

ESTTA Tracking number: **ESTTA1214077**

Filing date: **06/08/2022**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer information

Name	Marshmello Creative LLC
Granted to date of previous extension	06/08/2022
Address	9595 WILSHIRE BLVD., NO. 201 BEVERLY HILLS, CA 90212 UNITED STATES
Attorney information	MARK D. PASSLER AKERMAN LLP 777 S. FLAGLER DRIVE SUITE 1100, WEST TOWER WEST PALM BEACH, FL 33401 UNITED STATES Primary email: ip@akerman.com 561-653-5000
Docket no.	11858-142

Applicant information

Application no.	90681952	Publication date	02/08/2022
Opposition filing date	06/08/2022	Opposition period ends	06/08/2022
Applicant	MelloWav LLC 145 CARLYLE COURT CARLSTADT, NJ 07072 UNITED STATES		

Goods/services affected by opposition

Class 041. First Use: Mar 1, 2017 First Use In Commerce: Mar 1, 2017
All goods and services in the class are opposed, namely: Entertainment services by a musical artist and producer, namely, musical composition for others and production of musical sound recordings; Music production services; Recording studio services


Grounds for opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
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Marks cited by opposer as basis for opposition


U.S. registration no.	5071319	Application date	09/21/2015
Register	Principal		

Registration date	11/01/2016	Foreign priority date	NONE
Word mark	MARSHMELLO		
Design mark			
Description of mark	NONE		
Goods/services	<p>Class 009. First use: First Use: Mar 1, 2015 First Use In Commerce: Mar 1, 2015</p> <p>Compact discs featuring music; Digital materials, namely, CD's, DVD's and downloadable files featuring music; Digital music downloadable from the Internet; Musical sound recordings; Musical video recordings; Phonograph records featuring music</p> <p>Class 041. First use: First Use: Feb 1, 2015 First Use In Commerce: Feb 1, 2015</p> <p>Disc jockey services; Entertainment in the nature of live performances by a musical artist and disc jockey; Entertainment services by a musical artist and producer, namely, musical composition for others and production of musical sound recordings; Entertainment services in the nature of live musical performances; Entertainment services, namely, personal appearances by a musical artist; Entertainment services, namely, providing information about a recording artist via an online network; Entertainment services, namely, providing non-downloadable prerecorded music, information in the field of music, and commentary and articles about music, all on-line via a global computer network; Music composition services; Production of musical videos; Providing a website featuring non-downloadable videos in the field of music</p>		

U.S. registration no.	6341818	Application date	04/02/2017
Register	Principal		
Registration date	05/04/2021	Foreign priority date	NONE
Word mark	MARSHMELLO		
Design mark			
Description of mark	NONE		
Goods/services	<p>Class 016. First use: First Use: 2020 First Use In Commerce: 2020</p> <p>Decals, posters and stickers</p>		

U.S. application no.	90004652	Application date	06/16/2020
Registration date	NONE	Foreign priority date	NONE
Word mark	MARSHMELLO		

Design mark	
Description of mark	NONE
Goods/services	Class 025. First use: First Use: Oct 28, 2015 First Use In Commerce: Oct 28, 2015 Bottoms as clothing; Caps being headwear; Hats; Hooded sweatshirts; Jackets; Knitted caps; Pants; Shirts; Socks; Sweatshirts; T-shirts; Tops as clothing

U.S. registration no.	5632144	Application date	05/01/2018
Register	Principal		
Registration date	12/18/2018	Foreign priority date	NONE
Word mark	MELLOGANG		
Design mark			
Description of mark	NONE		
Goods/services	Class 041. First use: First Use: Jan 1, 2016 First Use In Commerce: Jan 1, 2016 Fan clubs		

U.S. registration no.	5885073	Application date	04/12/2019
Register	Principal		
Registration date	10/15/2019	Foreign priority date	NONE
Word mark	MELLOGANG		

Design mark	MELLOGANG
Description of mark	NONE
Goods/services	Class 025. First use: First Use: Jan 1, 2016 First Use In Commerce: Jan 1, 2016 Bottoms as clothing; Caps being headwear; Hats; Headwear; Jackets; One-piece garments for children; Pants; Shirts; Shirts and short-sleeved shirts; Socks; Sweatshirts; Tops as clothing; Athletic pants; Hooded sweatshirts; Sports pants; T-shirts

U.S. application no.	88385796	Application date	04/15/2019
Registration date	NONE	Foreign priority date	NONE
Word mark	THE MELLO BRAND		
Design mark			
Description of mark	NONE		
Goods/services	Class 003. First use: First Use: None First Use In Commerce: None Baby wipes impregnated with cleaning preparations; Blush; Blush pencils; Body oil; Body wash; Bubble bath; Detergent soap; Eye liner; Lipstick; Lipstick cases; Lotions for face and body care; Make-up; Make-up foundations; Make-up pencils; Make-up powder; Make-up preparations; Make-up removing preparations; Perfumed powders; Perfumes, aftershaves and colognes; Perfuming sachets; Shampoo-conditioners; Shampoos; Sunscreen preparations; All-purpose cleaners; Baby lotion; Baby shampoo; Bath soaps; Body lotion; Body masks; Cosmetics and make-up; Dishwasher detergents; Dry shampoos; Eyes make-up; Face and body lotions; Facial cleansers; Facial lotion; Facial moisturizers; Fruit and vegetable wash; Hair conditioners; Hair masks; Hair shampoo; Hair care lotions; Laundry detergent; Liquid soaps for laundry; Non-medicated bubble bath preparations; Non-medicated beauty soap; Non-medicated liquid soap; Perfumed soap; Pre-moistened cosmetic wipes; Shaving lotion; Skin cleansers; Skin conditioners; Skin masks; Skin moisturizer; Skin and body topical lotions, creams and oils for cosmetic use; Sun tan lotion; Sun-block lotions; Sun-tanning oils and lotions		


