

EXHIBIT 99

[Jt. App'x at 5:1119-1140, Dkt. 191-1]

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.

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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.

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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

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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

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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.

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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

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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).

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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

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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

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1904 Copies of deposits. (cont'd)

1904.01 Authorization to make copies of deposits.
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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

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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

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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

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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.
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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

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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

[1998]

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

[1998]

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

[1998]

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]

[1998]

EXHIBIT 100

[Jt. App'x at 6:1200-1203, Dkt. 192-1]

1 GLENN D. POMERANTZ (State Bar No. 112503)
glenn.pomerantz@mto.com
2 KELLY M. KLAUS (State Bar No. 161091)
kelly.klaus@mto.com
3 MELINDA E. LeMOINE (State Bar No. 235670)
melinda.lemoine@mto.com
4 ADAM I. KAPLAN (State Bar No. 268182)
adam.kaplan@mto.com
5 MUNGER, TOLLES & OLSON LLP
355 South Grand Avenue
6 Thirty-Fifth Floor
Los Angeles, California 90071-1560
7 Telephone: (213) 683-9100
Facsimile: (213) 687-3702

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

11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**
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.

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

**DECLARATION OF ADAM I.
KAPLAN IN SUPPORT OF
NOTICE OF MOTION AND
CROSS-MOTION AND MOTION
AND CROSS-MOTION FOR
SUMMARY JUDGMENT**

Hearing

Date: January 26, 2015
Time: 9:30 a.m.
Judge: Hon. George H. King,
Chief Judge
Courtroom: 650

Ex. 100

Ex. 100
140

KAPLAN DECL. ISO MOT. AND
CROSS MOT. FOR SUMMARY JUDGMENT
CASE NO. CV 13-04460-GHK (MRWx)

1 I, ADAM I. KAPLAN, hereby declare:

2 1. I am an attorney at the firm Munger, Tolles & Olson LLP, counsel for
3 Defendants Warner/Chappell Music, Inc. and Summy-Birchard, Inc. (jointly,
4 “Warner/Chappell”). I am admitted to practice law in the State of California and
5 before this Court. I submit this declaration in support of Warner/Chappell’s Motion
6 for Summary Judgment. If called upon as a witness to testify as to the contents of
7 this declaration, I could and would competently do so.

8 2. I recognize the document bearing Bates numbers WC0000388-90 as a
9 true and correct copy of the Registration Certificate for E51990, which was marked
10 as Exhibit 9 to the deposition of Thomas Marcotullio (Warner/Chappell’s Fed. R.
11 Civ. P. (“Rule”) 30(b)(6) witness). This document is Appendix Exhibit 101.

12 3. I recognize the document bearing Bates numbers WC0000103-104 as a
13 true and correct copy of the Certificate of Registration of a Claim to Renewal
14 Copyright for R306186. This document is Appendix Exhibit 102.

15 4. I recognize the document bearing Bates numbers WC0000385-87 as a
16 true and correct copy of the Registration Certificate for E51988, which was marked
17 as Exhibit 4 to the deposition of Thomas Marcotullio (Warner/Chappell’s Rule
18 30(b)(6) witness). This document is Appendix Exhibit 103.

19 5. I recognize the document bearing Bates numbers WC0000953-54 as a
20 true and correct copy of the Certificate of Registration of a Claim to Renewal
21 Copyright for R306185. This document is Appendix Exhibit 104.

22 6. I recognize the document bearing Bates number P003299 as a true and
23 correct copy of the Record of the Filing of Copyright Deposits under the Act of
24 March 4, 1909. This document is Appendix Exhibit 105.

25 7. I recognize the document bearing Bates number WC0000977-979 as a
26 true and correct copy of sheet music for Happy Birthday to You!, published in 1935
27 by Clayton F. Summy Co. as publication number 3075. This document is Appendix
28 Exhibit 106.

Ex. 100

Ex. 100

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-1-

1 8. I recognize Appendix Exhibit 107 as a true and correct copy of
2 Excerpts of the Confidential Deposition Transcript of Thomas Marcotullio,
3 Warner/Chappell's Rule 30(b)(6) witness, taken on June 3, 2014 [*provisionally*
4 *lodged under seal*].

5 9. I recognize Appendix Exhibit 109 as a true and correct copy of
6 Excerpts of the Deposition Transcript of Jeremy Blietz, taken on July 10, 2014.

