produced.

7 6. Warner/Chappell objects to the Requests to the extent they seek
8 documents created after, or related to events after, the filing of the Complaint in this
9 action, on the grounds that such documents are neither relevant nor reasonably
10 calculated to lead to the discovery of admissible evidence.

11 7. Warner/Chappell will make reasonable efforts to search for documents
12 in the places where they would be reasonably likely to be found, and
13 Warner/Chappell objects to the Requests to the extent they purport to require a
14 broader search.

15 8. Warner/Chappell objects to the Requests to the extent they seek
16 documents outside of any applicable limitations period, whether arising by statute,
17 contract or otherwise.

18 9. In responding to the Requests, Warner/Chappell does not waive, or
19 intend to waive, any privilege or objection, including, but not limited to, any
20 objections to the competency, relevance, materiality, or admissibility of any of the
21 documents produced in response to the Requests. No objection or response made in
22 these responses and objections shall be deemed to constitute a representation by
23 Warner/Chappell as to the existence or non-existence of the documents requested or
24 within the scope of Warner/Chappell's agreement to search for and produce.

25 10. Warner/Chappell objects to Plaintiff's use of the terms "documents"
26 and "things" as vague, ambiguous, overly broad and unduly burdensome to the
27 extent any of those terms has a meaning or scope that is different than that required
28 by Rule 34 of the Federal Rules of Civil Procedure, including, without limitation, to

1 the extent the terms require Warner/Chappell to search for and provide electronic
2 documents and information that are not reasonably accessible.

3 11. Warner/Chappell objects to any Request to the extent it purports to
4 require it to produce documents or information for inspection and copying in
5 violation of a legal or contractual obligation of non-disclosure to a third party.

6 12. Warner/Chappell objects to any Request to the extent it calls for a legal
7 conclusion. Any response by Warner/Chappell shall not be construed as providing a
8 legal conclusion regarding the meaning or application of any terms or phrases used
9 in the Requests.

10 13. Warner/Chappell objects to the Requests to the extent they call for the
11 production of “all” documents concerning a subject matter on the ground that such
12 Requests are, to that extent, overly broad and unduly burdensome.

13 14. Warner/Chappell objects to any Request containing the defined terms
14 “You,” “Your,” “Defendants,” “Warner/Chappell” [sic], and/or “Summy-Birchard”
15 as vague, ambiguous, overbroad and unduly burdensome to the extent any of these
16 terms include any entity other than the responding Defendant(s).

17 15. Warner/Chappell objects to Instruction Paragraph 1 to the extent that it
18 incorporates by reference instructions that are inapposite to the Requests.

19 16. Warner/Chappell objects to all Instructions (including all subparts
20 thereof), including Instruction Paragraphs 3 through 17, to the extent they purport to
21 require Warner/Chappell to produce documents in certain formats and pursuant to
22 certain procedures on the ground that they are unduly burdensome and seek to
23 impose costs and obligations beyond those set forth in the Federal Rules of Civil
24 Procedure. Subject to and without waiving this objection, any documents that
25 Warner/Chappell agrees to produce, with the exception of email or efile documents,
26 will be produced as static TIFF images branded with bates numbers, along with a
27 loadfile/index that will indicate document breaks. With respect to any email or efile
28 documents that Warner/Chappell agrees to produce (to the extent there are such) **Ex. 95**

1 documents), Warner/Chappell will produce such documents as TIFF images,
2 branded with bates numbers, with searchable metadata/information (where
3 available) sufficient to make these documents reasonably usable as required under
4 the Federal Rules of Civil Procedure. Warner/Chappell is willing to meet and
5 confer with Plaintiffs regarding specific metadata fields and/or other mutually
6 agreeable protocols.

7 17. Warner/Chappell objects to Instruction Paragraph 15 to the extent it
8 purports to impose any obligation for Warner/Chappell to prepare a privilege log, if
9 any, in excess of the requirements of the Federal Rules of Civil Procedure. Any
10 privilege log that Warner/Chappell prepares will be completed in accordance with
11 the requirements of the Federal Rules of Civil Procedure. Further, Warner/Chappell
12 will not log any documents withheld on the basis of privilege or work product
13 created after the date of the filing of Plaintiffs' original Complaint.

14 18. Warner/Chappell objects to Instruction Paragraph 16 to the extent it
15 purports to impose any obligation for Warner/Chappell to prepare a log of destroyed
16 or discarded documents, if any, in excess of the requirements of the Federal Rules of
17 Civil Procedure.

18 19. Warner/Chappell objects to Instruction Paragraph 18 to the extent it
19 purports to impose upon Warner/Chappell any obligation in excess of those required
20 under the supplementation rules of the Federal Rules of Civil Procedure. Except as
21 expressly provided in the Rules, Warner/Chappell specifically disclaims any
22 obligation to supplement its responses or production in response to Plaintiff's
23 Requests.

24 20. These General Objections are incorporated into each individual
25 response and supplement response below without further reference.

26 Warner/Chappell reserves the right to supplement or modify its responses and
27 objections to the Requests.

28 **Ex. 95**

1 registrations referred to in Plaintiffs’ operative Complaint. To the extent that
2 Warner/Chappell discovers during that search non-privileged documents that
3 constitute or relate to filings with the Copyright Office regarding copyright
4 registrations contained in the Request but not referred to in Plaintiffs’ operative
5 Complaint, Warner/Chappell will produce such non-privileged documents.

6 **REQUEST FOR PRODUCTION NO. 2:**

7 All documents constituting, creating, describing, or relating to Your
8 acquisition of each Right You claim to *Happy Birthday to You*, including
9 documentation of all assignment(s) or transfer(s) of such Rights.

10 **RESPONSE TO REQUEST FOR PRODUCTION NO. 2:**

11 Warner/Chappell incorporates its General Objections.
12 Warner/Chappell specifically objects to this Request as vague and ambiguous,
13 including in its use of the undefined terms (“acquisition,” “assignment(s),” or
14 “transfer(s).” Warner/Chappell further objects to this Request as overly broad,
15 unduly burdensome, not reasonably calculated to lead to the discovery of admissible
16 evidence, and/or lacking in the reasonable particularity required by law.
17 Warner/Chappell further objects to this Request to the extent it calls for information
18 protected by the attorney-client privilege and/or work product doctrine.

19 Subject to and without waiving those objections, Warner/Chappell
20 responds as follows: Warner/Chappell will produce responsive, non-privileged
21 documents, if any, following a search of reasonable diligence that memorialize or
22 relate to Warner/Chappell’s acquisition of the copyright to *Happy Birthday to You*.

23 **REQUEST FOR PRODUCTION NO. 3:**

24 Pertinent publications of *Happy Birthday to You*, including the scores,
25 lyrics, arrangements, notes on arrangements, Deposit Copies, and other documents
26 related to *Happy Birthday to You* and *Good Morning to All*.

27
28

1 including in its use of the undefined term “due diligence file.” Warner/Chappell
2 further objects to this Request as overly broad, unduly burdensome, not reasonably
3 calculated to lead to the discovery of admissible evidence, and/or lacking in the
4 reasonable particularity required by law. Warner/Chappell further objects to this
5 Request to the extent it calls for information protected by the attorney-client
6 privilege and/or work product doctrine.

7 Subject to and without waiving those objections, Warner/Chappell
8 responds as follows: Warner/Chappell will produce responsive, non-privileged
9 documents, if any, following a search of reasonable diligence.

10 **REQUEST FOR PRODUCTION NO. 7:**

11 All documents constituting, evidencing, describing or relating to the
12 Rights of the following persons and entities to *Happy Birthday to You* or *Good*
13 *Morning to All*:

- 14 a. Clayton F. Summy
- 15 b. Clayton F. Summy Co. (incorporated 1895, Ill.)
- 16 c. Clayton F. Summy Co. (incorporated 1925, Ill.)
- 17 d. Clayton F. Summy Co. (incorporated 1931, Del.)
- 18 e. John F. Segenstack
- 19 f. Mildred Hill
- 20 g. Patty Hill
- 21 h. Jessica Hill
- 22 i. The Hill Foundation

23 **RESPONSE TO REQUEST FOR PRODUCTION NO. 7:**

24 Warner/Chappell incorporates its General Objections.
25 Warner/Chappell specifically objects to this Request as vague and ambiguous.
26 Warner/Chappell further objects to this Request as overly broad, unduly
27 burdensome, not reasonably calculated to lead to the discovery of admissible
28 evidence, and/or lacking in the reasonable particularity required by law. **Ex. 95**

1 Warner/Chappell further objects to this Request to the extent it calls for information
2 protected by the attorney-client privilege and/or work product doctrine.

3 Subject to and without waiving those objections, Warner/Chappell
4 responds as follows: Warner/Chappell will produce responsive, non-privileged
5 documents, if any, following a search of reasonable diligence.