U.S. application no.	88386794	Application date	04/15/2019
Registration date	NONE	Foreign priority date	NONE
Word mark	THE MELLO BRAND		
Design mark			
Description of mark	NONE		
Goods/services	Class 018. First use: First Use: None First Use In Commerce: None		

	Backpack straps; Backpacks with rollingwheels; Diaper bags; Luggage; Luggage tags; Purses; Purses and wallets; Tote bags; Umbrellas; Wallets; Bags for umbrellas; Coin purses; Duffle bags; Fitted belts for luggage; Gym bags; Key wallets; Leather credit card wallets; Leather shoulder belts; Military duffle bags, garment bags for travel, tote bags, shoulder bags and backpacks; Non-motorized, collapsible luggage carts; Overnight bags; Pouches and bags sold empty for attachment to backpacks; Straps for luggage; Travelling bags; Week-end bags; Wheeled tote bags
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U.S. application no.	88385750	Application date	04/15/2019
Registration date	NONE	Foreign priority date	NONE
Word mark	THE MELLO BRAND		
Design mark			
Description of mark	NONE		
Goods/services	Class 025. First use: First Use: None First Use In Commerce: None Bottoms as clothing; Caps being headwear; Footwear; Hats; Headwear; Jackets; One-piece garments for children; Pants; Scarves; Shirts; Shirts and short-sleeved shirts; Shoes; Slippers; Socks; Sweatshirts; Swimwear; Tops as clothing; Underwear; Athletic pants; Cloth bibs; Hooded sweatshirts; Sports pants; T-shirts		

U.S. application no.	88385851	Application date	04/15/2019
Registration date	NONE	Foreign priority date	NONE
Word mark	THE MELLO BRAND		
Design mark			
Description of mark	NONE		
Goods/services	Class 005. First use: First Use: None First Use In Commerce: None Feminine hygiene pads; Hand-sanitizing preparations; Infant formula; Tampons; Vitamins; Antibacterial cleaners; Antimicrobial hand-sanitizing preparations; Babies' swim diapers; Baby diapers; Dietary supplements for human beings and animals; Dietary and nutritional supplements; Disposable training pants; Food supplements; Homeopathic supplements; Kits comprised primarily of sanitizer gel and disinfecting wipes and also including sanitary masks, plastic gloves and hand cream used for germ prevention; Prenatal vitamins; Sanitary tampons; Vitamin supplements		

U.S. application no.	88700123	Application date	11/20/2019
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Registration date	NONE	Foreign priority date	NONE
Word mark	MELLO JR.		
Design mark			
Description of mark	NONE		
Goods/services	<p>Class 025. First use: First Use: None First Use In Commerce: None Clothing, namely, cloth bibs, booties, hats and infant wear; tops as clothing; bottoms as clothing; shirts; sweatshirts; all of the aforementioned goods to be limited to a children's programming theme</p> <p>Class 038. First use: First Use: None First Use In Commerce: None Streaming of audiovisual and multimedia content via the internet; transmission and delivery of audiovisual and multimedia content for others via the internet; video-on-demand transmission services; all of the foregoing featuring musical performances and appearances by performing artist known as Marshmello</p> <p>Class 041. First use: First Use: None First Use In Commerce: None Entertainment services in the nature of providing non-downloadable entertainment programs and content, namely, providing an ongoing television program in the field of children's entertainment, providing online interactive children's stories, providing a web site featuring non-downloadable photographic, audio, video and prose presentations featuring children's stories, children's educational music and learning activities for children, providing a website featuring non-downloadable videos featuring children's stories, children's educational music and learning activities for children, provision of non-downloadable children's films and television programs via a video-on-demand service via the internet, a global computer network, and wireless communications networks; Interactive educational and entertainment services, namely, providing a web site featuring non-downloadable photographic, audio, video and prose presentations featuring children's stories, children's educational music and learning activities for children, providing a website featuring non-downloadable videos featuring children's stories, children's educational music and learning activities for children, providing an ongoing television program in the field of children's entertainment, providing on-line interactive children's stories, provision of non-downloadable children's films and television programs via a video-on-demand service, providing a website containing non-downloadable photographic, video, audio and graphical text, video clips and other multimedia materials relating to movies and television programs in the fields of children's entertainment, family entertainment, children's education and documentaries; providing a web site featuring non-downloadable photographic, audio, video and prose presentations featuring children's stories, children's educational music and learning activities for children, providing a website featuring non-downloadable videos featuring children's stories, children's educational music and learning activities for children, providing an ongoing television program in the field of children's entertainment, providing on-line interactive children's stories, provision of non-downloadable children's films and television programs via a video-on-demand service; providing a website featuring non-downloadable multimedia entertainment content in the nature of non-</p>		

