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**MA Music Industry Entrepreneurship
Legal & Business Affairs – Case Study**

Good Morning to You Productions Corp. & Rupa Marya V. Warner/Chappell Music Inc. 2013 - 2016

This putative class action lawsuit was initially brought to Warner Chappell by Good Morning to You Productions (GMTY) in the Southern District of New York. Later, the case was combined with a similar lawsuit by Rupa Marya, filed in the Central District of California. The case was focussed on the copyright ownership of the “Happy Birthday to You” song, where Warner/Chappell had claimed exclusive ownership of the rights, GMTY and Marya argued that the song was in the public domain and Warner/Chappell had no right to charge licensing fees. The case attracted significant attention in the media as the public were largely unaware that the song was owned and monetised by a corporation that was “collecting about \$5,000 per day in royalties on the song” (Brauneis, 2010) and was also claimed to be “the most profitable song ever” (Masnick, 2013).

The pretext to this case starts with filmmaker Jennifer Nelson who was producing a documentary about the song. After discovering that Warner/Chappell “claimed exclusive copyright ownership to *Happy Birthday to You*”, she would have to pay “the sum of \$1,500 and enter into a synchronization license agreement” in order to feature the song in her film (Good Morning to You Productions et al, 2013). In March 2013, Nelson did pay the licensing fee to go ahead with her documentary. A couple of months later, in June 2013, Marya recorded *Happy Birthday* as part of a live album that she released. She later discovered that Warner/Chappell “claimed exclusive copyright ownership” and she paid them “\$455 for a mechanical license for the reproduction and distribution of 5,000 albums” (Marya, 2013).

In copyright law, both the music and lyrics to a song are “copyrightable elements” which are “protected against infringement independently” (Marya, 2015). In this case, Warner/Chappell were only claiming to have copyright ownership of the lyrics, as “both Parties agree that the Happy Birthday melody was borrowed from Good Morning and entered the public domain a long time ago. The Parties disagree only about the status of the Happy Birthday lyrics” (Marya, 2015). Whilst Warner/Chappell has claimed ownership of this copyright since 1998 and have financially exploited the works from that time.

Case Definition

The case brought forward in this instance was a Putative Class Action lawsuit. This is defined as “a lawsuit based on a hypothetical class of people defined in the lawsuit the initial plaintiff asks to represent” (Sewell, 2015). This is because it’s clear that Nelson wouldn’t have been the only entity affected, however it would be incredibly difficult to find out who these people are and contact them; ““Plaintiff believes that the Class includes thousands of persons or entities who are widely geographically disbursed” (GMTY et al, 2013). The class that GMTY decided to represent is outlined in the Class Action Complaint:

“All persons or entities (excluding Warner/Chappell’s directors, officers, employees, and affiliates) who entered into a license with Warner/Chappell or paid Warner/Chappell, directly or indirectly through its agents, a licensing fee for the

song *Happy Birthday to You* at any time from June 13, 2009, until Warner/Chappell's conduct as alleged herein has ceased." (GMTY et al, 2013)

By representing everyone else who have experienced the same issue, the lawsuit has much more significance and a wider reach, as it prevents Warner/Chappell from merely refunding Nelson's money. Instead, they would be liable for every other licensing fee from the song in the timeframe listed above.

Lawsuit and Result

The claim presented by GMTY and Marya was submitted with the intention to "declare invalid the copyright that defendant Warner/Chappell claims to own to the world's most popular song, *Happy Birthday to You*", to show the song is "in the public domain, and to return millions of dollars of unlawful licensing fees collected by defendant Warner/Chappell pursuant to its wrongful assertion of copyright ownership of the song." (Marya, 2015)

Warner/Chappell's defence gives a timeline of events that traces the ownership of the song from the assumed original author of lyrics, Patty Hill, who passed them on to Summy Co, which was later acquired by Warner/Chappell:

"Defendants contend, in brief, that the Hill sisters authored the lyrics to Happy Birthday around the turn of the last century, held onto the common law rights for several decades, and then transferred them to Summy Co., which published and registered them for a federal copyright in 1935." (Marya, 2015)

In contrast, the "Plaintiffs challenge nearly every aspect of this narrative" and assert that Hill may not have been the original author, Hill may have abandoned her ownership claim and Summy Co. may not have acquired the rights from Hill in the first place (Marya, 2015).