6 **REQUEST FOR PRODUCTION NO. 8:**

7 All documents constituting, evidencing, describing or relating to
8 litigation over Rights (including infringement of any Right) to *Happy Birthday to*
9 *You or Good Morning to All*, including without limitation docket sheets, pleadings,
10 motions, briefs, affidavits, declarations, memoranda, transcripts, opinions,
11 settlement agreements, orders and judgments.

12 **RESPONSE TO REQUEST FOR PRODUCTION NO. 8:**

13 Warner/Chappell incorporates its General Objections.
14 Warner/Chappell specifically objects to this Request as vague and ambiguous.
15 Warner/Chappell further objects to this Request as overly broad, unduly
16 burdensome, not reasonably calculated to lead to the discovery of admissible
17 evidence, and/or lacking in the reasonable particularity required by law, insofar as
18 the Request purports to seek documents related to this litigation. Warner/Chappell
19 further objects to this Request to the extent it calls for information protected by the
20 attorney-client privilege and/or work product doctrine.

21 Subject to and without waiving those objections, Warner/Chappell
22 responds as follows: Warner/Chappell will produce non-privileged documents, if
23 any, following a search of reasonable diligence, that relate to the lawsuits referred to
24 in Paragraphs 103 and 104 of Plaintiffs' operative Complaint.

25 **REQUEST FOR PRODUCTION NO. 9:**

26 All documents describing the corporate structure, relationship and
27 revenue sharing agreements and policies concerning *Happy Birthday to You*
28 between and among Warner/Chappell and Summy-Birchard.

Ex. 95

Obviously not what we asked for. The Para 103 and 104 lawsuits are suits that we already know about.

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Subject to and without waiving those objections, Warner/Chappell responds as follows: Warner/Chappell will produce responsive, non-privileged documents, if any, following a search of reasonable diligence.

DATED: March 21, 2014

MUNGER, TOLLES & OLSON LLP

By: /s/ Kelly M. Klaus
KELLY M. KLAUS

Attorneys for Defendants Warner/Chappell Music, Inc. and Summy-Birchard, Inc.

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PROOF OF SERVICE

*Good Morning to You Productions Corp., et al. v.
Warner/Chappel Music, Inc., et al.*
U.S. District Court Case No. CV 13-04460-GHK (MRWx)

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the City and County of San Francisco, State of California. My business address is 560 Mission Street, Twenty-Seventh Floor, San Francisco, CA 94105-2907.

On March 21, 2014, I served true copies of the following document(s) described as

DEFENDANTS' OBJECTIONS AND RESPONSES TO PLAINTIFFS' FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS

on the interested parties in this action as follows:

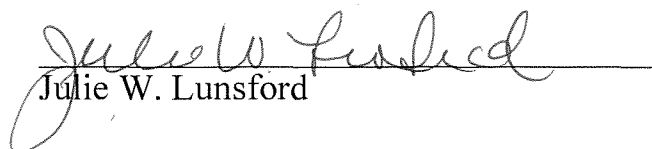
**** SEE ATTACHED SERVICE LIST ****

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the firm's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid, as indicated on the attached service list.

BY ELECTRONIC MAIL: As indicated on attached Service List. I caused such document(s) to be sent by electronic mail for instantaneous transmittal via telephone line.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on March 21, 2014, at San Francisco, California.


Julie W. Lunsford

SERVICE LIST

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EXHIBIT 96

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9 *Interim Lead Counsel for Plaintiffs and the [Proposed] Class*

10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA -**
12 **WESTERN DIVISION**

13 GOOD MORNING TO YOU) Lead Case No. CV 13-04460-GHK (MRWx)
14 PRODUCTIONS CORP., *et al.*,)
15 Plaintiffs,) **PLAINTIFF GOOD MORNING TO**
16 v.) **YOU PRODUCTIONS CORP.'S**
17) **INTERROGATORIES TO**
18) **DEFENDANTS – SET NO. ONE**
19)
20 WARNER/CHAPPELL MUSIC,)
21 INC., *et al.*)
22 Defendant.)
23)
24)
25)
26)
27)
28)

23 **PROPOUNDING PARTY: PLAINTIFF GOOD MORNING TO YOU**
24 **PRODUCTIONS CORP.**

25 **RESPONDING PARTIES: DEFENDANTS WARNER/CHAPPELL MUSIC,**
26 **INC. AND SUMMY-BIRCHARD, INC.**

27 **SET NO.: ONE**

1 Pursuant to Rule 33 of the Federal Rules of Civil Procedure, plaintiff GOOD
2 MORNING TO YOU PRODUCTIONS CORP. ("Plaintiff"), by and through its
3 undersigned counsel, hereby propounds the following interrogatories upon
4 defendants WARNER/CHAPPEL MUSIC, INC. and SUMMY-BIRCHARD, INC.
5 ("Defendants"), to be answered, under oath, within 30 days or such other time as the
6 parties may agree or the Court may order.

7 **DEFINITIONS**

- 8 1. "Defendants" means Warner/Chappell Music, Inc., and Summy-
9 Birchard, Inc. (or each individually, as context requires).
- 10 2. "Warner/Chappel," means Warner/Chappell Music, Inc., its subsidiaries
11 and predecessors in interest, including without limitation Summy-Birchard, Inc.
- 12 3. "Summy-Birchard" means Summy-Birchard, Inc., its subsidiaries and
13 predecessors in interest, including without limitation Summy-Birchard, Inc.
- 14 4. "CFSC" refers to the Clayton F. Summy Co. identified as copyright
15 owner in the applications for Copyright E51988 and Copyright E51990.
- 16 5. "ASCAP" refers to the American Society of Composers, Authors and
17 Publishers.
- 18 6. "You" or "Your" refers to each Defendant served with these requests.
- 19 7. "*Happy Birthday to You*" means the song *Happy Birthday to You*.
- 20 8. "Copyright Office" refers to the United States Copyright Office.
- 21 9. "Copyright" means statutory copyright.
- 22 10. "Right" means an interest, including license and Copyright, in or to a
23 work.
- 24 11. "Copyright E51988" means the Copyright recorded with the Copyright
25 Office under the registration number E51988.
- 26 12. "Copyright E51990" means the Copyright recorded with the Copyright
27 Office under the registration number E51990.
- 28

1 13. “New Matter” means the work, or subset of work, in which Copyright
2 is claimed in the application for Copyright.

3 14. “Deposit Copy” means the work deposited with the Copyright Office as
4 such.

5 15. “Including” and “includes” shall be construed to mean “including
6 without limitation.”

7 16. The use of the singular form of any word includes the plural and
8 vice versa.

INSTRUCTIONS

9
10 1. The term “document,” as used here, includes each “item” set forth in
11 Rule 34(a) of the Federal Rules of Civil Procedure, including, without limitation,
12 electronically stored information, electronic or computerized data compilations, and
13 e-mail.

14 2. Whenever reference to a business entity appears, the reference shall
15 mean the business entity, its affiliated companies, partnerships, divisions,
16 subdivisions, units, businesses, ventures, directors, officers, employees, imprints,
17 agents or other representatives or affiliated third parties.

18 3. Your answers shall include all available information, including hearsay,
19 in Your possession, custody or control, or in the possession, custody or control of
20 Your agents or attorneys.

21 4. You shall answer each interrogatory fully, in writing and under oath,
22 unless it is objected to, in which event all reasons for the objection shall be stated in
23 lieu of an answer.

24 5. If You object to any part of an interrogatory, please respond to the
25 remaining part or parts completely.

26 6. All documents produced as an alternative to answering an interrogatory
27 shall be produced as they are kept in the usual course of Your business or shall be
28 organized and labeled in a manner responsive to the interrogatory.

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1 7. If the person who verifies the answers to the interrogatories does not
2 have personal knowledge of the information contained in each answer, that person
3 shall identify such information and its source.

4 8. Where identification of a Copyright is required, the following shall be
5 separately stated as to each Copyright:

- 6 a. the title, description, and author(s) of the work as stated on the
7 application for Copyright;
- 8 b. the title, description, and author(s) of the New Matter, if different from
9 (a.) in any respect;
- 10 c. the title, description, deposit date, and author(s) of the Deposit Copy, if
11 different from (a.) or (b.) in any respect;
- 12 d. the Registration Number and registration date;
- 13 e. the Copyright owner;

14 9. Where identification of a meeting is required, state the meeting date,
15 location and attendees, and the substance of the subjects discussed.

16 10. Where identification of a telephone conversation is required, state the
17 date of the conversation, the location and identity of the call originator(s),
18 recipient(s) and all other participants, and the substance of the subjects discussed.

19 11. Where identification of a document is required, separately state as to
20 each document:

- 21 a. its date, its exact title, and the substance of the document with sufficient
22 particularity to enable it to be identified and located within any
23 document production;
- 24 b. the identification and location of the files where the original and each
25 copy is normally or presently kept;
- 26 c. the name, business affiliation, and last known address of each author,
27 intended recipient, and person currently in possession of the original or
28 a copy of the document; and,

1 d. if such document is no longer in existence, state the circumstances
2 surrounding its elimination, the date and reasons for such elimination,
3 and, the identity of the person(s) who ordered and/or supervised the
4 elimination.

