

EXHIBIT 95

[App'x at 5:1084-94, Dkt. 191-1]

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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 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 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

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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.

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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*.

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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.

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

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.

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1 Subject to and without waiving those objections, Warner/Chappell
2 responds as follows: Warner/Chappell will produce responsive, non-privileged
3 documents, if any, following a search of reasonable diligence.
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5 DATED: March 21, 2014

MUNGER, TOLLES & OLSON LLP

6 By: /s/ Kelly M. Klaus

7 KELLY M. KLAUS

8 *Attorneys for Defendants Warner/Chappell*
9 *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:

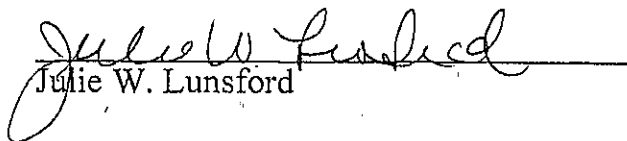
**** SEE ATTACHED SERVICE LIST ****

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

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