

“Happy Birthday, Screw You”

“Happy Birthday to You,” shared in everyday rituals in Western societies, is certainly among the three most sung songs in the English language, but it is a privately owned cultural text.⁵⁴ It is widely perceived to be in the public domain and is sung in many different languages throughout the world, but its copyright is strictly enforced by Warner-Chappell, a subsidiary of AOL/Time-Warner, which currently holds worldwide rights to the song (with the exception of Japan).⁵⁵

During most of the twentieth century, singing “Happy Birthday to You” in any kind of public venue without paying royalties and gaining permission is a violation of copyright law, and there are agents employed by song publishing firms that “scour the U.S.A., popping up unexpectedly in restaurants, nightclubs, bars and even summer camps, looking for lawbreakers.”⁵⁶ Restaurants whose servers sing “Happy Birthday to You” must buy a permit from ASCAP and, consequently, many chain restaurants do not allow the song to be sung on the premises. Other establishments like ShowBiz Pizza Place and Bennigan’s have their own versions of the birthday song to avoid costly licensing fees or potential lawsuits.⁵⁷

Repeated requests for information about the song from the current copyright holder, Warner-Chappell Music, Inc., went unanswered. Finally, Don Biederman—an Executive Vice President of the company—informed me in a faxed letter that although the company maintains “files concerning HBTY in various departments of our company,” he could not provide me with any information on “Happy Birthday to You” because “we regard this information as proprietary and confidential.”⁵⁸ Furthermore, I was refused permission to quote the song’s brief lyrics within a chapter that was even remotely critical of the song’s history. This is important because it provides another illustration of the restrictions placed on the use of cultural texts when they enter into privatized legal and economic relations.

In this case, the song’s history is obscured by the legal and administrative rules that surround the use of these privately owned cultural texts. The federal Copyright Law of 1976 defines an event as “public perfor-

mance” if it occurs “at a place open to the public, or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered.”⁵⁹ If the song is sung at school, summer camp, a restaurant, or the like, the performers or the establishments are liable under the law.

The birthday song, as it is currently known, was formally copyrighted in 1935 by two schoolteacher sisters, Mildred and Patty Hill and, according to Patty’s nephew, it was done so as a joke.⁶⁰ Whether or not it was originally conceived of as a joke, it was taken very seriously and the Hills’ publisher frequently brought suit against people or businesses that violated copyright law by performing it publicly—in most cases as a result of those people mistakenly believing it was a children’s song in the public domain.⁶¹

One person who was most likely very well acquainted with royalty payments and copyright law is the popular music composer Irving Berlin. In his 1934 Broadway play *As Thousands Cheer*, the actors sang the lines “Happy Birthday to You” in a scene celebrating John D. Rockefeller’s birthday. Although the lyrics of “Happy Birthday to You” had not yet been copyrighted, the Hills’ publishing firm, Clayton Sammy Company, nevertheless claimed that the use of the song in the play was an infringement on the melody of “Good Morning to You.”⁶² The unauthorized usage of the song that celebrated the birthday of John D. Rockefeller was in all probability very innocent, but as was the case with later lawsuits against other infringers, that fact did not cease the lawsuit against Berlin.

The producers of another Broadway show (*Angel on the Wings*) that also used the tune at the beginning of its run had the show’s composer write a new melody to avoid paying royalties for “Happy Birthday to You.” Similarly, the authors of *The Male Animal* and *Panama Hattie* were also involved in litigation over the unauthorized use of the song.⁶³ A later Broadway play, *The Gin Game*, did not properly credit the song in its program at the beginning of its run in the 1970s. After a “polite yet firm” letter was sent by the song’s then-current copyright owners, Sammy-Birchard Music, a fee of \$25 per performance was paid.⁶⁴

In 1986, classical music humor musician P.D.Q. Bach avoided using any strains of “Happy Birthday to You” in a public performance of a birthday ode to his father, for fear of violating the song’s copyright. Instead, he based his piece on a traditional German birthday song to avoid a lawsuit.⁶⁵ Some composers of “serious music” have also unknowingly infringed on the song’s copyright, such as Stravinsky, who met with trouble when he cited a few bars of “Happy Birthday to You” in one his symphonic

fanfares.⁶⁶ In another case, Roy Harris used part of the song in his work "Symphonic Dedication," which honored the birthday of a famous American composer, Howard Hanson.⁶⁷ *Variety* reporter David Ewen stated, "Keeping the occasion in mind, Harris brought his composition to a climax with a modern treatment of 'Happy Birthday.' After Harris' piece had been introduced by the Boston Symphony he was compelled by the copyright owners to delete the 'Happy Birthday' passage from his score."⁶⁸