	downloadable videos featuring children's stories, children's educational music and learning activities for children; all of the foregoing featuring musical performances and appearances by the performing artist known as Marshmello
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U.S. application no.	88926112	Application date	05/20/2020
Registration date	NONE	Foreign priority date	NONE
Word mark	MELLODEES		
Design mark			
Description of mark	NONE		
Goods/services	<p>Class 041. First use: First Use: None First Use In Commerce: None</p> <p>Education and entertainment services, namely, providing on-line instruction via website and on-line non-downloadable videos in the fields of mathematics, literacy, science and arts for the educational development and entertainment of children; providing a website featuring information in the fields of education, and entertainment for children, child educational development and information in the field of parenting concerning education of children; educational and entertainment services, namely, providing online, non-downloadable videos for children in the field of mathematics, literacy, science and arts; entertainment services, namely, providing on-line computer games; arranging and organizing online computer games in the nature of social entertainment events; entertainment services, namely, production of on-going television programs in the fields of mathematics, literacy, science and arts for the educational development and entertainment of children, movies, motion picture films featuring animation, and video recordings; entertainment services, namely, presentation of live show performances by costumed characters and puppets; entertainment services, namely, presentation of live show storytelling performances; provision of non-downloadable television programs, movies, motion picture films featuring animation, non-downloadable videos for children via video on-demand transmission services, the Internet and television programming, cable television programming, satellite television, mobile phone applications, and online distribution channels; special effects animation services for the production of animated motion picture films; television scheduling being programming; entertainment and education services, namely, providing a website featuring temporary use of non-downloadable interactive educational games, non-downloadable motion picture films featuring animated cartoons non-downloadable videos for children in the fields of mathematics, literacy, science and arts for the educational development and entertainment of children; education and entertainment services for children and families, namely, an on-going animated television programming series in the fields of mathematics, literacy, science and arts for the educational development and entertainment of children provided via video on-demand transmission services, the Internet, and television programming, cable television programming, satellite television, mobile phone applications, and online distribution channels; entertainment and education services, namely, providing a website featuring temporary use of non-downloadable interactive educational games, non-</p>		

	downloadable motion picture films featuring animated cartoons, and nondownloadable videos for children in the field of mathematics, literacy, science and arts; entertainment services, namely, production and distribution of on-going television programs in the field of children's entertainment, via broadcast cable television, video on-demand transmissions, satellite television, and the Internet; production and distribution of motion pictures for children; providing information, advisory and consultancy services relating to all the foregoing
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Attachments	87395562#TMSN.png(bytes) 90004652#TMSN.png(bytes) 87901883#TMSN.png(bytes) 88383314#TMSN.png(bytes) 88385750#TMSN.png(bytes) 88700123#TMSN.png(bytes) 88926112#TMSN.png(bytes) Notice of Opposition v. MELLOWAV - TTAB.pdf(126276 bytes) EX A Forbes 30 Under 30 Cover Story_ How Marshmello Became A 44 Milli on DJ.pdf(340727 bytes) EX B Marshmello - YouTube.pdf(968154 bytes) EX C Whats the Real Difference.pdf(2166096 bytes) EX D WAV Definition and Meaning - Merriam-Webster.pdf(743845 bytes)
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Signature	/Mark D. Passler/
Name	MARK D. PASSLER
Date	06/08/2022

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re:

Serial No. 90/681,952

Trademark: MELLOWAV

Filing Date: April 29, 2021

Published in the Official Gazette: February 8, 2022

MARSHMELLO CREATIVE, LLC)	
)	
Opposer,)	Opp. No.:
v.)	
)	
MELLOWAV LLC)	
)	
Applicant.)	
)	

NOTICE OF OPPOSITION

Marshmello Creative, LLC, a Delaware limited liability company having a principal place of business of 9595 Wilshire Blvd., No. 201, Beverly Hills, California 90212 (“Opposer”), believes it will be damaged by the registration of the trademark shown in Application Serial No. 90/681,952 by MelloWav LLC (“Applicant”) for the identified services and hereby opposes that application under the provisions of 15 U.S.C. § 1063 as follows:

1. Opposer is a limited liability company that owns and manages intellectual property related to the popular electronic music producer and DJ known as “Marshmello.”

2. Marshmello posted his first original song "Wavez" to his SoundCloud page in the early months of 2015. Marshmello’s debut studio album was released in January 2016. That album included a platinum-certified single with over a million units sold. Since that time, Marshmello has released hit albums and performed live throughout the United States and worldwide.

3. Marshmello has been nominated, and has won, numerous honors and awards in the music industry, including the *Billboard Music Awards*, *DJ Magazine's* top 100 DJs award, *Electronic Music Awards*, *iHeartRadio Music Awards*, *International Dance Music Awards*, *MTV Europe Awards*, as well as many others.

4. Indeed, Marshmello's commercial success as a performer and DJ has been acknowledged in the non-music press, such as Forbes magazine. See <https://www.forbes.com/sites/zackomalleygreenburg/2018/11/07/forbes-30-under-30-cover-story-how-marshmello-became-a-44-million-dj/?sh=d0474c3618b9> (copy attached as Exhibit A) ("Marshmello earned \$44 million over the past two years, thanks to six-figure nightly fees and crossover hits like "Happier" (with Bastille) and "Wolves" (with Selena Gomez).") Marshmello's YouTube music channel is now the 50th largest on the planet—behind Bruno Mars and ahead of Maroon 5 — with 55.3 million subscribers. See <https://www.youtube.com/c/marshmellomusic> (copy attached as Exhibit B).