7 10. I recognize Appendix Exhibit 110 as a true and correct copy of
8 Excerpts of the Deposition Transcript of Plaintiffs' Expert Witness, Joel Sachs,
9 Ph.D., taken on September 9, 2014.

10 11. I recognize Appendix Exhibit 111 as a true and correct copy Excerpts
11 of Exhibit 47 to the Deposition of Joel Sachs, Ph.D (Expert Report of Joel Sachs,
12 Ph.D. and Exs. J and L thereto).

13 12. I recognize the documents bearing Bates numbers WC0001450-52 and
14 WC0000844-45 as true and correct copies of a Recorded Assignment of Copyright
15 from Patty S. Hill and Jessica S. Hill to The Hill Foundation, Inc., dated October 16,
16 1944. These documents are Appendix Exhibits 112 and 113, respectively.

17 13. I recognize the documents bearing Bates numbers WC0001456-62 and
18 WC0000838-45 as true and correct copies of a Recorded Assignment of Copyright
19 from The Hill Foundation, Inc., to Clayton F. Summy Co., dated October 16, 1944.
20 These documents are Appendix Exhibits 114 and 115, respectively.

21 14. I recognize Appendix Exhibit 116 to be a true and correct copy of the
22 Declaration of David K. Sengstack , dated January 20, 1981 recorded in the
23 Copyright Office on February 2, 1981 (WC0001998-2075).

24 15. I recognize Appendix Exhibit 117 to be a true and correct copy of
25 Confidential Minutes of a September 29, 1931, Meeting of the Board of Directors of
26 C.F.S. Musical Co. (WC0002091-93) [*provisionally lodged under seal*].

27 16. I recognize Appendix Exhibit 118 to be a true and correct copy of
28 Confidential Stock Certificate for Birch Tree Group, Ltd. and Stock Power

Ex. 100

142

-2-

1 (WC0002094-97) [*provisionally lodged under seal*].

2 17. I recognize the document bearing Bates numbers WC0001137 and
3 WC0001142-43 as a true and correct copy of an excerpt of an October 1988
4 “Confidential Information Memorandum” regarding Birch Tree Group Ltd. This
5 document is Appendix Exhibit 119.

6 18. I recognize Appendix Exhibit 120 as a true and correct copy of
7 Plaintiffs’ Complaint in this matter, filed on June 20, 2013 (Dkt. 9).

8 19. I recognize Appendix Exhibit 121 as a true and correct copy of
9 Plaintiffs’ First Amended Complaint in this matter, filed on July 26, 2013 (Dkt. 29).

10 20. I recognize Appendix Exhibit 122 as a true and correct copy of
11 Plaintiffs’ Second Amended Consolidated Complaint, filed on September 4, 2013
12 (Dkt. 59).

13 21. I recognize Appendix Exhibit 123 as a true and correct copy of
14 Plaintiffs’ Third Amended Consolidated Complaint, filed on November 5, 2013
15 (Dkt. 72).

16 22. I recognize Appendix Exhibit 124 as a true and correct copy of
17 Plaintiffs’ Joint Report on Parties’ Planning Meeting, filed February 10, 2014 (Dkt.
18 No. 89).

19 23. I recognize Appendix Exhibit 125 as a document bearing Bates number
20 WC0002098 as a true and correct copy of a letter from the United States Copyright
21 Office to Lisa Minnerly, of Warner/Chappell Music, Inc., dated December 9, 2013,
22 regarding the transmission of copies of registrations, including copies of
23 registrations E51990 and E51998.

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Ex. 100

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24. I recognize the document bearing Bates numbers WC0000963-973 as a true and correct copy of an agreement among The Hill Foundation, Inc., Patty S. Hill and Jessica M. Hill, and Clayton F. Summy Co., dated October 16, 1944. This document is Appendix Exhibit 126.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 25th day of November 2014, at San Francisco, California.



ADAM I. KAPLAN

EXHIBIT 101

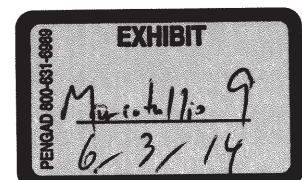
[Jt. App'x at 6:1205-1207, Dkt. 192-1]



COPY OF REGISTRATION

E 51990

NOTE: due to the nature of the storage medium (CARD CATALOG), the attached photocopies are the best possible copies available



Ex. 101

Ex. 101

Happy birthday to you Composers of this		27969	
PUBLISHED MUSICAL COMPOSITION		By Mildred J. Hills, etc. by Preston Warren Grant Pl. with words.	
		<i>* (copyright for line of Clayton F. Summy Co.)</i>	
PUBLISHED		© Dec. 6, 1935	
2 c. rec'd and regist'd		2 c. Reg. 9	
Entry, Cl. M. Xxc, No.		E pub. 51990	
Copyright claimed by		Clayton F. Summy Co., Chicago.	
<i>(© is claimed on arrangement in case) (piano solo with text)</i>			

U. S. GOVERNMENT PRINTING OFFICE: 1930

R 306186, Dec. 6, 1962, by Sunny-Richard
Co. (YWH of Prator Ware Co.)