In deciding where the burden of proof lies in this case, the court initially noted that "there is no reason to relieve the alleged owners of the intellectual property of the usual burden of proof just because they are nominally the defendants" which would have meant that Warner/Chappell would have to prove beyond doubt that they were the rightful copyright owners to the song lyrics. However, the defendants had a registration certificate in their possession, which they alleged to be evidence that the rights were transferred to Summy Co. This allowed them to argue that they should have a "Presumption of Validity" and transfer the burden of proof to the plaintiffs:

"Once a claimant shows that she has a certificate of registration, the burden of proof shifts to the opposing party who "offer some evidence or proof to dispute or deny the [claimant's] prima facie case."" (Marya, 2016)

The court found issue with this argument because the author on the certificate is listed as Preston Ware Orem and does not mention either of the Hill sisters. In addition, it is not clear

whether the song lyrics are included in this registration as the main body of work is a piano arrangement.

The Plaintiffs' case was built on these main arguments:

1. There are several publications of the song's words that do not credit Patty Hill as the author. Defendants must be able to give evidence that she was the original author.
2. Patty Hill had abandoned her ownership claim to the lyrics. A suggestion of this was presented in an interview she had with TIME magazine.
3. Summy Co. never obtained the rights for the song from Patty Hill.

Firstly, Warner/Chappell's assertion that Patty Hill was the author of *Happy Birthday* was based on a testimony that she gave, where she claimed to have written the lyrics. However, the court found that this testimony "would not be sufficient" and the Plaintiffs had raised "genuine issues of material fact" (Marya, 2015). As the defendants did not have any further evidence of authorship, they could not prove that Hill was the original author.

Secondly, the argument that Hill had abandoned her ownership claim was based solely on a published interview with TIME magazine about the songs, where the writer stated:

"Patty Hill, who will share in the damages, if any, had no complaint to make on the use of the words because she long ago resigned herself to the fact that her ditty had become common property of the nation." (Marya, 2015)

In researching the songs authorship, Robert Brauneis takes particular issue with this interview being taken as abandonment: "Since this doesn't even pretend to be a direct quote, its evidentiary value is limited, and, in any event, Patty Hill was not the sole owner of copyright" (Brauneis, 2010). The court agreed with this lack of reliability, stating that the phrase was vague and that the journalist could have been paraphrasing.

Finally, the argument that Summy Co. did not acquire the rights from the song was based on the lack of clarity in the transfer of rights. The Defendant's claim to ownership came from a legal procedure that passed the rights of the song's melody to Summy Co. and argued that the lyrics were also included. However, this was not clear in the procedure and the court ruled that "The Defendants cannot even point to evidence showing that the Hill sisters transferred their rights in the lyrics to the Hill Foundation, such that the Hill Foundation could, in turn, legitimately transfer them to Summy Co." (Marya, 2015). This detail was the deciding factor in the ruling – as there is no indication that Summy Co. ever acquired the rights to the song themselves, Warner/Chappell's claim to ownership is therefore invalid. The court ruled in the Plaintiffs' favour and The Final Order and Judgement for the case states that "The Court hereby declares that, as of the Final Settlement Date, the Song entitled *Happy Birthday to You!* will be in the public domain." (GMTY, 2016)

After this judgement, Warner/Chappell settled the case for \$14m which “will be distributed among those who paid licensing fees for the song back to 1949” (Chung, 2016) and it’s also apparent that, through a settlement, Warner/Chappell “avoid the demand that it should be punished for collecting licensing money for many decades” (Gardener, 2016). This is sensible damage limitation as it seems unlikely they would be able to prove ownership in any form of appeal process. If the case was to then escalate into a prosecution of Warner/Chappell for fraudulently exploiting a work that they don’t own, the costs of penalty would push the price much higher.