5 12. Where information concerning licensing activity is requested, provide
6 the requested information by license type, such that information about the public
7 performance licenses, mechanical licenses, synchronization licenses and all other
8 types of licenses of the Song You have authorized or granted are separately provided.

9 13. Where identification of a person is required, the following shall be
10 separately stated as to each person:

11 a. the name and last known business address or location and phone number
12 of each such person; and

13 b. if such person is an individual, additionally state each business position
14 held by that individual at the time or times for which such identification
15 is requested; and

16 c. if such a person is not an individual, identify each individual employed
17 by or representing such person who has knowledge of the matter at
18 issue.

19 14. If You refuse to respond to any of these interrogatories based on a claim
20 of privilege or confidentiality, Your statement of the claim shall include all facts
21 relied upon in support thereof. If You claim attorney work-product privilege,
22 identify the litigation for which the work-product was prepared.

23 15. If You answer any interrogatory by reference to business records
24 pursuant to Rule 33(d) of the Federal Rules of Civil Procedure, identify the business
25 records and provide the name(s) of your employee(s) certifying the documents as
26 business records for purposes of answering the interrogatory.

27 16. These interrogatories are continuing requests and you are obligated to
28 notify Plaintiff's counsel right away and amend or supplement your responses as

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1 soon as reasonably possible if you determine that an answer You provided was false,
2 or if You subsequently obtain information which leads You to believe that Your
3 response was incomplete or incorrect when made, or that Your response, although
4 correct and complete when made, is no longer correct and complete.

5 **RELEVANT TIME PERIOD**

6 Unless otherwise specified, the relevant time period for these interrogatories is
7 June 18, 2009 to the present date (the "Relevant Time Period").

8 **INTERROGATORIES**

9 **INTERROGATORY NO. 1:**

10 Identify and describe in detail each Right that You claim to *Happy Birthday to*
11 *You*.

12 **INTERROGATORY NO. 2:**

13 Describe the New Matter for which Copyright was claimed on the application
14 for Copyright E51988.

15 **INTERROGATORY NO. 3:**

16 Describe the New Matter for which Copyright was claimed on the application
17 for Copyright E51990.

18 **INTERROGATORY NO. 4:**

19 Who wrote the familiar lyrics to *Happy Birthday to You* and when were they
20 written by that person(s)?

21 **INTERROGATORY NO. 5:**

22 If different than the person You identified in response to Interrogatory No. 4,
23 who wrote the lyrics to the work in which CFSC claimed Copyright in its application
24 for Copyright No. E51988, what lyrics did that person(s) write, and when were they
25 written by that person(s)?

26 **INTERROGATORY NO. 6:**

27 If different than the person You identified in response to Interrogatory No. 4,
28 who wrote the lyrics to the work in which CFSC claimed Copyright in its application

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1 **INTERROGATORY NO. 14:**

2 Describe Your system of monitoring use of *Happy Birthday to You*, including
3 monitoring by a performance or reproduction rights organization or other agent(s).

4
5 Dated: February 12, 2014

**WOLF HALDENSTEIN ADLER
FREEMAN & HERZ LLP**

6
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Ex. 96

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EXHIBIT 97

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7 Attorneys for Defendants
8 Warner/Chappell Music, Inc. and
Summy-Birchard, Inc.
9

10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12 **WESTERN DIVISION**

13 GOOD MORNING TO YOU
PRODUCTIONS CORP.; et al.,
14
Plaintiffs,
15
v.
16 WARNER/CHAPPELL MUSIC, INC.,
17 et al.,
18
Defendants.
19

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

**DEFENDANTS' OBJECTIONS AND
RESPONSES TO PLAINTIFFS'
FIRST SET OF
INTERROGATORIES**

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1 Pursuant to Federal Rule of Civil Procedure 33, Defendants
2 Warner/Chappell Music, Inc. and Summy-Birchard, Inc. (jointly
3 “Warner/Chappell”) hereby submit the following objections and responses to
4 Plaintiffs’ First Set of Interrogatories (“Interrogatories”).

5 **PRELIMINARY STATEMENT**

6 1. These responses are made solely for purposes of this action. Any
7 information provided in response to any particular Interrogatory is subject to and
8 without waiver of all objections as to competence, relevance, materiality, propriety,
9 admissibility, and all other objections on grounds that would permit or require the
10 exclusion of the information, if such information were offered in evidence, all of
11 which objections and grounds are hereby expressly reserved and may be interposed
12 at the time of trial or in response to any motion or application that may be made by
13 Plaintiffs.

14 2. Discovery in this action is ongoing. Additional information may be
15 discovered in the future that conceivably could be responsive to one or more of the
16 Interrogatories propounded by Plaintiffs. In accordance with the provisions of
17 Federal Rule of Civil Procedure 26(e), Warner/Chappell reserves its right to
18 supplement its responses to the Interrogatories to the extent that additional
19 responsive and/or corrective information becomes available, though
20 Warner/Chappell does not thereby assume any obligation to supplement its
21 responses to these Interrogatories, other than as required under the Federal Rules of
22 Civil Procedure. Warner/Chappell reserves all rights to rely at trial or for any
23 purpose in connection with this action upon any and all such information, whether
24 or not provided in response to any particular Interrogatory. Nothing stated herein
25 shall constitute or be construed as a waiver of Warner/Chappell’s right to prove its
26 contentions through information, documents and/or other materials that currently are
27 not in its possession, custody, or control.

28 **Ex. 97**
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1 4. Warner/Chappell objects to the Interrogatories to the extent they seek
2 information that is confidential, proprietary, trade secret information, and/or
3 competitively sensitive. Subject to and without waiver of any and all other
4 objections to the production of such information, Warner/Chappell will produce
5 such information only upon the entry of, and in accordance with the terms of, an
6 appropriate protective order.

7 5. Warner/Chappell objects to the Interrogatories to the extent they seek
8 information created after, or related to events after, the filing of the Complaint in
9 this action, on the grounds that such information is neither relevant nor reasonably
10 calculated to lead to the discovery of admissible evidence.

11 6. Warner/Chappell objects to the Interrogatories to the extent they seek
12 information outside of any applicable limitations period, whether arising by statute,
13 contract or otherwise. In particular, Warner/Chappell objects to the statement of the
14 “relevant time period” as being from June 18, 2009 to the present date, insofar as the
15 limitations period under 17 U.S.C. § 507(b) extends back only three years before the
16 filing of the first complaint consolidated in this action.

17 7. Warner/Chappell objects to any Interrogatory to the extent it calls for a
18 legal conclusion. Any response by Warner/Chappell shall not be construed as
19 providing a legal conclusion regarding the meaning or application of any terms or
20 phrases used in the Interrogatories.

21 8. Warner/Chappell objects to any Interrogatory containing the defined
22 term “*Happy Birthday to You*” as vague and ambiguous to the extent Plaintiffs have
23 not defined what is meant by “the song *Happy Birthday to You.*” Warner/Chappell’s
24 responses construe “Happy Birthday to You” to mean the lyrics, “Happy Birthday to
25 you, Happy Birthday to you, Happy Birthday dear _____, Happy Birthday to
26 you!,” as well as the arrangement of those lyrics with the underlying musical
27 melody.

1 9. Warner/Chappell objects to any Interrogatory containing the defined
2 terms “Copyright” and/or “Right” as vague, ambiguous, overbroad and unduly
3 burdensome to the extent either of those terms includes any copyrights other than
4 United States copyrights. Warner/Chappell’s responses are limited to U.S.
5 Copyrights.

6 10. Warner/Chappell objects to any Interrogatory containing the defined
7 terms “You,” “Your,” “Defendants,” “Warner/Chappell” [sic], and/or “Summy-
8 Birchard” as vague, ambiguous, overbroad and unduly burdensome to the extent
9 any of these terms include any entity other than the responding Defendant(s).
10 Warner/Chappell further objects to Instruction Paragraph 2 as vague, ambiguous,
11 overbroad and unduly burdensome to the extent it includes any entity or person
12 other than the responding Defendant(s). Warner/Chappell’s objections herein are
13 made only on behalf of the responding defendants.

14 11. Warner/Chappell objects to any Interrogatory containing the defined
15 term “New Matter” as vague and ambiguous, and potentially calling for a legal
16 conclusion, insofar as it refers to “the work, or subset of work, in which Copyright is
17 claimed in the application for Copyright.” To the extent an Interrogatory uses the
18 term “New Matter,” Warner/Chappell construes the Interrogatory to request that
19 Warner/Chappell identify what, if anything, is stated on an application for copyright
20 following the question, “State exactly on what new matter copyright is claimed (see
21 Sec. 6 of Act of 1909).”