5. Opposer, either itself or through related entities, owns the following trademarks, all used in connection with the performer Marshmello:

a. U.S. Trademark Reg. No. 5,071,319 for **MARSHMELLO** for "compact discs featuring music; digital materials, namely, cd's, DVD's and downloadable files featuring music; digital music downloadable from the internet; musical sound recordings; musical video recordings; phonograph records featuring music," in class 9 and "disc jockey services; entertainment in the nature of live performances by a musical artist and disc jockey; entertainment services by a musical artist and producer, namely, musical composition for others and production of musical sound recordings; entertainment services in the nature of live musical performances; entertainment services, namely, personal appearances by a musical artist; entertainment services, namely, providing information about a recording artist via an online network; entertainment services, namely, providing non-downloadable prerecorded music, information in the field of music, and

commentary and articles about music, all on-line via a global computer network; music composition services; production of musical videos; providing a website featuring nondownloadable videos in the field of music,” in Class 41;

b. U.S. Trademark Application Serial No. 87/395,562 for **MARSHMELLO** for “decals; pamphlets in the field of music; post cards; posters; stickers; advertising posters; bumper stickers; informational flyers featuring information about a musical artist and live performances,” in Class 16;

c. U.S. Trademark Application Serial No. 90/004,652 for **MARSHMELLO** for “bottoms as clothing; caps being headwear; hats; hooded sweatshirts; jackets; knitted caps; pants; shirts; socks; sweatshirts; t-shirts; tops as clothing,” in Class 25;

d. U.S. Trademark Reg. No. 5,632,144 for **MELLOGANG** for “fan clubs” in Class 41;

e. U.S. Trademark Reg. No. 5,885,073 for **MELLOGANG** for “bottoms as clothing; caps being headwear; hats; headwear; jackets; one-piece garments for children pants; shirts; shirts and short-sleeved shirts; socks; sweatshirts; tops as clothing; athletic pants; hooded sweatshirts; sports pants; t-shirts,” in Class 25;

f. Through its affiliated entity Mello Marks, LLC, U.S. Trademark Application No. 88/385,796 for **THE MELLO BRAND** for “baby wipes impregnated with cleaning preparations; blush; blush pencils; body oil; body wash; bubble bath; detergent soap; eye liner; lipstick; lipstick cases; lotions for face and body care; make-up; make-up foundations; make-up pencils; make-up powder; make-up preparations; make-up removing preparations; perfumed powders; perfumes, aftershaves and colognes; perfuming sachets; shampoo-conditioners; shampoos; sunscreen preparations; all-purpose cleaners; baby lotion; baby shampoo; bath soaps; body lotion; body masks; cosmetics and make-up; dishwasher detergents; dry shampoos; eyes make-up; face and body lotions; facial cleansers; facial lotion; facial moisturizers; fruit and vegetable wash; hair conditioners; hair masks; hair shampoo; hair care lotions; laundry detergent; liquid soaps for laundry; non-medicated bubble bath preparations; non-medicated beauty soap; non-medicated liquid soap; perfumed soap; pre-moistened cosmetic wipes; shaving lotion; skin cleansers; skin conditioners; skin masks; skin moisturizer; skin and body topical lotions, creams and oils for cosmetic use; sun tan lotion; sun-block lotions; sun-tanning oils and lotions,” in Class 3.

g. Through its affiliated entity Mello Marks, LLC, U.S. Trademark Application No. 88/386,794 for **THE MELLO BRAND** for “backpack straps; backpacks with rolling wheels; diaper bags; luggage; luggage tags; purses; purses and wallets; tote bags; umbrellas; wallets; bags for umbrellas; coin purses; duffle bags; fitted belts

for luggage; gym bags; key wallets; leather credit card wallets; leather shoulder belts; military duffle bags, garment bags for travel, tote bags, shoulder bags and backpacks; non-motorized, collapsible luggage carts; overnight bags; pouches and bags sold empty for attachment to backpacks; straps for luggage; travelling bags; weekend bags; wheeled tote bags,” in Class 18;

h. Through its affiliated entity Mello Marks, LLC, U.S. Trademark Application Serial No. 88/385,750 for **THE MELLO BRAND** for “bottoms as clothing; caps being headwear; footwear; hats; headwear; jackets; one-piece garments for children; pants; scarves; shirts; shirts and short-sleeved shirts; shoes; slippers; socks; sweatshirts; swimwear; tops as clothing; underwear; athletic pants; cloth bibs; hooded sweatshirts; sports pants; t-shirts,” in Class 25;

i. Through its affiliated entity Mello Marks, LLC, U.S. Trademark Application Serial No. 88/385,851 for **THE MELLO BRAND** for “feminine hygiene pads; handsanitizing preparations; infant formula; tampons; vitamins; antibacterial cleaners; antimicrobial hand-sanitizing preparations; babies' swim diapers; baby diapers; dietary supplements for human beings and animals; dietary and nutritional supplements; disposable training pants; food supplements; homeopathic supplements; kits comprised primarily of sanitizer gel and disinfecting wipes and also including sanitary masks, plastic gloves and hand cream used for germ prevention; prenatal vitamins; sanitary tampons; vitamin supplements,” in Class 5;