EXHIBIT 102

[Jt. App'x at 6:1209-1210, Dkt. 192-1]

Certificate of Registration of a Claim to Renewal Copyright

REGISTRATION NO.
R 306186
DO NOT WRITE HERE

This is to certify that the statements set forth on this certificate have been made a part of the records of the Copyright Office. In witness whereof the seal of the Copyright Office is hereto affixed.



Abraham L. Kaminstein
1. Renewal Claimant(s), Address(es), and Statement of Claim: *ABRAHAM L. KAMINSTEIN*
Register of Copyrights
United States of America

(a) Name Summy-Birchard Company
Address 1834 Ridge Ave., Evanston, Ill.
Claiming as proprietor of copyright in a work made for hire

(b) Name _____
Address _____
Claiming as _____

(c) Name _____
Address _____
Claiming as _____

2. (a) Title:
HAPPY BIRTHDAY TO YOU! -- easy piano solo with text

(b) Renewable Matter:
Arrangement as easy piano with text

(c) Contribution to Periodical or Other Composite Work:

(Title of periodical or composite work)

If a periodical, give: Vol. _____; No. _____; Date _____

3. Authors of Renewable Matter:
Clayton F. Summy Co. (now, by change of name, Summy-Birchard Company) as employer for hire of Preston Ware Orem

4. Facts of Original Registration:
Original registration number: Class E. pub No. 51990
If registered as published, give date of publication December 6, 1935
If registered as unpublished, give date of registration _____
Original copyright claimant Clayton F. Summy Co.

Complete all applicable spaces on next page. } 7

5. Deposit account:
 Sunny-Birchard Publishing Company
 6. Send correspondence to:
 Name Brown, Jackson, Boettcher & Diener Address 53 W. Jackson Blvd., Chicago 4, Ill.
Mr. C. Lyman Emrich, Jr.

7. Send certificate to:

(Type or print name and address)
 Name Sunny-Birchard Company
 Address 1834 Ridge Ave. (Number and street)
Evanston, Ill. (City) (Zone) (State)

Information concerning renewal copyright

Two important points must be kept in mind with respect to renewal copyright: (1) there are strict time limits for securing it, and (2) it can be claimed only by certain specified persons named in the law.

Time limits

When to renew. The original term of copyright in a published work lasts for 28 years from the date of publication; in the case of a work originally registered in unpublished form, the copyright term lasts for 28 years from the date of registration in the Copyright Office. In either case, the copyright may be renewed for a second 28-year term only if a claim is registered in the Copyright Office within the last (28th) year of the original copyright term. For example, a work copyrighted on June 15, 1940, would be eligible for renewal between June 15, 1967, and June 15, 1968.

Caution: Unless a valid renewal claim and fee are received in the Copyright Office before the first copyright term expires, copyright protection is lost permanently and the work enters the public domain. The Copyright Office has no discretion to extend the renewal time limits.

How to register your claim

Procedure to follow. Complete an application for renewal registration on Form R and send it to the Register of Copyrights, Washington 25, D. C. The application should be accompanied by the registration fee of \$2.00. Do not send copies of the work.

Who may claim renewal

Except in the case of five specific types of works, the law gives the right to claim renewal to the individual author of the work, regardless of who owned the copyright during the original term. If the author is deceased, the statute gives the right to claim renewal to certain of his statutory beneficiaries as explained below. The present owner (proprietor) of a copyright is entitled to claim renewal *only* in the five cases listed in Paragraph B, below.