22 12. Warner/Chappell objects to any Interrogatory containing the defined
23 term “Deposit Copy” as vague and ambiguous insofar as it refers to “the work
24 deposited with the Copyright Office.” “The work” is not deposited with the
25 Copyright Office; rather, copies of a work are deposited with the Copyright Office
26 at the time of an application for registration. To the extent an Interrogatory uses the
27 term “Deposit Copy,” Warner/Chappell construes the Interrogatory to refer to the

Ex. 97
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1 copies of the work deposited with the Copyright Office at the time of the application
2 for registration.

3 13. Warner/Chappell objects to Plaintiff's use of the terms "documents" as
4 vague, ambiguous, overly broad and unduly burdensome to the extent any of those
5 terms has a meaning or scope that is different than that required by Rule 34 of the
6 Federal Rules of Civil Procedure, including, without limitation, to the extent the
7 terms require Warner/Chappell to search for and provide electronic documents and
8 information that are not reasonably accessible.

9 14. Warner/Chappell objects to Instruction Paragraph 7 on the ground that
10 it purports to impose obligations on Warner/Chappell beyond those required by the
11 Federal Rules of Civil Procedure, the Local Rules of the United States District Court
12 for the Central District of California, or any other applicable law, rule or order.
13 Warner/Chappell will respond to the Interrogatories in accordance with the
14 applicable Rules and Orders of the Court, and not Plaintiffs' Instructions beyond the
15 same.

16 15. Warner/Chappell objects to Instruction Paragraph 8, and any
17 Interrogatory that includes the defined term "Copyright," to the extent that the
18 application of Instruction Paragraph 8 has the effect of increasing the number of
19 interrogatories served, including discrete subparts, to a number greater than the 25
20 written interrogatories permitted under Federal Rule of Civil Procedure 33.
21 Application of Instruction Paragraph 8 has the effect of asking as many as 13
22 separate interrogatories. Any response by Warner/Chappell to an Interrogatory
23 requesting the identification of a "Copyright" will include the number of the original
24 registration only. Plaintiffs are able to read the documentation associated with any
25 registered copyright.

26 16. Warner/Chappell objects to Instruction Paragraph 11, and any
27 Interrogatory for which identification of a document is required, to the extent that
28 the application of Instruction Paragraph 11 has the effect of increasing the number

Ex. 97
1109

1 of interrogatories served, including discrete subparts, to a number greater than the
2 25 written interrogatories permitted under Federal Rule of Civil Procedure 33.
3 Application of Instruction Paragraph 11 has the effect of asking as many as 13 (or
4 more) unique interrogatories. Any response by Warner/Chappell to an Interrogatory
5 requesting the identification of a document will include information sufficient to
6 describe the document with reasonable particularity. Plaintiffs are able to read such
7 documents.

8 17. Warner/Chappell objects to Instruction Paragraph 12, and any
9 Interrogatory for which “information concerning licensing activity is requested,” to
10 the extent that the application of Instruction Paragraph 12 has the effect of
11 increasing the number of interrogatories served, including discrete subparts, to a
12 number greater than the 25 written interrogatories permitted under Federal Rule of
13 Civil Procedure 33. Application of Instruction Paragraph 12 has the effect of asking
14 numerous separate interrogatories. Further, any Interrogatory intended to request
15 “information concerning licensing activity” is irrelevant to the issues in the first
16 phase of this litigation.

17 18. Warner/Chappell objects to Instruction Paragraph 13, and any
18 Interrogatory for which identification of a person is required, to the extent that the
19 application of Instruction Paragraph 13 has the effect of increasing the number of
20 interrogatories served, including discrete subparts, to a number greater than the 25
21 written interrogatories permitted under Federal Rule of Civil Procedure 33.

22 Application of Instruction Paragraph 13 has the effect of asking as many as 4 (or
23 more) unique interrogatories. Any response by Warner/Chappell to an Interrogatory
24 requesting the identification of a document will include the person’s name.

25 19. Warner/Chappell objects to Instruction Paragraph 16 to the extent it
26 purports to impose upon Warner/Chappell any obligation in excess of those required
27 under the supplementation rules of the Federal Rules of Civil Procedure. Except as
28 expressly provided in the Rules, Warner/Chappell specifically disclaims any

Ex. 97
1110

1 obligation to supplement its responses or production in response to Plaintiff's
2 Interrogatories.

3 20. These General Objections are incorporated into each individual
4 response and supplement response below without further reference.

5 Warner/Chappell reserves the right to supplement or modify its
6 responses and objections to the Requests.

7 **INTERROGATORY NO. 1:**

8 Identify and describe in detail each Right that You claim to *Happy*
9 *Birthday to You*.

10 **RESPONSE TO INTERROGATORY NO. 1:**

11 Warner/Chappell incorporates its General Objections.
12 Warner/Chappell specifically objects to this Interrogatory as vague and ambiguous.
13 Warner/Chappell further objects to this Interrogatory as overly broad, unduly
14 burdensome, not reasonably calculated to lead to the discovery of admissible
15 evidence, and/or lacking in the reasonable particularity required by law,
16 including insofar as the Interrogatory seeks information relating to any "Right"
17 other than Copyright, which is the only right in issue in the case. Warner/Chappell
18 further objects to this Request to the extent it calls for information protected by the
19 attorney-client privilege and/or work product doctrine.

20 Subject to and without waiving the foregoing objections,
21 Warner/Chappell responds as follows: Warner/Chappell owns the copyrights (with
22 all rights under copyright, as set forth in 17 U.S.C. § 106) to *Happy Birthday to You*
23 as defined in General Objection 8, above, as evidenced and presumed valid by and
24 through (1) copyright registration certificate E51990, which includes the lyrics to
25 *Happy Birthday to You* as defined in General Objection 8, above, and (2) copyright
26 registration certificate E51988, which includes those same lyrics as well as a second
27 verse of lyrics, "May your birthday be bright, Full of cheer and delight, Happy

1 birthday dear _____, Happy birthday to you,” as well as the renewals of both
2 copyrights.

3 **INTERROGATORY NO. 2:**

4 Describe the New Matter for which Copyright was claimed on the
5 application for Copyright E51988.

6 **RESPONSE TO INTERROGATORY NO. 2:**

7 Warner/Chappell incorporates its General Objections.
8 Warner/Chappell specifically objects to this Interrogatory as vague and ambiguous,
9 and calling for legal conclusions, in its use of the defined term “New Matter.”
10 Warner/Chappell further objects to this request on the ground that it contains
11 express or implied assumptions of fact and/or law with respect to matters at issue in
12 this case. Warner/Chappell further objects to this Request to the extent it calls for
13 information protected by the attorney-client privilege and/or work product doctrine.

14 Subject to and without waiving the foregoing objections,
15 Warner/Chappell responds as follows: The copyright application submitted in
16 connection with the registration that resulted in the issuance of copyright
17 registration E51988 states, following the question, “State exactly on what new
18 matter copyright is claimed (see Sec. 6 of Act of 1909)”: “Arrangement for Unison
19 Chorus and revised text.”

20 **INTERROGATORY NO. 3:**

21 Describe the New Matter for which Copyright was claimed on the
22 application for Copyright E51990.

23 **RESPONSE TO INTERROGATORY NO. 3:**


24 Warner/Chappell incorporates its General Objections.
25 Warner/Chappell specifically objects to this Interrogatory as vague and ambiguous,
26 and calling for legal conclusions, in its use of the defined term “New Matter.”
27 Warner/Chappell further objects to this request on the ground that it contains
28 express or implied assumptions of fact and/or law with respect to matters at issue in

Ex. 97

1112

1 DATED: April 11, 2014

MUNGER, TOLLES & OLSON LLP

2
3 By: 
KELLY M. KLAUS

4 *Attorneys for Defendants Warner/Chappell*
5 *Music, Inc. and Summy-Birchard, Inc.*

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Ex. 97
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VERIFICATION

I, Nathaniel A. Osher, am Vice President, Legal and Business Affairs of Warner/Chappell Music, Inc., and I have been authorized to make this verification on behalf of Warner/Chappell and Summy-Birchard, Inc. (jointly "Warner/Chappell").

I have read the Objections and Responses of Warner/Chappell to Plaintiffs' First Set of Interrogatories (the "Responses") and hereby declare that the Responses are either true to the best of my personal knowledge or were assembled by authorized employees or agents of Warner/Chappell who inform me that the facts as to which I do not have personal knowledge are true to the best of those persons' knowledge and belief.

I declare under the penalty of perjury under the laws of the United States of America that the facts set forth in the document described above are true and correct.

Executed at Los Angeles, California on April 11, 2014.



Nathaniel A. Osher

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PROOF OF SERVICE

*Good Morning to You Productions Corp., et al. v.
Warner/Chappel Music, Inc., et al.*
U.S. District Court Case No. CV 13-04460-GHK (MRWx)

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the City and County of San Francisco, State of California. My business address is 560 Mission Street, Twenty-Seventh Floor, San Francisco, CA 94105-2907.