j. Through its affiliated entity Mello Jr. LLC, U.S. Trademark Application Serial No. 88/700,123 for **MELLO JR.** for “digital media, namely, downloadable audio and video recordings featuring music, stories, children's programming, learning activities for children; audio recordings featuring music, stories, learning activities for children; musical recordings; sound recordings featuring theatrical performances or music; video recordings featuring theatrical performances or musical performances,” in Class 9; “clothing, namely, cloth bibs, booties, baby bunting, hats, infant wear; tops as clothing; bottoms as clothing; shirts; sweatshirts,” in Class 25; “toys; games; action figures and accessories therefor; card games; collectable toy figures; dolls; doll accessories; doll playsets; electric action toys; jigsaw puzzles; mechanical toys; musical toys; parlor games; paper party favors; party games; playing cards; squeeze toys; talking toys; toy action figures and accessories therefor; toy figures,” in Class 28; “streaming of audiovisual and multimedia content via the internet; transmission and delivery of audiovisual and multimedia content via the internet; video-on-demand transmission services,” in Class 38; “entertainment services in the nature of providing entertainment programs and content, not downloadable, namely, ongoing television programs, movies, video clips, graphics and information in the fields of children's entertainment, family entertainment, children's education and documentaries, via a video-on demand service, by means of the internet,

electronic communications networks, computer networks and wireless communications networks; interactive online entertainment in the nature of a website containing non-downloadable photographic, video, audio and graphical text, video clips and other multimedia materials such as presentations, recordings, and graphics relating to movies and television programs in the fields of children's entertainment, family entertainment, children's education and documentaries; providing a website featuring nondownloadable multimedia entertainment content in the nature of non-downloadable videos in the field of entertainment," in Class 41.

K. Through its affiliated entity Mello Jr. LLC, U.S. Trademark Application Serial No. 88/926,112 for **MELLODEES** for "Education and entertainment services, namely, providing on-line instruction via a website and on-line non-downloadable videos in the fields of mathematics, literacy, science and arts for the educational development and entertainment of children; providing a website featuring information in the fields of education , and entertainment for children, child educational development and information in the field of parenting concerning education of children; educational and entertainment services, namely, providing online, non-downloadable videos for children in the field of mathematics, literacy, science and arts; entertainment services, namely, providing on-line computer games; arranging and organizing online computer games in the nature of social entertainment events; entertainment services, namely, production of on-going television programs in the fields of mathematics, literacy, science and arts for the educational development and entertainment of children, movies, motion picture films featuring animation, and video recordings; entertainment services, namely, presentation of live show performances by costumed characters and puppets; entertainment services, namely, presentation of live show storytelling performances; provision of non-downloadable television programs, movies, motion picture films featuring animation, non-downloadable videos for children via video on-demand transmission services, the Internet and television programming, cable television programming, satellite television, mobile phone applications, and online distribution channels; special effects animation services for the production of animated motion picture films; television scheduling being programming; entertainment and education services, namely, providing a website featuring temporary use of non-downloadable interactive educational games, non-downloadable motion picture films featuring animated cartoons non-downloadable videos for children in the fields of mathematics, literacy, science and arts for the educational development and entertainment of children; education and entertainment services for children and families, namely, an on-going animated television programming series in the fields of mathematics, literacy, science and arts for the educational development and entertainment of children provided via video on-demand transmission services, the Internet, and television programming, cable television programming, satellite television, mobile phone applications, and online distribution channels; entertainment and

education services, namely, providing a website featuring temporary use of nondownloadable interactive educational games, non-downloadable motion picture films featuring animated cartoons, and nondownloadable videos for children in the field of mathematics, literacy, science and arts; entertainment services, namely, production and distribution of on-going television programs in the field of children's entertainment, via broadcast cable television, video on-demand transmissions, satellite television, and the Internet; production and distribution of motion pictures for children; providing information, advisory and consultancy services relating to all the foregoing."

(Collectively, "Opposer's Asserted Marks")

6. Marshmello is often referred to as "Mello" in real life and in media references, which nickname is reflected in his MELLO trade names and trademarks, listed above, including notably MELLOGANG for fan club services in Class 41.

7. Upon information and belief, Applicant filed application Serial No. 90/681,952 for MELLOWAV for use in connection with "entertainment services by a musical artist and producer, namely, musical composition for others and production of musical sound recordings; music production services; Recording studio services" in International Class 41 claiming a first use date of March 1, 2017 (the "Opposed Mark") on April 29, 2021 – four years after Marshmello's meteoric rise to fame as a performer and producer, nearly six years after Opposer's first MARSHMELLO application was filed (Reg. No. 5,071,319 in Class 41), and also after Opposer's affiliate Mello Jr. filed applications for MELLO JR. and MELLODEES covering services in Class 41. Applicant's claimed first use date likewise is subsequent to Opposer's 2015 filings for MARSHMELLO, and 2016 first use of MELLOGANG in Class 41.

9. The Opposed Mark MELLOWAV begins with Opposer's mark MELLO and ends with WAV, which is a popular digital audio file format: "Waveform audio files (also called WAV files) are one of the more popular digital audio formats and a gold standard in studio recording. ... WAV

files capture and recreate an original audio waveform at the highest quality without affecting or altering the sonic characteristics of the sound in any way." See <https://www.izotope.com/en/learn/whats-the-difference-between-file-formats.html> (copy attached as Exhibit C). "Wav" has a dictionary definition: "computer file format used for the storage of digital audio data," see <https://www.merriam-webster.com/dictionary/WAV> (copy attached as Exhibit D). As a result, the opposed mark as a whole invokes the musical artist Marshmello, aka Mello, and his core service, digital music. MELLOWAV is thus similar in sight, sound, meaning, and overall commercial impression to Opposer's Asserted Marks.