Implications on Music Industry

An element of copyright law that could relate quite closely to this case is the idea of “Fair Use” of copyrighted works, particularly in the context of the Digital Millennium Copyright Act (Copyright Office, 1998). In 1998, Tom Bell predicted the rise of “Automated Rights Management” in the new digital era that may be implemented in a way that “may limit copyright's fair use defence” (Bell, 1998). Whilst his prediction hasn’t quite come to fruition yet, it is clear that the automation of rights collection is still very much a possibility and is seen as an ideal in the music industry. With this new environment of rights management, Bell expects that: “In the place of fair use, a reciprocal quasi-compulsory license will likely come to define rights to expressive works in the digital intermedia” (Bell, 1998). By making it easier for people to pay for licences to use copyrighted works, it’s possible that the concept of using a work for free will be phased out.

An argument could be made that the length of copyright is becoming too long and that works are too easily passed on from party to party. The primary purpose of copyright is to allow content creators to financially exploit their works and this purpose is not being fulfilled in situations where a corporation is able to make \$2m a year from a work created in the 1890’s at the latest. Neither the content creator, nor their extended family are benefitting from its copyrighted status. Whilst it is fair for Warner/Chappell to fight for the revenue stream that they deemed to own under current law, the lack of wider benefit should be considered. On the other hand, if the law was to be changed in order to prevent corporations from monetising works after an artist has died, this would significantly compromise any artist who wants to sell the rights to their content for a lump sum. The value of these rights would be much less if a business was prevented from exploiting them and it could even cause a conflict with the need to avoid restraint of trade.

The *Happy Birthday* case may set some form of precedent to other similar cases in the future. It’s likely that many labels and publishers are monetising old copyrights that have complicated histories. Because this case put the burden of proof onto the Defendants claiming to own the copyright, any new lawsuits will likely do the same. This means that these copyright owners will have to have a stringent approach to their record keeping in order to prove beyond doubt that they are the genuine owners of any rights. A recent example of a related case comes from the same law firm that represented GMTY, who are now questioning the validity of Woody Guthrie’s authorship claim of *This Land is Our Land* from 1940. With this, they are contesting Ludlow Music’s claim to ownership of this copyright and arguing that it should be in the public domain (Lizerbram, 2016). Similarly,

another case involving Ludlow Music has recently concluded that the first verse of a song, *We Shall Overcome* is in the public domain (Mullin, 2017).

It appears that these cases will keep coming when there is any element of doubt to copyright ownership, and it seems like they will continue to be seen as moral victories. Much of the media coverage of these lawsuits presents a David vs Goliath narrative where the struggling artist manages to defeat a greedy corporation. However, as it stands, the environment as a whole is flawed because it allows parties to financially benefit from copyright ownership that is assumed to be correct until challenged by an official lawsuit. If the Music Industry is going to have a fair approach to copyright ownership, parties should have to provide a significant amount of evidence of ownership to any works to eliminate any doubt before financially benefitting from these works.

Conclusion

From the perspective of Warner/Chappell, the continuous business decision to monetise the intellectual property that they had assumed to own is understandable, considering the amount of revenue it had been generating for the company. It could be argued that they should have considered this a risky or temporary revenue stream, considering how prominent it is in the public already.

The complexities of providing proof of ownership, alongside proof of authorship, is particularly difficult when dealing with works that have been around for a long time and been owned by several different entities. The *Happy Birthday* lawsuit will likely provide motivation for further lawsuits filed by people unhappy with paying licence fees for various reasons. In order to avoid regular lawsuits of this nature, copyright law could be altered to force corporations claiming copyright ownership to prove beyond doubt that they are entitled to financial exploitation of those works. Considering the fact that Warner/Chappell had to return all of its revenue from *Happy Birthday*, this sort of system would save time and money on all sides.

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