On April 11, 2014, I served true copies of the following document(s) described as

**DEFENDANTS' OBJECTIONS AND RESPONSES TO
PLAINTIFFS' FIRST SET OF INTERROGATORIES**

on the interested parties in this action as follows:

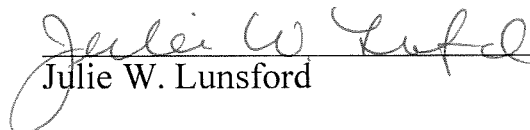
**** SEE ATTACHED SERVICE LIST ****

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the firm's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid, as indicated on the attached service list.

BY ELECTRONIC MAIL: As indicated on attached Service List. I caused such document(s) to be sent by electronic mail for instantaneous transmittal via telephone line.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on April 11, 2014, at San Francisco, California.


Julie W. Lunsford

SERVICE LIST

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Betsy C. Manifold
Francis M. Gregorek
Rachele R. Rickert
Marisa C. Livesay
WOLF HALDENSTEIN ADLER
FREEMAN & HERZ LLP
750 B Street, Suite 2770
San Diego, California 92101

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New York, New York 10016

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Lionel Z. Glancy
Marc L. Godino
GLANCY BINKOW & GOLDBERG LLP
1925 Century Park East, Suite 2100
Los Angeles, California 90067

Via E-Mail & U.S. Mail

EXHIBIT 98



Date: June 12, 2014

LIBRARY
OF
CONGRESS

Beth Landes
Wolf Haldenstein Alder Freeman &
Herz LLP
270 Madison Avenue
New York, NY 10016

Type of remittance received:

check or money order

deposit account--
description number:

X credit card

SR1-1415479123

COPYRIGHT
OFFICE

101 Independence
Avenue, S.E.

The Records Research and Certification Section has provided the following services and applied fees as shown below.

Additional certificate	\$280.00
Expedited service (rush certifications, searches, or additional certificates)	\$265.00
Total fees charged	\$545.00
Total remittance received	\$545.00

Washington, D.C.
20559-6000

Sincerely yours,
Jarletta walls
Supervisory Copyright Specialist
Records Research and Certification Section
Office of Public Records and Repositories

Enclosure: 8
Additional Certificate E 51988 & 7 others

EXHIBIT 99

COMPENDIUM II

COMPENDIUM
OF
COPYRIGHT OFFICE PRACTICES

Under the Copyright Law Which
Became Fully Effective on
January 1, 1978, Including
Title 17 of the United States
Code and Amendments Thereto

COPYRIGHT OFFICE
THE LIBRARY OF CONGRESS
WASHINGTON, D. C. 20559

1984

CHAPTER 1900

RECORDS, INDEXES, AND DEPOSITS OF THE COPYRIGHT OFFICE; INSPECTION, COPYING, ADDITIONAL CERTIFICATES, AND OTHER CERTIFICATIONS

1901 Records of the Copyright Office; statutory provisions.
The copyright code states that the Register of Copyrights shall provide and keep records of all deposits, registrations, recordations, and other actions taken by the Copyright Office and shall prepare indexes of all such records. See 17 U.S.C. 705. The statute also provides the fee schedule for Office services in connection with searches of the records, and the certification of copies of records. See 17 U.S.C. 708.

1902 Inspection of Copyright Office records and deposits in general. The public may inspect completed records and indexes relating to a processed application for registration--whether the claim was registered or rejected--and may inspect copies, phonorecords, or identifying material deposited in connection with such applications. They may also inspect completed records and indexes related to a recorded document. See 17 U.S.C. 705 and 37 C.F.R. 201.2(b)(1).

Persons who satisfy the criteria set out in the regulations and in 1902.02 of this chapter may have access to pending applications for registration, the deposit material accompanying them, and documents that have been submitted to the Office for recordation which have not yet been recorded. See 37 C.F.R. 201.2(b)(4). Also see section 1902.02 below.

The public may also inspect the Office's authorization file, which contains original copies of requests for copies of deposits for reasons of pending or prospective litigation, sworn statements of persons requesting such copies; claimants' letters authorizing deposits to be copied; and claimants' death certificates supplied by the next of kin who request copies of deposits. The file also contains complete copies of the deposit requested or a brief description of oversized copies, three dimensional works or negatives or a copy of the tape cover and accompanying materials for audio-visual deposits, copies of each certification issued for a deposit, and copies of the photo identifications of persons who have filed requests, statements, authorizations or death certificates. These documents are retained in the authorization file for a period of 10 years from the end of the calendar year in which they were filed. Portions of this file are available for public inspection and copying pursuant to section 1903.

1902 Inspection of Copyright Office records and deposits in general. (cont'd)

1902.01 Completed records. All completed records and indexes relating to a registration or a rejection or to a recorded document, and all articles deposited in connection with completed registrations or rejections and retained under the control of the Copyright Office, are open to public inspection. See 17 U.S.C. 705. Before being permitted to inspect any deposit, however, the requester must (1) show proper photo identification, including a photograph and current address, and (2) complete and sign a "Request for Inspection of Copyright Deposit" (Form C-8), indicating agreement not to copy or deface the material to be inspected. Requesters who need to make limited notes about the deposit copy during the inspection may do so only on the form provided for that purpose by the Certifications and Documents staff. The staff will review all notes before requesters leave the inspection area.

1902.02 Pending applications, documents, and open correspondence files. Access will be afforded to pending applications for registration, the deposit material accompanying them, and pending documents for recordation and to open correspondence files on such materials in the following instances:

1. In the case of applications for registration, the deposits accompanying them and correspondence files, access will be afforded upon the request of the copyright claimant or an authorized representative. In exceptional circumstances, the Register may allow inspection of pending applications and open correspondence files by someone other than the copyright claimant or the claimant's representative upon receipt of a written request which is deemed by the Register to show good cause for such access and establishes that the person making the request is properly and directly concerned. The written request for such access should be addressed to the General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024 or faxed to the General Counsel at 202-707-8366.
2. Access to documents will be afforded upon the request of one of the persons who executed the document or an authorized representative of that person.

1902 Inspection of Copyright Office records and deposits in general. (cont'd)

1902.03 Official correspondence. Official correspondence, including preliminary applications between copyright claimants or their agents and the Copyright Office, that relate directly to a completed registration, a recorded document, a rejected application for registration, or a document for which recordation was refused, may be inspected by the public. NOTE: That portion of official correspondence that is directly related to rejected applications for registration or documents for which recordation was refused and which once represented a closed case is open for public inspection and copying. This is true even though the once-closed case may have been later re-opened by some subsequent action on the part of the copyright claimant, an authorized agent thereof, or by the Copyright Office.

1902.04 Time and place of inspection. All of the materials open for inspection may be inspected during the operating hours of the Copyright Office, 8:30 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, in the Certifications and Documents Section of the Information and Reference Division. Some of these materials are not stored on the premises of the Copyright Office and access to them cannot be assured unless arrangements are made in advance with the Certifications and Documents Section. Where authorized, inspection of pending applications and documents will be permitted in the Certification and Documents Section.

1902.05 Records not open to public inspection. The general policy of the Copyright Office is to prohibit access to in-process files and to any areas where they are kept. Access to certain information contained in Copyright Office in-process files may be allowed under conditions specified in section 1902.06(b) below. See 37 C.F.R. 201.2(b)(2). In-process files are those which the Copyright Office prepares for its own internal use in connection with pending applications for registration or for the recordation of documents and which are preliminary to the completion of the public record. These files include the Receipt-In-Process Records, Exception Tracking System Records, accounting files, open unfinished business files, and other files of a similar nature. Certain information contained in Copyright Office in-process files may

1902 Inspection of Copyright Office records and deposits in general. (cont'd)

1902.05 Records not open to public inspection. (cont'd) be obtained by anyone upon request. See section 1902.06 below. In no case, however, will access be permitted to any financial or accounting records without the prior approval of the Register or the General Counsel.

1902.06 Requests by the public for information in the in-process files.

1902.06(a) Requests not requiring payment of a fee.

Limited access to in-process files. Public access to a limited amount of information contained in the Copyright Office's in-process files is permitted on a computer terminal designated for that purpose in the Records Maintenance Unit of the Information and Reference Division. The in-process file may be accessed between 8:30 a.m. and 5:00 p.m., Monday through Friday, excepting legal holidays, upon payment of the applicable fees. The following information is available:

- 1) the title(s) of the work(s), including, in the case of serials, volume number, date of issue, and issue number. NOTE: Only the first title listed in an application or document is included;
- 2) the date(s) of receipt of the application or document;
- 3) the class of an application for registration;
- 4) the number of deposit copies, sets of identifying material, or phonorecords received;
- 5) the name of the remitter; and
- 6) the name of the claimant, if different from the name of the remitter.