10. The services identified in the Opposed Mark are identical and competing with the services identified in several of Opposer's above-listed registrations and pending applications, notably, "entertainment services by a musical artist and producer, namely, musical composition for others and production of musical sound recordings; music production services."

11. The dates of first use and/or constructive dates of first use of Opposer's Asserted Marks predate the Opposed Mark, and therefore Opposer has prior and superior rights as compared to Applicant.

12. As a result, the Opposed Mark is likely to cause consumer confusion, mistake, and deception as to the affiliation, connection, or association between Applicant and Opposer, or as to the origin, sponsorship, or approval of Applicant's goods and Opposer, all to Opposer's detriment, thereby causing Opposer damage.

13. Additionally, the term MELLO coupled with the term WAV points uniquely to, the famous performer Marshmello. Marshmello is not connected in any way with the services offered by Applicant under the Opposed Mark.

14. The Opposed Mark is likely to draw a false association, sponsorship, connection, or affiliation with Marshmello and Opposer's Asserted Marks. Consumers will erroneously believe that the goods sold under the Opposed Mark are licensed or sponsored by, or associated with, Marshmello, when that is not the case.

15. The Opposed Mark is barred from registration because it consists of or comprises a trademark which so resembles Opposer's Asserted Marks as to be likely, when used in connection with the alleged goods of Applicant, to cause confusion, mistake, or deception as to an affiliation, connection, or association between Opposer and Applicant, or as to the sponsorship or approval of Applicant's goods and other commercial activities by Opposer within the meaning of 15 U.S.C. § 1052(d). Potential customers are likely to believe that Applicant's goods originate from, or are sponsored or approved by, Opposer, when such is not the case. All of the foregoing will cause Opposer damage.

16. The Opposed Mark is barred from registration because it consists of or comprises a trademark that falsely suggests a connection with the living individual Marshmello within the meaning of 15 U.S.C. § 1052(a). Applicant is not affiliated with or connected in any way to Opposer, and Opposer has not consented to Applicant's use of the Opposed Mark represented in Application Serial No. 90/681,952.

18. Accordingly, pursuant to 15 U.S.C. § 1063, the Opposed Mark is not entitled to registration.

WHEREFORE, Opposer believes that it will be damaged by registration of the Opposed Mark as shown in Application Serial No. 90/681,952, and respectfully requests that this Opposition be

sustained and that registration be refused. Authorization is given to charge the filing fee for this Opposition to Deposit Account No. 50-0951.

Dated: June 8, 2022

Respectfully submitted,

AKERMAN, LLP

By: /Mark D. Passler/

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ATTORNEYS FOR OPPOSER

HOLLYWOOD & DAILY
ENTERTAINMENT COVER
Forbes 30 Under 30 Cover Story: How
Marshmello Became A \$44 Million
DJ



Zack O'Malley Greenburg Former Staff

Senior Editor, Media & Entertainment

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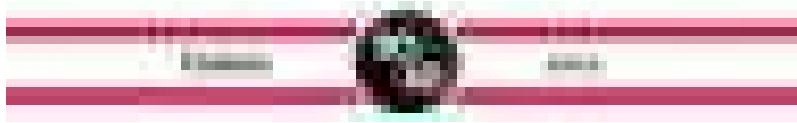
Three years ago a mysterious man arrived at Los Angeles International Airport with his head encased in a rigid 13.5-pound helmet shaped like a marshmallow. He reluctantly removed the fragile apparatus at the behest of a TSA agent and fed it through an x-ray machine. When he went to retrieve it, his worst fears were confirmed.

“It was cracked,” the headpiece’s owner, incognito DJ-producer Marshmello, told *Forbes* in a rare interview.

Nowadays he can afford to fly private.

Marshmello earned \$44 million over the past two years, thanks to six-figure nightly fees and

crossover hits like “Happier” (with Bastille) and “Wolves” (with Selena Gomez). Puffed up by his series “Cooking With Marshmello,” his YouTube channel is now the 50th largest on the planet—behind Bruno Mars and ahead of Maroon 5—averaging 250 million views and 1.4 million new subscribers every month.



For more on the next generation of leaders, see [Forbes' 30 Under 30 coverage](#).

“What sets the world’s greatest DJs apart is that they are also great producers and songwriters, creating songs that transcend genre and appeal to a global pop audience,” says Robb McDaniels, CEO of Beatport, the electronic music hub. “Marshmello is one of the select few who have defined this generation.”

Success has allowed Marshmello to upgrade to a \$55,000 helmet that has an internal air-conditioning system and programmable LED lights and weighs just eight pounds. More important, the headgear has turned into a transcendent symbol that has placed Marshmello among the world’s five [highest-earning DJs](#) even as he refuses to obey the music industry’s rules:

He still hasn't signed a major label record deal, much less shown his face in public.

"For us it was, how do you create a brand that is accessible to everybody, that everyone can be and relate to?" says

Marshmello's manager, Moe Shalizi, who lands on our new 30 Under 30 list; his client graces the cover.

"The concept we had in mind with Mello was, How do you create a universal character?"



The November 30, 2018 issue of Forbes featuring Marshmello.

