



Zack O'Malley Greenburg Forbes Staff

I cover the business of music, media & entertainment.

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Santa Claus Is Coming To Town, Perhaps To A Court Near You



Santa Claus: Making a contract, checking it twice. Or more.

Christmas is nigh—and as usual, it's bringing heaps of songwriting royalties for the owners of songs like "Santa Claus Is Coming to Town."

That jolly ditty, written by John Frederick Coots and Haven Gillespie in 1934, has been recorded by artists from Bing Crosby to [Justin Bieber](#) and continues to garner considerable airplay. Last week three different versions of the song (recordings by [Bruce Springsteen](#), Michael Bublé and the [Jackson 5](#)) landed on *Billboard's* Top 50 Holiday Songs chart. Such tunes can generate six-figure payouts, with proceeds split between the songwriters and the publishers who administer the copyrights.

“The bottom line is that Christmas songs like ‘Santa Claus Is Coming to Town’ are very good for a publisher’s bottom line,” says entertainment attorney Bernie Resnick. He notes that for some big catalogs, more than 40 of the 50 top-earning songs in the fourth quarter of every year are holiday tunes.

Despite the cheery profits, griches abound, particularly in the case of “Santa Claus Is Coming to Town.” A year ago the heirs of Fred Coots [filed](#) a motion against EMI, the publisher in charge of administering the copyright, in a [Florida](#) court. Just last week the case’s judge tossed the suit, saying it had been filed in the wrong jurisdiction. A lawyer for the plaintiffs [said](#) he was planning to re-file in [New York](#).

So what are the chances of the heirs winning their case anytime soon? About as slim as the chances of Santa fitting his big belly down a thin chimney—though it’s hard to say for sure, in part because the case is so complicated. Last year’s filing marked the latest chapter in a long history of maneuvering that began in 1934, when Coots and Gillespie assigned publishing rights to a music executive named Leo Feist.

Coots renewed the agreement multiple times in the years that followed, but in 1981 filed notice of termination before agreeing to assign rights to Feist’s successor at EMI the same year. As part of that agreement, the publisher would pay Coots’ four children \$100,000 over several years, according to [court documents](#). After Coots died in 1985, EMI continued to administer the copyright, taking a standard fee and passing along Coots’ songwriting share to his heirs.

In 2004, however, Coots’ heirs sent EMI a termination notice and two years later [hatched an agreement](#) to move the copyright to another publisher. They filed additional documents in 2007 and 2012 alleging that Coots’ 1981 agreement was invalid for a laundry list of arcane reasons. Yet EMI, which was purchased by a consortium of investors led by Sony/ATV earlier this year, still retains the copyright.

EMI has [argued](#) that the 1981 agreement is perfectly valid—and that, because Coots had already exercised his termination rights that year

before arriving at a new deal with the publisher, his heirs have no right to terminate a second time.

A representative from Sony/ATV declined to comment on the current situation, and a call to the plaintiffs' law firm wasn't immediately returned. The case's next judge may be equally eager to deal with the case.

"The statute is not always easy to understand," says Dori Hanswirth, a partner at Hogan Lovells. "Particularly with respect to the issue of copyright terminations, there is not a large body of case decisions for a court to analyze."

Hanswirth recalls working on a copyright case where the judge told her he would not grant any summary judgment motions—meaning that she would have to go all the way to a jury trial to win her case. Coots' heirs and their legal team could be headed in a similar direction.

"If the case is assigned to a judge who does not like to rule on copyright issues," says Hanswirth, "then the same thing could happen with the 'Santa Claus' case."

So if you find yourself in the midst of a family holiday squabble this week, take comfort in the fact that it's probably less complicated than the one surrounding "Santa Claus Is Coming to Town."

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