1902.06(b) Requests requiring payment of a fee. Certain information contained in the Copyright Office in-process files may be obtained by anyone upon request and the payment of applicable fees to the Certifications and Documents

1902 Inspection of Copyright Office records and deposits in general. (cont'd)

1902.06 Requests by the public for information in the in-process files. (cont'd)

1902.06(b) Requests requiring payment of a fee. (cont'd)

Section, Information and Reference Division.
The following information will be supplied in response to each such request:

- 1) the date(s) of receipt of: (i) the application(s) for registration that may have been submitted and is (are) being processed; (ii) the document(s) that may have been submitted for recordation and is (are) being processed; and (iii) the copy (copies) or phonorecord(s) that may have been deposited;
- 2) the title(s) of the work(s), including (if a serial) the date of issue, volume number, and issue number;
- 3) the name of the remitter;
- 4) the description or classification, if an application for registration;
- 5) the number of copies or phonorecords deposited; and
- 6) the name of the claimant, if different from the name of the remitter.
- 7) the registration status of the claim.
- 8) the registration number, if any.

1902.07 Administrative staff manuals. Administrative staff manuals, referred to as "Compendium of Office Practices I" and "Compendium of Office Practices II," are prepared for the general guidance of the Copyright Office staff in making registration and recording documents, and for the public who avails itself of the registration and recordation systems. These manuals are available for public inspection in the Certifications and Documents Section from 8:30 a.m. to 5:00 p.m., Monday through Friday, except legal holidays. See 37 C.F.R. 201.2(b)(7). See also section 1903.06.

1902 Inspection of Copyright Office records and deposits in general. (cont'd)

1902.08 Materials not open for public inspection. As a general rule and subject to requirements of the Freedom of Information Act and the Privacy Act, the Office will not permit public inspection of notes, internal memoranda, information relating to facts concerning personal privacy or financial information, trade secrets, or internal matters of a relatively trivial nature. Similarly, material relating to internal matters of personnel and procedures, Office administration, security matters or internal considerations of policy, including the work product of an attorney, are not open to public inspection.

1903 Copying Copyright Office records, indexes, correspondence, and deposits in general. Copies may be made of any public records or indexes of the Copyright Office, including the Office's file of litigation statements and other documents, known as (the "authorization file"). See section 1904.01(2); see 17 U.S.C. 706(a). Copies of applications may be made by the requester or may be furnished by the Copyright Office upon payment of the duplication fees. Copies may be made of official correspondence, including preliminary applications between copyright claimants or their agents and the Office, and directly relating to a completed registration, a recorded document, a rejected application for registration, or a document for which recordation was refused. Requests for copies of correspondence should include the information specified in the Copyright Office regulations. See 37 C.F.R. 201.2(c) and (d). See also section 1903.02 below for requirements. Copies or reproductions of materials deposited for registration and retained under the control of the Copyright Office will be furnished under the conditions specified below. The copyright owner or anyone providing a litigation statement may use a camera or other small copying device to copy a deposit if the copy is made in the Certifications and Documents Section under the supervision of Copyright Office personnel and if no electrical power, special lights, or other equipment is required. However, only copies made by the Copyright Office will be certified by the Office. See 17 U.S.C. 706(b) and 37 C.F.R. 201.2(d). See also sections 1904 and 1906 below.

1903.01 Making copies. If the requested copies can be made routinely on the photocopying equipment available in the Certifications and Documents Section, the copies will be prepared by Copyright Office staff. If the amount of material to be

[1998]

1903 Copying Copyright Office records, indexes, correspondence, and deposits in general. (cont'd)

1903.01 Making copies. (cont'd)
reproduced or its complexity makes duplication by the Certifications and Documents staff impracticable, the copies will be made by the Photoduplication Service of the Library of Congress or the Motion Picture, Broadcasting and Recorded Sound Division. The current duplication fees will be charged. See section 1911 below.

1903.02 Requests for copies other than additional certificates. Requests for copies of records, indexes, material from the authorization file, correspondence, and deposits should be made to the Certifications and Documents Section. Fees are charged for making copies, for any searches required to find the material, and for certification. Failure to provide a registration number and year date, or volume and document number for a recorded document, may result in a search charge to find the material. To minimize search fees and expedite copying, the request for copies should include the following information when available:

- 1) A clear identification of the type of records or deposits to be copied (for example copies of deposits, correspondence, catalog entries, etc.).
- 2) A specification of whether the copies are to be certified or uncertified.
- 3) A clear identification of the specific records to be copied including, where possible, the type of work involved (for example a novel, song lyrics, technical drawing), the registration number, if any, the year date or approximate year date of registration or submission to the Office, the complete title of the work, the author(s) including any pseudonym, the claimant(s), and if the requested copy is of an assignment, license, contract, or other recorded document, the volume and page number of the recorded document.
- 4) The telephone number and address of the requester.

See 37 C.F.R. 201.2(d).

1903 Copying of Copyright Office records, indexes, correspondence, and deposits in general. (cont'd)

1903.03 Copies of records. The Copyright Office will furnish a copy of any official record upon request and payment of the duplication fee. Official records include completed records of registrations, rejections, or recorded documents; indexes; litigation statements; and catalog entries relating to a registration or a recorded document.

1903.04 Materials which may generally be copied. The Copyright Office will furnish a copy of official correspondence, including preliminary applications, between copyright and mask work claimants or their agents and the Office, that directly relate to a completed registration (however, see section 1903 above), a recorded document, a rejected application for registration, or a document for which recordation was refused. See 37 C.F.R. 201.2(c)(1).

1903.05 Materials which may generally not be copied. The Copyright Office will not make copies available of correspondence, application forms, and any accompanying material (including deposit material) forming part of a pending application. As a general rule and subject to requirements of the Freedom of Information Act and the Privacy Act, the Office will not furnish copies of notes, internal memoranda, information relating to facts concerning personal privacy or financial information, trade secret or internal matters of a relatively trivial nature. Similarly, no copies will be furnished of material relating to internal matters of personnel and procedures, Office administration, security matters, or internal consideration of policy and decisional matters, including the work product of office attorneys.

1903.06 Administrative staff manuals. Copies of Compendium I (1973) are available for purchase from the National Technical Information Service and copies of Compendium II (1984) may be purchased from the Government Printing Office. As Compendium II is updated, changes will be available on-line at www.loc.gov/copyright. In addition, requests for photocopies of the administrative staff manuals referred to as "Compendium of Copyright Office Practices I" and "Compendium of Copyright Office Practices II" may be submitted to the Certifications and Documents Section of the Copyright Office during regular

- 1903 Copying of Copyright Office records, indexes, correspondence, and deposits in general. (cont'd)
- 1903.06 Administrative staff manuals. (cont'd)
work hours, 8:30 a.m. to 5:00 p.m., Monday through Friday, except legal holidays. A fee will be charged for this service.
- 1904 Copies of deposits. Requests for copies or phonorecords of deposited articles retained under the continuous control of the Copyright Office should be made to the Certifications and Documents Section. Requests for copies of deposits that have been transferred to the Library of Congress should be made to the Photoduplication Service or to the custodial division of the Library that has the copy in its collection.
- 1904.01 Authorization to make copies of deposits.
Reproductions of the copies, phonorecords, or identifying material deposited in connection with a copyright or mask work registration or a refusal to register a published or unpublished work, and held in the custody of the Copyright Office will be provided only when one of the following three conditions have been met:
- 1) The Copyright Office receives written authorization from the copyright or mask work claimant of record or his or her designated agent, or from the owner of any of the exclusive rights in the copyright or mask work whose ownership is demonstrated by written documentation of the transfer of ownership. If the requester appears in person and alleges to be entitled to a reproduction of the deposit material on one of the foregoing bases, identification consisting of a photo I.D. and a current address is required along with the above-mentioned written authorization. A copy of the photo identification will be retained in the authorization file. If the request is made by telephone, the Office will ask for a written request.
 - 2) The Copyright Office receives a completed Copyright Office litigation statement form from an attorney on behalf of either the plaintiff or defendant in connection with litigation, actual or prospective, involving the copyrighted work or mask work. The following information must be included on the completed form: (i) the names of all the

[1998]

1904 Copies of deposits. (cont'd)

1904.01 Authorization to make copies of deposits.
(cont'd)

parties involved and the nature of the controversy; and (ii) the name of the court in which the actual case is pending or, in the case of a prospective proceeding, a full statement of the facts of the controversy in which the work is involved; and (iii) a sworn statement from the requester that the reproduction is to be used in connection with the specified litigation. In addition, the Office will ask for photo identification from any person filing a litigation statement, a copy of that identification will be made part of the file. The name of any authorized person receiving deposit copies will be retained in the authorization file.

- 3) The Copyright Office receives a court order for a reproduction of the deposit copies, phonorecords, or identifying material of a work which is the subject of litigation. The order must be issued by a court having jurisdiction over the case in which the reproduction is to be submitted as evidence.

