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Wish the public domain a very 'Happy Birthday'

Mom walks into the room, where everybody shouts "Happy Birthday!" What do you do next? You license the Happy Birthday song from Warner Chappell of course. **Matthew B. Wenzlau | The Wenzlau Law Group, PLLC**



Wish the public domain a very 'Happy Birthday'

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[Matthew Wenzlau](#)

The Wenzlau Law  
Group, PLLC

Imagine, if you will, preparing for your mother's 70th birthday. The cake, candles and food are ready. The guests are lined up, excited to celebrate the occasion. Mom walks into the room, where everybody shouts "Happy Birthday!" What do you do next? You license the Happy Birthday song from Warner Chappell of course. After all, Warner owns the copyright, and you wouldn't want to turn a birthday entourage into outlaws.

If that analysis doesn't work for you, another option is to invalidate the copyright owned by Warner. This was the case with *Rupa Marya v. Warner Chappell Music Inc.* (See Case No. 2:13-cv-04460-GHK-MRW).

### **The Background**

The issue in the Marya case was who owns the lyrics to the song "Happy Birthday."

The song was written sometime around or before 1893 by Mildred and Patty Hill, who also wrote a song called "Good Morning." The Good Morning song along with a similar song called "Happy Birthday" were sold to their publisher Clayton F. Summy. Summy copyrighted the songs in a book called "Song Stories for the Kindergarten," which eventually led to a 1935 federal registration of the lyrics for "Happy Birthday to You" and eventual sale to Warner in 1988. (See *Marya v. Warner* at 4, 2015).

The plaintiffs claimed the song lyrics belonged in the public domain. The defendants claimed the copyright was valid as of its filing date in 1935. The evidence submitted shows that the full lyrics for the song appeared in print by 1911, but were referenced in part by the early 1900s. Because the exact date of 1935 is questionable, the song filing was more accurately dated to sometime between the 1900s and 1920s.

Understandably, Warner sought to enforce the 1935 registration, both for its \$2+ million annual licensing fees, and because any copyright registration from 1935 was automatically extended until 2030 by the 1985 Copyright Term Extension Act.

Ultimately, the court found that the lyrics should be dated before 1935 and thus belonged in the public domain. Warner's property, if any, was limited to specific piano arrangements of the song. On the issue of whether Warner owned the lyrics to "Happy Birthday," the court noted in its conclusion: "Because Summy Co. never acquired the rights to the Happy Birthday lyrics, [Warner does] not own a valid copyright in the Happy Birthday lyrics. (See *Marya v. Warner* at 43, 2015).

### The Conclusion

Back to our introductory scenario: With the *Marya* ruling, your 70-year-old mother is no longer outlawed because of her public domain birthday theme music. There is, however, a deeper tone to this case. At what point does copyright end...I mean really end?

There seems to be a market addiction to copyright monies. Any idea of withdrawal, leads copyright owners to the steps of D.C. seeking another fix. Much like the *Blurred Lines* case of early 2015; the 1909 Copyright Act, the 1974 Copyright Act and current laws for extensions and recaptures, seemingly change the copyright landscape from a limited monopoly to a perpetual source of revenue. The original system was seemingly designed to give incentive to creators for their creative works and require payment from the public patrons for a limited period of time. We have legislated around it.

Overall, *Marya v. Warner* adds to the debate on the nature of copyright, the timing of copyright, and who owns the rights. Happy Birthday to the public domain.

*Matthew B. Wenzlau (JD, MBA) is the founder of The Wenzlau Law Group, PLLC. For over 15 years, he has concentrated in entertainment law, including motion pictures, television law, e-commerce, television, and music law. He represents clients in private disputes, arbitrations, and negotiations involving entertainment-related matters. Wenzlau serves on numerous entertainment committees on topics, including motion pictures, television, broadcasting, e-commerce and music. He is a graduate of the Regent University School of Law (JD) and received his Master's of Business Administration (MBA) from Arizona State University. He is a member of the Arizona Bar and the Tennessee Bar, as well as being admitted to practice before the United States Tax Court. ?*

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