

# Exhibit 1

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# All the 'Happy Birthday' song copyright claims are invalid, federal judge rules



By **Christine Mai-Duc** · Contact Reporter

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**N**one of the companies that have collected royalties on the "Happy Birthday" song for the past 80 years held a valid copyright claim to one of the most popular songs in history, a federal judge in Los Angeles ruled on Tuesday.

In a stunning reversal of decades of copyright claims, the judge ruled that Warner/Chappell never had the right to charge for the use of the "Happy Birthday To You" song. Warner had been enforcing a copyright since 1988, when it bought Birch Tree Group, the successor to Clayton F. Summy Co., which claimed the original disputed copyright.

Judge George H. King ruled that a copyright filed by the Summy Co. in 1935 granted only the rights to specific piano arrangements of the music, not the actual song.

## **PREVIOUSLY: Happy Birthday to whom? A simple song with a complex history**

*Article continues below* ↓

"'Happy Birthday' is finally free after 80 years," said Randall Newman, an attorney for the plaintiffs in the suit, which included a group of filmmakers who are producing a documentary about the song. "Finally, the charade is over. It's unbelievable."

A spokesman for Warner/Chappell, the publishing arm of Warner Music, said, "We are looking at the court's lengthy opinion and considering our options."

The plaintiffs' attorneys had characterized the years-long legal fight as a David vs. Goliath battle that pitted independent filmmakers against a large corporation collecting profits on a song whose authors had long since died.

Until now, Warner has asked for royalties from anyone who wanted to sing or play "Happy Birthday to You" -- with the lyrics -- as part of a profit-making enterprise. Royalties were most often collected from stage productions, television shows, movies or greeting cards. But even those who wanted to sing the song publicly as part of a business, say a restaurant owner giving out free birthday cake to patrons,

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technically had to pay to use the song, prompting creative renditions at chain eateries trying to avoid paying royalties.

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The fact that the birthday tune can't be played or sung without permission from Warner has been little more than a surprising piece of trivia for most, but for Warner Music Group, it has meant big business. Two of the filmmaker plaintiffs paid \$1,500 and \$3,000 for the rights to use the song, their attorneys said. Filmmaker Steve James paid Warner \$5,000 to use the song in his 1994 documentary "Hoop Dreams."

"It was quite expensive for us at that time and with our budget. And we only used it for 9 seconds," James wrote in an email passed along by his publicist. James said the scene was "essential" to the film and ultimately decided to pay up.

At a March hearing in the case, records show, a Warner/Chappell representative seated in the audience told the judge that the company collects as much as "six figures" for certain single uses of the song. The song brings in about \$2 million a year in royalties for Warner, according to some estimates.

The complex saga of the eight-note ditty has spanned more than 120 years, withstanding two world wars and several eras of copyright law. The song has seen the rise and fall of vinyl records, cassette tapes, CDs and now, the era of digital streaming music.

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### **FOR THE RECORD**

**Sept. 23, 2:18 p.m.:** An earlier version of this article said "Happy Birthday" is a six-note song. It is actually an eight-note song.

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The story began in 1893, with a Kentucky schoolteacher and her older sister. Patty Smith Hill and Mildred J. Hill wrote the song for Patty's kindergarten students, titling it "Good Morning To All." The original lyrics Patty wrote were: "Good morning to you / Good morning to you / Good morning, dear children / Good morning to all."

Patty later said that she had worked with her sister to compose a simple melody to match the words that could be easily sung by young children.

The sisters published the song in a book called "Song Stories for the Kindergarten," and assigned the copyright to their publisher, Clayton F. Summy Co., in exchange for a cut of the sales.

That was only the beginning of the tangled web of copyright law various attorneys have argued may or may not apply to one of the world's most famous songs.

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Warner and the plaintiffs both agreed that the melody of the familiar song, first written as "Good Morning To All," had entered the public domain decades ago. But Warner claimed it still owned the rights to the "Happy Birthday" lyrics, leaning on the 1935 copyright claim.

At various turns in the case, attorneys argued over whether the Hill sisters had actually written the song, whether they had "abandoned" their rights to what became the "Happy Birthday" tune and even whether Patty Smith Hill had been accurately quoted in a 1935 Time magazine article about the song.

It is not entirely clear, the judge ruled, that the Hill sisters wrote the lyrics for "Happy Birthday To You." But either way, they never asserted a copyright claim for the lyrics, even though they sued for the rights to the original melody.

Ultimately, the judge ruled that no evidence existed that the Summy Co. -- the original company to assert a copyright claim -- ever legally obtained the rights to the "Happy Birthday To You" song from whomever wrote it.

Tuesday's ruling means that the song is now considered a public work and is free for everyone to use without fear of having to pay for it, according to a statement from the plaintiffs' attorneys.

Jennifer Nelson, one of the filmmaker plaintiffs and owner of Good Morning to You productions, called the decision a "great victory for musicians, artists and people around the world who have waited decades for this."

Robert Brauneis, a George Washington University law professor who has extensively researched the copyright history of the song, says the ruling does not explicitly place "Happy Birthday To You" in the public domain.

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"It does leave open some questions," Brauneis said Tuesday night. "If [the Hill sisters] didn't convey the rights to Summy Co., then is there someone else that might still own them?"

With Mildred Hill dead for nearly a century now, Brauneis said, "Figuring out who owned [the rights] at this point would be quite an interesting job."

The plaintiff's attorneys have said that they will move to qualify the lawsuit as a class-action in an effort to recoup millions of dollars in licensing fees Warner/Chappell has collected on the tune over the years.

**Mark C. Rifkin, one of Nelson's attorneys, said the plaintiffs will pursue Warner for royalties paid since "at least" 1988, and could also ask the company to repay royalties that have been collected all the way**

back to 1935. It's not clear how much money that could entail.

A third of the profits from licensing the song still go to a designated charity of the Hill family, the Association for Childhood Education International, which promotes global education efforts for children and the professional growth of educators. The association's 2012 nonprofit tax return, the most recent available, indicates it received \$754,108 in royalties.

Warner could still appeal King's decision, but it will have to ask the judge to permit an appeal to go forward. The company has not indicated that it will do so.

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## UPDATE

**8:00 p.m.** Updated with a response from Warner and more details.

**6:00 p.m.** Updated with background on the case.

This story was originally published at 5:04 p.m.

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