1904.02 Nature of copies or phonorecords. Upon authorization and receipt of the duplication fee, the Copyright Office will supply a photocopy of copies, phonorecords, or identifying material deposited as part of a copyright or mask work registration. When a request is made for a reproduction of a work, such as a sound recording embodied on an audiotape or cassette, or a work embodied on a floppy disk, a CD-ROM or other format in which either a sound recording or the underlying musical, dramatic, or literary work is embodied, the Copyright Office will provide a reproduction when possible. The Office reserves the right to substitute a monaural reproduction for a stereo, quadraphonic, or any other fixation accepted for deposit. The Office will provide the title and the registration number of the work along with the date of any registration that has been made. In response to a specific request, the Office will provide reproductions of any printed or other visually perceptible material published with a phonorecord. For other deposit materials, the Office will supply uncertified copies that depict or reproduce the deposit with varying degrees of fidelity depending on the needs of the requester. For example: a photocopy of a

[1998]

- 1904 Copies of deposits. (cont'd)
- 1904.02 Nature of copies or phonorecords. (cont'd)
 photograph can be supplied if such a reproduction
 is suited to the requester's needs. For the
 nature of certified copies, see section 1909
 below.
- 1905 Certificates of registration. After the Register of
 Copyrights determines that the material deposited for
 registration constitutes copyrightable or mask work
 subject matter, and that the other legal and formal
 requirements of the law have been met, the Register
 will register the claim and issue to the applicant a
 certificate of registration under the seal of the
 Copyright Office. The certificate will contain the
 information given in the application, together with the
 number and effective date of the registration. See 17
 U.S.C. sections 410(a), 908(e). A certificate of
 renewal registration will be issued for works first
 published or registered before January 1, 1978, upon
 compliance with the renewal provisions of the copyright
 code. See 17 U.S.C. 304(a). Certificates returned to
 the Copyright Office as undeliverable will be mailed a
 second time unless they were undeliverable because the
 addressee moved and left no forwarding address.
 Certificates returned a second time are destroyed after
 updating the Office's records to show the status of the
 mailing was "undeliverable."
- 1905.01 Nature of the certificate. The certificate of
 registration or certificate of renewal is a
 digital image of the application made on a form
 containing the signature of the Register of
 Copyrights and the seal of the Copyright Office.
- 1906 Additional certificates of registration. Additional
 certificates of an original or renewal registration
 will be issued to anyone upon request and payment of
 the fee. See 17 U.S.C. 706(a). Additional
 certificates are certified copies of the record of
 registration and have the same legal effect as the
 original certificate. Certified copies of additional
 certificates may also be requested from the
 Certifications and Documents Section upon payment of
 the appropriate fee. The manner in which additional
 certificates are prepared may vary, depending upon the
 date of the original registration. Additional
 certificates are prepared by the Certifications and
 Documents Section of the Information and Reference
 Division. The Copyright Office will not issue
 additional certificates of cancelled registrations. It
 will, however, certify a copy of the cancelled
 registration in the same manner as it certifies any

1906 Additional certificates of registration. (cont'd)
other public record. See sections 1903.03(a) above and
1909.06 below. The Office will certify copies of
applications refused registration as part of the
correspondence file.

1906.01 Registration made on or after January 1, 1978.
Additional certificates for registrations made on
or after January 1, 1978, are duplicate
facsimiles. These may be made from original
applications, from a microfilm copy or from
another imaged copy. The additional certificate
contains the signature of the current Register of
Copyrights together with the seal of the Copyright
Office. Each such additional certificate is
stamped to identify it as an additional
certificate.

1906.02 Registration made on or before December 31, 1977.
Additional certificates for registrations made on
or before December 31, 1977, consist of a
photocopy of the application that was used to make
the original registration with a pre-printed
certification statement attached. The
registration number, date of certification, and
the signature of the current Register of
Copyrights are added to the certification
statement form, which is issued under the seal of
the Copyright Office. In cases where a photocopy
of the application cannot be used to produce an
additional certificate of registration, an
additional certificate may be made by typing the
name of the claimant, title, date of publication,
date of receipt of copy(s), and the registration
number on a pre-printed certification form. The
name of the Register of Copyrights is then added
to the form together with the seal of the
Copyright Office.

1906.03 Prints or labels registered in the Patent Office
before July 1, 1940. The Patent Office retained
carbon copies of each certificate issued by that
Office. Copies of the Patent Office records were
transferred to the Copyright Office on July 1,
1940. An additional certificate of copyright
registration for a print or label registered in
the Patent Office before July 1, 1940, consists of
a photocopy of the carbon copy of the original
certificate of registration together with the
Copyright Office's certification of the photocopy.

1907 Certificate of recordation. Upon receipt of any
transfer of ownership or other document pertaining to a
copyright or mask work, which meets the requirements of

[1998]

- 1907 Certificate of recordation. (cont'd)
the law (see 17 U.S.C. 205(a)), the Copyright Office
will record the document and return it with a
certificate of recordation. See 17 U.S.C. 205(b).
- 1907.01 Nature of the certificate of recordation. The
document submitted for recordation is returned to
the sender with an attached certificate of
recordation after a preservation copy has been
made for Copyright Office records. The
certificate consists of a form containing the
signature of the Register of Copyrights, the date
of recordation, and the volume and document number
of the recorded document. The certificate also
bears the seal of the Copyright Office.
- 1908 Certified copy of a recorded document. A certification
of recordation may be issued to anyone upon request and
payment of the fee(s). See 17 U.S.C. 706(a). The
certification consists of a copy of the document, or
relevant portions thereof, and an attached
certification form.
- 1908.01 Microfilm recordation. Some documents originally
recorded in the Copyright Office on microfilm
(generally before 1982) also include a microfilm
copy of the original certificate of recordation.
In such cases, the original certificate of
recordation is reproduced along with the document
and is included in the certified copy.
- 1908.02 Preparation of copies of document. Copies of most
documents are prepared by the Certifications and
Documents Section of the Information and Reference
Division. A fee for making the copy will be
charged. See section 1911 below. Some copies of
documents must be prepared by the Photoduplication
Service, which charges its current fees for the
service.
- 1908.03 Certification of copies of recorded documents.
Copies of recorded documents are certified by the
Certifications and Documents Section of the
Information and Reference Division. Certified
copies of recorded documents are furnished by
providing a photocopy of the document printed on
paper, including a photocopy of the original
certificate of recordation, if it is on record.
See sections 1908.01 and 1908.02 above. The copy
of the document is attached to a certification
form on which is included the volume and document
number where the document is recorded, the date of
certification, and the date of recordation. The
signature of the Register of Copyrights and the

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- 1908 Certified copy of a recorded document. (cont'd)
- 1908.03 Certification of copies of recorded documents.
(cont'd)
seal of the Copyright Office are included on the certificate. A fee for making the copy will be charged at the rate established by the Photoduplication Service.
- 1909 Certification in general. Certification is an official written representation of the Copyright Office attesting to one or more facts and bearing the seal of that Office and issued under the name and title of the Register of Copyrights. The Office will certify only an authorized work product produced by the Office or official Office records.
- 1909.01 Register's name on certification. The name of the current Register of Copyrights will be used regardless of his or her temporary absence from the Office for reasons such as travel, illness, etc. Only during a change in terms, when an Acting Register has been appointed by the Librarian of Congress, will the name of an Acting Register be used.
- 1909.02 Authentication of certified documents issued by the Copyright Office. The Copyright Office has adopted an official seal to authenticate its certified documents. See 17 U.S.C. 701(b). The appearance of the seal has varied during different periods of time; however, the certification remains valid if it was correctly sealed at the time it was made. Use of the Library of Congress seal or any other non-official Copyright Office seal does not result in a valid certification.
- 1909.03 Omission of Register's name or Copyright Office seal. A document lacking either the Register's name or the Copyright Office seal is not validly certified.
- 1909.04 Appeal from denial of certification. Denial of a request for certification may be appealed in the following order: (1) Head, Certifications and Documents Section, (2) Chief of the Information and Reference Division, and (3) Register of Copyrights, who may delegate the responsibility to the General Counsel or the Assistant General Counsel.
- 1909.05 Undeliverable certifications. Certifications, including additional certificates of registration, returned to the Copyright Office as undeliverable,

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1909 Certification in general. (cont'd)

1909.05 Undeliverable certifications. (cont'd)
are generally remailed one time. If returned again, the certification is destroyed after the CIS image status has been updated to show that the mailing was "undeliverable," in accordance with retention policies established by the Register of Copyrights for those files.

1909.06 Who may authenticate documents. Documents may be authenticated by the person or persons to whom that authority has been delegated by the Register of Copyrights. Documents will generally be authenticated by the Head of the Certifications and Documents Section or in his/her absence by the Assistant Chief or Chief of the Information and Reference Division. For original certificates of registration or certificates of recordation of documents see sections 1905.01 and 1907.01 above.

1909.07 Certifications. Certifications are made in four different formats depending on the nature of the material being certified.

- 1) Certification of original certificates of registration, rejected applications, or recordation of documents. For the form of certification of original certificates of registration see section 1905.01 above. For the form of certification for original certificates of recordation of documents see section 1907.01 above.
- 2) Certification of statements from the public record. A standard certification attests to one or more facts from the public record about a document or deposit. It bears the name and title of the Register of Copyrights and is signed by the head of the Office's Certification and Documents Section, or an authorized designee.
- 3) Certification of a deposit in a format different from the original. A special certification is required when the reproduction is not exact, e.g. a cassette tape is made from a phonorecord, a photograph is made of a three-dimensional object, a copy is reduced in size from the original deposit, or a copy is made of only part of a larger work (preface only of a book or five pages of a twenty-page document). Such a certificate is issued under the name and title of the

1909 Certification in general. (cont'd)

1909.07 Certifications. (cont'd)

Register of Copyrights, and is signed by the head of the Certification and Documents Section, or an authorized designee.

