

## Federal Court Narrows Claims Surrounding “HAPPY BIRTHDAY TO YOU” Copyright Suit

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Following up on a [previous post](#) regarding the lawsuit winding its way through federal court seeking clarity on whether the music publisher [Warner Chappell](#) owns or has the exclusive right to license the copyright in the ubiquitous “Happy Birthday to You” song, U.S. District Judge George H. King (Central District of California) has ordered that certain tangential claims be stayed until further notice, while the case will move forward on the central claim, essentially whether Warner’s copyright in the song is valid and enforceable or not.

Judge King’s order confirms the parties’ agreement at an October 7<sup>th</sup> hearing to bifurcate (separate) the central claim from the remaining claims (seeking an injunction against Warner, and a variety of related claims such as unfair competition, false advertising, and breach of contract) at least through the summary judgment phase of the central claim. The central claim alone will proceed for the time being allowing the parties and the Court to focus on what is truly the dominating question in this case.

In his order Judge King also declined to apply a four-year statute of limitations to the central claim instead of the traditional copyright infringement three-year period. Plaintiffs claimed that unlike a traditional copyright infringement action where a plaintiff alleges a defendant infringed its copyright, this is a “declaratory judgment” action involving a copyright, that is to say one where plaintiffs are preemptively bringing suit so the Court can decide whether Warner even has rights it can assert. Basically instead of asserting its purported rights, Warner is being forced into a suit to defend its rights. Despite the procedural change however, the analysis and issues are very similar to a traditional copyright infringement action. The question Judge King has to resolve was, since the Declaratory Judgment Act (which permits this type of suit) does not contain its own statute of limitations, plaintiffs argued that the Court should instead use the four-year period applicable to California’s unfair competition claims (one of those ancillary claims Judge King stayed in this same order). Judge King declined, holding that because the Declaratory Judgment Act is merely a procedural vehicle and the substantive rights being challenged are copyright-based under the Copyright Act, the best statute of limitations period is not California’s four-year period, but rather the Copyright Act’s three-year period. He therefore dismissed two plaintiffs whose claims were time-barred by the new shorter period and gave them three weeks to re-file if they can/chose to.

Judge King’s order is clearly going to focus the parties and the court on the central issue, whether Warner has a valid enforceable copyright in the “Happy Birthday to You” song. We will continue to

closely watch this one as it proceeds.

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