- A. The following persons may claim renewal in all types of works except those enumerated in Paragraph B, below:
1. The author, if living. State the claim as: *the author.* there is no surviving widow, widower, or child. State the claim as: *the executors of the author.*
 2. The widow, widower, and/or children of the author, if the author is not living. State the claim as: *the widow (widower) of the author and/or the child (children) of the deceased author.*
 3. The author's executors, if the author left a will and if there is no surviving widow, widower, or child. State the claim as: *the next of kin of the deceased author, there being no will.*
 4. The next of kin of the author, if the author left no will and if there is no surviving widow, widower, or child. State the claim as: *the next of kin of the deceased author, there being no will.*
- B. In the case of the following five types of works, the proprietor (owner of the copyright at the time of renewal registration) may claim renewal:
1. Posthumous work (work first published and copyrighted after the death of the author). State the claim as: *proprietor of copyright in a posthumous work.* a corporate body otherwise than as assignee or licensee of the individual author. (This type of claim is considered appropriate in relatively few cases.)
 2. Periodical, cyclopedic, or other composite work. State the claim as: *proprietor of copyright in a composite work.*
 3. "Work copyrighted by a corporate body otherwise than as assignee or licensee of the individual author." State the claim as: *proprietor of copyright in a work copyrighted by*
 4. Work copyrighted by an employer for whom such work was made for hire. State the claim as: *proprietor of copyright in a work made for hire.*
 5. Print or label originally registered in the Patent Office prior to July 1, 1940. State the claim as: *proprietor of copyright in a print or label.*

FOR COPYRIGHT OFFICE USE ONLY	
Application received	
DEC -6 1962	
Fee received	

EXHIBIT 103

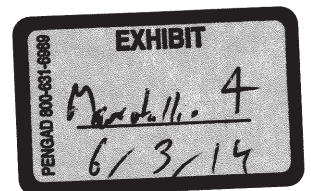
[Jt. App'x at 6:1212-1214, Dkt. 192-1]



COPY OF REGISTRATION

E 51988

**NOTE: due to the nature of the storage medium
(CARD CATALOG), the attached photocopies
are the best possible copies available**



Ex. 103

153

Ex. 103

WC0000385
1212

Happy birthday to you, unison song, <small>Composer or title</small>	E 27970
PUBLISHED MUSICAL COMPOSITION	by Mildred J. Hill, rev. text and arr. of music by Mrs. R. B. Norman, etc. *(employee for hire of Clayton F. Summy Co.)
PUBLISHED	© Dec. 6, 1935 ;
2 c. rec'd and regist'd	2 c. Dec. 9
Entry, Cl. E.Xc. No.	E pub. 51988
Copyright claimed by (© is claimed on arrangement for Unison Chorus and record copy.)	Clayton F. Summy Co., Chicago. (OVER)

U. S. GOVERNMENT PRINTING OFFICE 1930

R 306185, Dec. 6, 1962, by Summary-Bickford
Co (Platt of Mrs. R. R. Farmer)

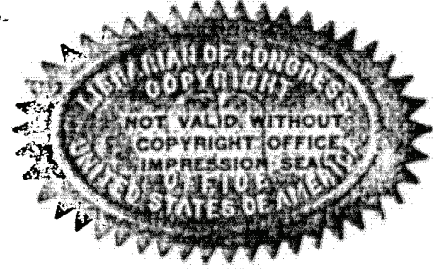
EXHIBIT 104

[Jt. App'x at 6:1216-1217, Dkt. 192-1]

Certificate of Registration of a Claim to Renewal Copyright

FORM R
REGISTRATION NO. R 306185
DO NOT WRITE HERE

This is To Certify that the statements set forth on this certificate have been made a part of the records of the Copyright Office. In witness whereof the seal of the Copyright Office is hereto affixed.



Abraham L. Kaminstein

1. Renewal Claimant(s), Address(es), and Statement of Claim: *Abraham L. Kaminstein*
Register of Copyrights
United States of America

(a) Name Summy-Birchard Company

Address 1834 Ridge Ave., Evanston, Ill.

Claiming as proprietor of copyright in a work made for hire

(b) Name

Address

Claiming as

(c) Name

Address

Claiming as

2. (a) Title:

HAPPY BIRTHDAY TO YOU! -- Unison Song

(b) Renewable Matter:

Arrangement and revised text

(c) Contribution to Periodical or Other Composite Work:

(Title of periodical or composite work)

If a periodical, give: Vol.; No.; Date

3. Authors of Renewable Matter:

Clayton F. Summy Co. (now, by change of name, Summy-Birchard Company) as employer for hire of Mrs. R.R. Forman

4. Facts of Original Registration:

Original registration number: Class E pub No. 51988

If registered as published, give date of publication December 6, 1935

If registered as unpublished, give date of registration

Original copyright claimant Clayton F. Summy Co.