The story begins in 2015, when the young DJ and Shalizi—who met Marshmello while he was still experimenting with different sounds and identities online—picked the name Marshmello in a nod to his music's mellow feel (during the 30 Under 30 vetting process last year, *Forbes* [confirmed](#) his age, 26, and full name, Chris Comstock).

To this day, the DJ has never publicly acknowledged any biographical information. And when Marshmello made his musical debut, releasing a free download every few days for three weeks via Soundcloud, the mystery helped supercharge his popularity. Electronic music fans on Reddit became obsessed with discovering his identity, as did some of the genre's superstars—

like Skrillex, the earliest high-profile booster of his music.

“I need to know who Marshmello is,” Shalizi remembers Skrillex demanding. “I’m going through some stuff in my life and I really need to know who he is because the music is helping me.”

But Shalizi’s client wanted to remain anonymous and didn’t seem particularly interested in fame. Even after he started texting Skrillex, Marshmello was so shy that he initially refused to contact his hero about an in-person meeting. “Skrillex [is] the guy who I’ve been looking up to ever since I started doing electronic music,” Marshmello recalls telling Shalizi as they cruised through Los Angeles. “I’m not just going to *call* him.” Shalizi stopped the car. “I’m not going to go until you call him,” the manager replied.

Marshmello relented—and found a surprise on the other end of the line: Katie Couric, who happened to be interviewing Skrillex for Yahoo on camera. (“It’s Chris,” she noted as the caller ID flashed onscreen. “Oh, Marshmello,” Skrillex

replied). A week later the video interview went public—and Marshmello’s growing legion of fans got their first clue to his identity. Internet conspiracy theorists posited that he was actually a rotating cast of famous DJs including Skrillex, Martin Garrix and Tiësto (the latter trolled electronic music enthusiasts by [showing up to a gig in a Marshmello mask](#)).

Shalizi insists Marshmello will earn around \$50 million in 2019, which would put him on par with this year’s top earner, Calvin Harris.

The buzz only helped drive Marshmello’s earning power: In late 2015, he took home \$30,000 for his first major gig, a Halloween show in New York. Then Shalizi planned a tour, focusing on small clubs that would sell out and drive demand. Marshmello earned scores of new fans—and grew his social media presence (he now boasts 7 million followers between Twitter and Facebook)—by spending hours posing for selfies after shows.

Marshmello got a boost from Coachella in 2016 even though he didn’t play the festival. Shalizi rented a nearby highway billboard and splashed an image of the DJ across it. Then he hired two bodyguards and a photographer to follow

Marshmello around the festival, where he [posed with celebrities like Zedd and DJ Khaled](#). “A year in, we already had over a million followers on Instagram,” says Shalizi (today’s count: 13.7 million). Marshmello returned to Coachella in 2017 and headlined the Sahara Tent, the festival's premier electronic stage.

His 2016 breakout hit, “Alone,” racked up 1 billion views on YouTube; his first album, *Joytime* (2016), reached No. 5 on the U.S. Dance charts. Major labels came calling with multimillion-dollar record deals, but Marshmello and Shalizi weren’t convinced that giving up their independence was worth it. “They wanted to sign us just to sign us,” says the DJ.

Marshmello stayed independent and struck deals on a song-by-song basis, making it easy for him to collaborate with artists on different labels. Keeping control of his copyrights enabled him to further goose his social presence by giving influencers his music to use in their videos. In turn, they would tag him, thereby introducing him

to their followers. This was part of what Shalizi likes to call “infinite algorithm” of social media.

To be sure, Marshmello isn’t the first DJ to cash in on a mysterious image—he follows in the helmet-steps of electronic acts like Deadmau5 and Daft Punk—but his earnings total over the past year ranks as the best annual haul for an incognito DJ ever measured by *Forbes*.

“It’s less about the masks and more about the actual talent,” Beatport’s McDaniels says of Marshmello. “He’s certainly got a long career in music ahead of him.”

Sure enough, his latest album, *Joytime II*, claimed the top spot on the dance charts this year. Shalizi insists Marshmello will earn around \$50 million in 2019, which would put him on par with this year’s top earner, Calvin Harris. The young manager entertains even wilder dreams. “We always talk about taking Marshmello public one day,” says Shalizi, referring to turning the DJ’s business into a publicly traded company. “He can do anything.”

**“What sets the world’s
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to a global pop audience,” says Robb McDaniels.

Though that may be a bit far-fetched, Marshmello has certainly built a DJ business with room to grow. Like Marvel’s stable of superheroes, his image is one onto which anyone anywhere can project their hopes and dreams—Shalizi says his biggest markets range from Brazil to Singapore. Marshmello connects by nodding to local favorites, playing Bollywood theme songs at New Delhi gigs or posting Indonesian fried rice recipes on “Cooking With Marshmello” for his Jakarta fans.

And, in theory, Marshmello is infinitely scalable. Imagine an army of confectionary clones fanning out across the globe, paying Marshmello a cut of their nightly fees. Just don’t bet on that last part happening.

“Sometimes we talk to people and they’re surprised we aren’t doing that,” explains Marshmello. “And I’m like, That’s not why I did this.”

