



Happy Birthday To You Let Loose

There are so many grey areas in Copyright Law that the publishing industry looks like a lint trap. Nonetheless, Federal Judge George H. King, whose birthday, ironically, I could not find on the web, ruled on September 22, 2015, that the song **Happy Birthday To You** is not protected under the copyright claimed for years by Warner/Chappell Music. Warner/Chappell has been charging great sums for the use of the song, some estimate at \$5,000 per day or 2 million dollars per year. Whether they have to attempt to pay some or all of this back will be in the court for years, I would guess.

Though many sources are saying that this ruling puts **Happy Birthday To You** in the Public Domain, technically that's not quite what it does. It just says that the people claiming copyright, Warner/Chappell, don't own a copyright on it after all. No one in the world has entered into the picture with another claim for the copyright though, so for all practical purposes, so far the song can be assumed to be in the Public Domain.

You can tell by my phrasing ("*not quite*," "*for all practical purposes*," "*so far*") what I mean about grey areas. As is stated on the **Public Domain Information Project** web pages (www.pdinfo.com), "*There is no "official" list of public domain property because something becomes public domain due to the absence of any law giving anyone claim to ownership. In effect, if no one on this entire planet can find any law which gives them legal claim to a property, then that property is in the public domain.*" (Let's hope I'm not in legal trouble by quoting so much from someone's copyrighted website. I doubt the Public Domain Project's website is in the Public Domain).

But as the years roll by and by and by, eventually even the most liberal of copyright protections eventually slough off from all songs, leaving them

up for grabs to anyone looking for royalty-free material.

Regarding **Happy Birthday To You**, that means it most likely (!) can be performed, recorded, reprinted, or otherwise reproduced with no royalties owed anyone. It probably can be used in films, played on the radio, used in Chevrolet commercials, quoted in its entirety in books, plastered on billboards, skywritten, carved into asphalt blocks and sold as a paperweight, printed on windbreakers, all perfectly legally, with no fees. (Note that this does NOT mean you can use a recording of Madonna singing the song for free in your next movie, because this is all about the song itself, not the sound recording of it. Sound recordings have their own separate copyright).

This ALSO means that I'm pretty sure the Girl Scouts no longer need to fear the long arm of the Performing Rights Organizations when singing this song. ASCAP scoundrels made the news back in 1995 for coming down hard on the Girl Scouts for the dastardly crime of singing **Happy Birthday To You** around the campfire without a license, if you remember. That genius maneuver cost ASCAP a good number of Brownie points but brought the whole complicated issue of copyright protection of songs very much into the news. And that was good.

Incidentally, this new ruling also means that "*derivative works*" based on the song are as of now allowed without danger of the author being hauled off into solitary confinement without any s'mores. Girl Scout examples: "*Happy birthday to you, I went out to the zoo, I saw a great monkey, And he looked just like you,*" and "*Happy birthday to you, Squashed tomatoes in stew, You look like a monkey, And you smell like one too.*" (Derivative works of a copyrighted song, unless they can be classified as "true parodies," fall under the protection of the copyright.)

The legal history of Happy Birthday To You is long and complicated. The song uses the melody of a song called **Good Morning To All**, which was written by two sisters, Mildred J. Hill (birthday June 27) and Patty Hill (birthday March 27) sometime prior to

1893. An appearance in print of the Happy Birthday lyrics, together with the well known melody, appeared in 1912, but whether the Hill Sisters wrote the words is debated. Through a confusion of mergers and acquisitions and court cases down through the years, Warner/Chappell ended up claiming ownership of the copyright, and collected somewhere near \$50,000,000 in royalties from uses of the song. Apparently they only owned a few piano arrangements of it, as it turns out. The history of this copyright hassle is long but interesting, and as with so many things of this nature, Wikipedia is a good place to start:

en.wikipedia.org/wiki/Happy_Birthday_to_You

One ironic result of this particular copyright being so tightly defended has been the proliferation of other birthday songs, created to be used in place of **Happy Birthday To You** to avoid the royalty costs. The BMI database has a listing of 1,159 entries with "Birthday" in the title, and that's just BMI. Copyright Law exists ostensibly to foster creativity in various ways, and maybe this outpouring of alternate titles is proof that sometimes it works. Here are just a few:

Birthday Berserka Mazurka
Birthday Big Butt
Birthday Boogaloo
Birthday Bounce
Birthday Bug
Birthday Cake Angry
Birthday Cake City
Birthday Cake Polka
Birthday Cake Wasted
Birthday Closing
Birthday Clown
Birthday Coat
Birthday Complaint
Birthday Daze
Birthday Envelope
Birthday In A Bearsuit
Birthday In Prison
Birthday Knife
Birthday Moths
Birthday Party Button
Birthday Party for a Mermaid
Birthday Pony
Birthday Portmanteau
Birthday Sex
Birthday Truck Song
Birthdays Are So Obnoxious

Happy Birthday y'all! Everybody, *sing!*