Complete all applicable spaces on next page. (A)

Sunny-Birchard Company

6. Send correspondence to:

Name: Brown, Jackson, Boettcher & Diener, Mr. C. Lyman Enrich, Jr. Address: 53 W. Jackson Blvd., Chicago 4, Ill.

7. Send certificate to:

(Type or print name and address)

Form with fields for Name (Sunny-Birchard Company), Address (1834 Ridge Ave., Evanston, Illinois), and State (Illinois).

Information concerning renewal copyright

Two important points must be kept in mind with respect to renewal copyright: (1) there are strict time limits for securing it, and (2) it can be claimed only by certain specified persons named in the law.

Time limits

When to renew. The original term of copyright in a published work lasts for 28 years from the date of publication...

1940, would be eligible for renewal between June 15, 1967, and June 15, 1968.

Caution: Unless a valid renewal claim and fee are received in the Copyright Office before the first copyright term expires...

How to register your claim

Procedure to follow. Complete an application for renewal registration on Form R and send it to the Register of Copyrights, Washington 25, D. C. The application should be accompanied by the registration fee of \$2.00.

Who may claim renewal

Except in the case of five specific types of works, the law gives the right to claim renewal to the individual author of the work, regardless of who owned the copyright during the original term.

- A. The following persons may claim renewal in all types of works except those enumerated in Paragraph B, below: 1. The author, if living. State the claim as: the author. 2. The widow, widower, and/or children of the author... 3. The author's executors... B. In the case of the following five types of works, the proprietor (owner of the copyright at the time of renewal registration) may claim renewal: 1. Posthumous work... 2. Periodical, cyclopedic, or other composite work... 3. 'Work copyrighted by a corporate body otherwise than as assignee or licensee of the individual author.'... 4. Work copyrighted by an employer for whom such work was made for hire... 5. Print or label originally registered in the Patent Office prior to July 1, 1940...

FOR COPYRIGHT OFFICE USE ONLY. Application received DEC -6 1962. Fee received.

EXHIBIT 106

[Jt. App'x at 6:1221-1223, Dkt. 192-1]



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

T

Ex. 106
160

Ex. 106

1221

WC0000977

HAPPY BIRTHDAY TO YOU!

(Vocal or Instrumental)

MILDRED J. HILL

Brightly

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

The first system of musical notation 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 contains the melody with notes G4, A4, B4, and G4. The bass staff contains a simple accompaniment with notes G3, B2, and G3. Fingerings are indicated by numbers 1-5. A dynamic marking of *mf* is present. The lyrics 'Hap-py Birth-day to you, Hap-py' are written below the notes.

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

The second system continues the melody and accompaniment. The treble staff notes are A4, B4, G4, and A4. The bass staff notes are G3, B2, and G3. Fingerings and dynamics are consistent with the first system. The lyrics 'Birth-day to you, Hap-py Birth-day, dear' are written below the notes.

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

The third system concludes the piece. The treble staff notes are G4, A4, B4, and G4. The bass staff notes are G3, B2, and G3. Fingerings and dynamics are consistent. The lyrics '* _____, Hap-py Birth-day to you!' are written below the notes, with a blank line for a name.

* Here insert the name of the one celebrating.

Copyright, 1935 by Clayton F. Summy Co.
International Copyright

3075

Dec 1, 2014

Ex. 106
161

Ex. 106

1222

WC0000978

OUTSTANDING PIANO SOLOS

For Teaching and Recital Purposes

Price 30¢ **Vale of Song**
WALTZ WALTER HOLFE
Tempo di Valse
Moderato marc.
mf

Price 25¢ **Soldiers Marching**
N. LOUISE WRIGHT
Allegro
mf *legato*

Price 30¢ **Moccasin Dance**
FRANCES TERRY
Con moto
mf animato

Price 30¢ **The Old Clock**
HUBBARD HARRIS
Not too fast
mf

Price 30¢ **The Band**
N. LOUISE WRIGHT
Allegro con spirito
ff *marcato*

Price 30¢ **Down a Woodland Path**
VALSETTE GODFREY UREN
Allegretto
mf

The above six numbers copyrighted by Clayton F. Summy Co.

Op. 1-2

CLAYTON F. SUMMY CO., MUSIC PUBLISHERS
429 So. Wabash Ave., Chicago, Ill. 9 East 45th Street, New York City, N. Y.