Postal Telegraph, a company that began the practice of using "Happy Birthday to You" for singing telegrams in 1938, found itself trading in copyright infringement waters, as did Western Union.⁶⁹ The birthday song had been sung upwards of an estimated million and a half times during the early 1940s by telegram delivery persons. Western Union career man M. J. Rivise stated, "From 1938 to 1942, most of our singing telegrams were birthday greetings, and 'Happy Birthday to You' was the cake-taker."⁷⁰ Postal Telegraph had apparently gained permission from ASCAP to use "Happy Birthday to You" without paying royalties, but in 1941 ASCAP demanded a payment proportionate to the amount the song was sung. Western Union and Postal Telegraph refused and commissioned birthday songs based on the public domain melodies of "Yankee Doodle" and "Mary Had a Little Lamb."⁷¹

These versions failed to catch the public's fancy, and by 1950 the singing of "Happy Birthday to You" resumed, apparently with the licensing problem sorted out. One of the most striking features of the song's evolution was the speed at which "Happy Birthday to You" was established as a folk song in the public mind—no more than 40 years after it was written, a very conservative estimate. This time frame is especially interesting because Hawes and other folk music authorities have documented that traditional folk song ballads can take centuries to become ensconced. The "Happy Birthday to You" singing telegrams and the number of times the song was apparently sung by telegraph company employees most certainly contributed to the song's institutionalization.⁷²

There have been many instances in which the song's copyright owners have objected to unauthorized usage, including the lingerie manufacturer Frederick's of Hollywood advertising underwear that played "Happy Birthday to You" (perhaps the copyright owners should have, instead, protested for reasons of taste).⁷³ By the 1980s, it had become common knowledge in commercial sectors that the song was copyrighted and currently, more often than not, approval is sought and royalties are paid.

In the case of the watch manufacturer Casio, in the 1980s the company paid one cent for every watch that was sold that played the tune of

"Happy Birthday to You" on the owner's birthday.⁷⁴ The entertainment industry is also well aware of the song's copyright, routinely paying royalties when the song is used in movies.⁷⁵ Over time, the various owners of the song's copyright have gone to great lengths to protect their intellectual property. One lawyer at Sammy-Birchard Music even wanted to redress Congress for singing "Happy Birthday to You" to President Reagan after a televised State of the Union address.⁷⁶

In 1988, Birch Tree Group, Ltd. sold "Happy Birthday to You" (and its other assets) to Warner Communications (which later became AOL/Time-Warner) for \$25 million. In explaining why they sold it, the owners of Birchtree told the *Chicago Tribune* that it is hard for a smaller company to monitor the usage of "Happy Birthday to You" and that "a major music firm could better protect the copyright during its final 22 years."⁷⁷ The copyright was set to run out in the year 2010, but, in 1998, Congress extended copyright protection for another 20 years.⁷⁸ The massive media companies that have taken shape after two decades of mega mergers allow these companies not only greater access to revenues, but because of their size, strengthened policing as well. At the turn of the twentieth century, AOL/Time-Warner continued to collect royalties for the performance of the song in any public setting; it aggressively guards its investment and will continue to do so until 2030.⁷⁹

Copyright law attempts to shut down intertextuality by trying to define where one text begins and another ends, and this is true of the way copyright treats the folk-song production method. In the case of "Happy Birthday to You," although it is not a folk song that dates back to the nineteenth or eighteenth centuries, the *evolution* of the song appears to be very deeply entrenched in the folk music-making tradition. "Happy Birthday to You" was based on a melody that floated around for years before it developed into its copyrighted arrangement, changing in form as different performers and composers made their personal contributions to the song.

The melody was composed by Mildred J. Hill and her sister Patty, and was published in 1893 within their book *Song Stories for the Kindergarten* as "Good Morning to All."⁸⁰ Children liked the song so much that they began singing it at birthday parties, changing the words to "Happy Birthday to You," a spontaneous form of lyrical parody or alteration that is common to the folk-song creation process.⁸¹ This song's origin, however, dates back beyond the Hill sisters' version; for instance, a very similar song was published by Horace Waters in 1858 as "Happy Greetings to All."⁸² "Happy Birthday to You" also bears a substantial similarity to two

other previously published songs, "A Happy New Year" and "A Happy Greeting to All."⁸³

Hawes argues that the story of "Happy Birthday to You" follows a classic pattern:

The Misses Hill . . . wrote a little song for little children; their work was so successful that it was, in essence, taken from them to become the anonymous property of the people, the public voice—the "folk," if you like. But in a society which is based very profoundly on the concept of private ownership, it becomes extremely difficult for the public to hang onto any kind of common property, whether it be a parkland or a song. And so "Happy Birthday to You" was taken back again, not so much by its authors as by the whole network of middlemen dedicated to the control and distribution of cultural works.⁸⁴

The manner in which copyright is used within contemporary music and culture industries leaves little room for building music from previously existing elements. This is especially ironic in the case of "Happy Birthday to You" because the song itself has no single "original" author who crafted the melody on his or her own. Even though the song evolved over a number of years, with numerous people contributing to the existence of the song as it is currently known, copyright law draws a border around the song, prohibiting its use in varying adaptations such as the works of Stravinsky or Roy Harris, among others.