- 4) Certification of other materials. Specifically drawn certifications of other materials, including apostilles, exemplifications, and declarations will be issued by the Office upon payment of a fee. An apostille is an attachment to a certification form required by some foreign courts pursuant to the Hague Convention of October 5, 1961. An apostille certifies, under the seal and signature of the current Register of Copyrights, that an attached public document has been signed by the head of the Copyright Office's Certifications and Documents Section.

1909.08 Method of requesting certification.

Certifications, including certification of additional certificates of registration, are made by the Certifications and Documents Section of the Information and Reference Division, and all requests for certification should be addressed to that Section. The request should include the following:

- 1) Specific request for certification. The request should clearly indicate whether the copies are to be certified. Where the request is unclear whether the copies are to be certified or not, the Copyright Office will ask for further instructions.
- 2) Full identification of material to be certified. The request should fully identify the material to be certified. See section 1903.02 above. Failure to identify adequately the material may necessitate an inquiry by the Office for further information or may result in a search fee to locate the material.

1909.09 Preparation and handling of certifications in general. All Copyright Office certifications must be prepared under the direction and control of the Copyright Office. See section 1903 above. When preparing copies for Office certification, the Photoduplication Service or Motion Picture, Broadcasting and Recorded Sound Division acts at

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1909 Certification in general. (cont'd)

1909.09 Preparation and handling of certifications in general. (cont'd)

the direction of the Copyright Office. When material is submitted to those offices for copying, the Copyright Office will observe the following procedures:

- 1) Furnish the materials to be copied, identify the exact material to be copied, and specify the copying process to be used; and,
- 2) Indicate that the material is being prepared for certification and that it should be returned to the Copyright Office for that purpose.

1909.10 Certified copies of official records. Upon payment of the certification and duplication fees, certified copies of official records of the Copyright Office may be furnished. Examples of official records include: entries in the registration record books, numbered applications, indexes to registration and recorded transfers and other documents pertaining to a copyright or mask work. The certified copies furnished by the Office will be accompanied by the appropriate certification form. See section 1909.07 above.

1909.11 Certified copies of correspondence. Upon payment of the certification and duplication fees, the Copyright Office will certify copies of any correspondence which is permitted to be copied. See section 1903.04 above. Every certification covering correspondence must be specially drawn. If the various pieces of correspondence all relate to the same registration, or group of related registrations, they may all be included in one certification, but each item must be separately identified in the certification.

1909.12 Certified copies of search reports. Search reports prepared by the Copyright Office will be certified on letterhead stationery available for that purpose. The search report is certified under the seal of the Register of Copyrights and is usually signed also by the Head of the Reference and Bibliography Section or in his or her absence it may be signed by the Assistant Chief or Chief of the Information and Reference Division.

1909 Certification in general. (cont'd)

1909.13 Certification of copies of information circulars, former circulars, and blank application forms.
The Copyright Office will certify copies of information circulars and blank application forms currently or formerly issued as official publications of the Office. Certifications are made by the Certifications and Documents Section, under the seal of the Register of Copyrights and signed by the Head of the Certifications and Documents Section or in his or her absence by the Assistant Chief or Chief of the Information and Reference Division.

1909.14 Certified copies of material deposited for copyright or mask work registration. When the Copyright Office has retained continuous control of deposits (see section 1904 above) and it is authorized to make copies (see section 1904.01 above), certified copies or phonorecords may be furnished of materials deposited for copyright or mask work registration, (whether registration is made or refused), upon receipt of the certification and duplication fees. The Office will not certify copies found in the collections of the Library of Congress. Only the Library of Congress can make such certifications.

NOTE: The practice of the Copyright Office regarding the retention under its control of materials deposited for copyright has varied at different times. Therefore, not all materials deposited for copyright registration are available for copying or certification.

1909.15 Jurisdictional requirement for certifying material deposited for copyright. The Copyright Office will certify a copy of material deposited in connection with a claim to copyright or a mask work only if such material has remained continuously under the control of the Copyright Office. Copies of such materials made part of the Library of Congress' collections will only be certified by the Photoduplication Service or the Motion Picture, Broadcast, and Recorded Sound Division. When such deposit materials are loaned for exhibit purposes to the Library of Congress Exhibits Office, the Copyright Office asks that these items be returned, and the Office insists that they not be altered in any way and that they not be available for public handling. In these cases the material is considered to have remained under the control of the Office and therefore can

1909 Certification in general. (cont'd)

- 1909.15 Jurisdictional requirement for certifying material deposited for copyright. (cont'd)
be certified while it is on exhibit and after it is returned to the Office. The Office will not certify any other material returned to it from the Library of Congress.

The Copyright Office will not certify any material added to a deposit after registration has been completed, except where the additional material is added as an addendum to the original registration.

The Copyright Office will certify only those copies which have been made by it or at its request. It will not certify copies of deposit material made by copyright or mask work owners or litigants, even if those copies are made under the supervision of the Office. See section 1903 above.

- 1909.16 Form and content of certified copies of material deposited for copyright or mask work registration (other than phonorecords and Patent Office deposits). The Copyright Office will provide the best possible reproduction(s) of deposited material, depending on the nature of the material and the need of the requester. Photocopies are provided for most flat material. As a general rule, the Office certifies a copy of the entire deposit retained by the Office. The material certified must include a copy of the page or surface bearing the registration number and date of deposit, if any.

- 1909.16(a) Copies of part or portions of a work. When a request is received to copy and certify only a part or portion of a work, a special certification clearly identifying the material certified must be drawn and typed. In such cases, the material copied and certified must include the page or surface bearing the registration number and date of deposit, and also the page or surface bearing the notice of copyright, if any.

- 1909.16(b) Copies of photographs and identifying reproductions deposited for certain three-dimensional works. To certify copies of photographs or reproductions deposited in lieu of three-dimensional or over-size copies, a certification must be prepared which identifies the "certified copies" as

1909 Certification in general. (cont'd)

1909.16 Form and content of certified copies of material deposited for copyright or mask work registration (other than phonorecords and Patent Office deposits). (cont'd)

1909.16(b) Copies of photographs and identifying reproductions deposited for certain three-dimensional works. (cont'd)
copies of photographs or identifying material deposited in lieu of copies. In such cases all of the photographs or reproductions in a set should be reproduced, unless the request specifies that only certain ones are to be copied. In all cases, however, the material copied and certified should include the page or surface bearing the registration number and date of receipt of the deposit, if any, and also the page or surface showing the notice of copyright, if any. For some pre-1956 registrations where both three-dimensional copies and photographs may be available, the Copyright Office will certify the photographs, unless the applicant specifically requests certification of the three-dimensional copies.

1910 Certification of actual deposit copy when required by the court. When required by a court, the Copyright Office will certify the actual copy, phonorecord, or identifying material used to make the registration, or to refuse registration, provided that the copy, phonorecord, or identifying material has been under the continuous control of the Copyright Office. The actual deposit material will be made available only upon the condition that it will be promptly returned to the custody of the Copyright Office. A certificate is drawn to show that the copy, phonorecord, or identifying material is the copy, phonorecord, or identifying material used to make or to refuse the registration. If the deposit material has been transferred to the Library of Congress's collections, the Office will not certify that copy, phonorecord, or identifying material.

1911 Fees in general. Fees are charged for the various services provided by the Copyright Office, the Photoduplication Service, or the Motion Picture, Broadcasting, and Recorded Sound Division.

1911.01 Statutory fees. Fees are charged for certain services as set forth in section 708 of the Copyright Act and section 908(d) of the

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1911 Fees in general. (cont'd)

1911.01 Statutory fees. (cont'd)

Semiconductor Chip Protection Act of 1984. They are payable to the Register of Copyrights.

Fees are charged:

- 1) For issuance of an additional certificate of registration;
- 2) For issuance of any other certification;
- 3) For making a search or any related service; and
- 4) For a special service, at a rate fixed by the Register.

1911.02 Photoduplication Service and Motion Picture, Broadcasting, and Recorded Sound Division fees.

Fees for the making of copies by these units are established by them and are payable to the Library of Congress at the copying rate then in effect for their services.

1911.03 Certification fees. The check for preparing a certification should be made payable to "the Register of Copyrights," regardless of which Library service unit is preparing the certification.

1912 Applicability of fees to other U.S. Government agencies. Section 708(b) of the Copyright Act provides that all fees prescribed by the Act are applicable to the United States Government and any of its agencies, employees, or officers, but that the Register of Copyrights has discretion to waive these requirements in occasional or isolated cases involving relatively small amounts.

[END OF CHAPTER 1900]

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