EXHIBIT 119

[Jt. App'x at 8:1761-1763, Dkt. 194-1]

SUMMARY FACT SHEET

Company: Birch Tree Group Ltd. ("Birch Tree", "BTG" or the "Company")

Corporate Headquarters: Princeton, New Jersey

Business: Birch Tree, through a series of predecessor companies, has been operated continuously by the Sengstack family since 1931 and the acquired companies date back as far as 1876. The Company currently operates as an international publisher and distributor of educational music used principally by music teachers for both class and individual instruction and performance. Notable in the catalog are two highly respected methods of instrumental instruction: The SuzukiTM Method ("Suzuki") and the Frances Clark[®] Library for Piano Students ("Clark" or the "Library"). Also, Birch Tree owns the copyright in "Happy Birthday To You", an internationally recognized song. The Company owns and controls a catalog of approximately 50,000 copyrights of which only 1,700 to 1,800 are active at this time. During 1987, approximately 81.0% of BTG's gross revenues were generated in the United States (7.1% in Japan) and 78.1% of gross revenues were generated by the two above-mentioned instrumental instruction methods and the song "Happy Birthday To You" ("HBTY").

Ownership: Birch Tree is 100% owned by its chairman, David K. Sengstack (66).

Proposed Transaction: See Exhibit #1.

THE COMPANY

HISTORY

Birch Tree Group Ltd. currently operates principally as an international publisher and distributor of educational music, music instruction methods and books about music. The Company controls over 50,000 copyrights of which only 1,700 to 1,800 are currently active. The Company also distributes the unique Folkways Record catalog for the Smithsonian Institution.

BTG has, through a series of predecessor companies, operated continuously since 1931 when John F. Sengstack, an accountant, purchased and reorganized Clayton F. Summy Co., a Chicago sheet music retailer and publisher. In 1956, the company changed its name to Summy-Birchard Publishing Company to reflect the purchase of C.C. Birchard & Company, and in 1961, after the acquisition of magazine and concert businesses, the company name was changed to Summy-Birchard Company. John F. Sengstack remained president until 1958, when he was succeeded by his son, David K. Sengstack, the present chairman.

During the 1950's and 1960's, the Company acquired a number of additional publishing companies: Creative Music Publishers, 1953 (Piano instruction method); Southwestern Music Publishers, 1957 (Band); C.C. Birchard & Co., 1957 (20th century American composers, school music textbooks, choral and instrumental music); Chart Music Publishing House, 1960 (School instrumental music); Arthur P. Schmidt Co., 1960 (20th century American composers and piano teaching music); James Allan Dash & Company (formerly Baltimore Music Co.), 1961 (Choral music) and Traficante Music Publishing Company, 1969 (Accordion music). Each of these companies had an area of specialization which added breadth and depth to Summy-Birchard.

A.P. Schmidt Co., a Delaware Corporation, was created in 1968 as a wholly-owned subsidiary of Summy-Birchard to hold the copyrights of the above-mentioned companies

(with the exception of Summy and Birchard) and affiliated with SESAC, Inc. (formerly Society of European Stage Authors and Composers), a privately owned rights company. In 1972, the copyrights of McLaughlin & Reilly Company (principally Catholic choral and organ music) were assigned to A.P. Schmidt Company.

In 1958, Summy-Birchard founded a magazine, *The Piano Teacher*, which existed for nine years. The magazine was the outgrowth of bulletins and pamphlets included with the Summy Subscription Service through which piano teachers could receive new issues on a regular, low-cost basis.

In 1961, Summy-Birchard Company further expanded into magazine publishing and entered the concert business with the purchase of Musical Courier, Inc., National Concert and Artists Corporation ("NCAC") and Civic Concert Service. The magazine was sold in 1964 while NCAC and Civic Concert Service were liquidated in 1971.

Acquisitions in the 1970's included Educational Music Bureau and Don Sellers, Inc. Educational Music Bureau was a Chicago supplier of school music and merchandise, while Don Sellers, Inc., was formed by Don Sellers in 1955 to market his recorded self-teaching piano and organ courses.

In 1982 BTG established a wholly-owned, Japanese subsidiary, Summy Music K.K., to enhance the Company's ability to promote its catalog of rights and publications in Japan as well as develop an independent catalog of Japanese rights and publications.

Recently, the Company entered into an agreement for the sole distribution rights to the 2,100 title Folkways Records catalog (in cooperation with the Smithsonian Institution), which includes a large collection of recordings for children.

The Company's principal office is at 180 Alexander Street, Princeton, New Jersey 08540 (609-683-0090).