*Reach Zack O'Malley Greenburg at
zgreenburg@forbes.com. Cover image by Jamel
Toppin for Forbes. Marshmello pictured wearing
Ermenegildo Zegna Couture.*



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Zack O'Malley Greenburg is senior editor of media & entertainment at *Forbes* and author of four books, including [A-List Angels: How a Band of Actors, Artists and Athletes Hacked...](#) **Read More**

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STORE

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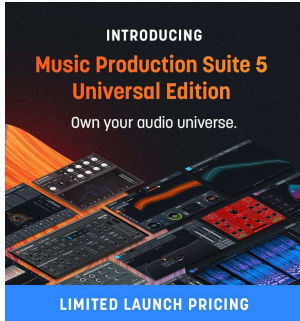
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What's the Real Difference Between .wav, .aiff, .mp3, and .m4a?


by David Bawiec, iZotope Contributor

October 9, 2019





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You've spent weeks working on the ultimate song, polishing the arrangement, and perfecting the mix. You're finally ready to share your song with mom or to send it off to the studio for mastering. But before you can bounce it, you're met with the ultimate head-scratcher: which audio format should you choose? WAV? AIFF? MP3? M4A?

In this article, you'll learn the difference between the four popular audio formats, along with use cases for which one to choose when.

How to bounce a session

You want to send your friend your latest song. You could send your session file, but what if they don't have your DAW? And on the off chance they *can* open the file, if they're missing just one plug-in you used, your song won't sound the same. How can you bypass all of this stress?

You should bounce your session instead.

What is bouncing in audio?

Bouncing is the process of rendering your entire project as a single stereo audio file that can be played on any device. It's the process of down-mixing all of your tracks into a two-channel (left speaker and right speaker) audio source. Unlike a session file, an audio bounce means you can send the audio file to your grandma and know that she'll be able to

listen to it without any special equipment.

When bouncing, you're presented with multiple options: audio format, sample rate, bit depth, and sometimes even normalization. Each one of them is important, so I recommend you check out Griffin Brown's great explanation of sample rate and bit depth in his [Basics of Digital Audio](#) article.

The four gold standards

Today, we focus on the importance of choosing the right audio format, what they mean, and when you should use each one. What was once a single standardized audio format, quickly grew into a plethora of options. New formats appear and disappear to solve different problems and offer varying benefits. With time, four contenders have become the golden standards you find everywhere today. So let's dive right into what the four standard audio formats are and when to use which one.



WAV files

What is a .WAV file?

File Extension: .wav

Format Type: Uncompressed Lossless

Waveform audio files (also called WAV files) are one of the more popular digital audio formats and a gold standard in studio recording. WAV was one of the [first digital audio formats](#), and quickly became a staple across all platforms. Despite decades of progress, it still maintains its position as one of the world's leading pro audio formats.

WAV files capture and recreate an original audio waveform at

the highest quality without affecting or altering the sonic characteristics of the sound in any way. WAV uses PCM (Pulse Code Modulation) to encode the data by slicing it into small chunks to provide the highest quality possible. It's a lossless file format, meaning that there is no data loss whatsoever. So what gets captured and recorded is the closest mathematical/digital representation of the original audio waveform—no noticeable audio quality loss happens in the process.

WAV files are also uncompressed, meaning that the data is stored as-is in full original format that doesn't require decoding. This provides enormous versatility allowing for superb editing and manipulation.



AIFF files

What is an .AIFF file?

File Extension: .aif or .aiff

Format Type: Uncompressed Lossless

AIFF (Audio Interchange File Format) works identically: it provides studio-grade audio recording and playback. Offering sample rate and bit depth options just like WAV files, AIFF registers the audio waveform as accurate samples (slices) using PCM to offer the highest possible audio recording quality and sound replication. Just like WAV, AIFF also stores data in uncompressed, lossless format, meaning you get no quality loss, just pure sonic happiness.

So what's the difference between the two? It mainly boils down to history. AIFF was created by Macintosh in 1988, allowing full studio-quality audio recording and playback on

Apple computers. WAVE was created from a partnership between Microsoft Windows and IBM in 1992, so WAV files played back natively on Windows machines. Nowadays both

formats can be recorded and played back natively on any operating system, so they're easily interchangeable, offering the same high-quality audio, regardless of format.



MP3 files

What is an .MP3 file?

File Extension: .mp3

Format Type: Compressed Lossy

Uncompressed audio formats like WAV and AIFF provide gorgeous sound quality, but at the cost of high file size. With the boom of internet file-sharing in the mid-90s, people quickly realized sending uncompressed files over dial-up connections was impractical—and oftentimes impossible. Which is why MP3s (MPEG-2 Audio Layer III) were born.

While a three-minute song would average 30MB in WAV or AIFF format, that same song converted to MP3 would take up a tenth of the space—only around 3MB. With compression algorithms that were capable of achieving impressively small file sizes, MP3 became a staple of the internet era and has maintained its strong position to date.



Like images, smaller audio files lose clarity and detail.

However, small file size came at the cost of sound quality. Take the pair of images above. On the left, you can see every little wrinkle and color vividly. A highly compressed image (on the right), however, becomes very pixelated and loses all of the clarity and detail. The same happens when you compress an audio file.

Different compression formats use varying methods to re-encode the data in a way that saves space. But this saving of space means some data has to get lost in the process.

What's the Real Difference Between .wav, .aiff, .mp3, and .m4a?
space means some data has to get lost in the process.

Usually, high frequencies are the first ones to go, as the majority of people can't hear the details in really high frequencies. The lower the encoding quality, the more frequencies and details will get lost in your audio.

Having said that, modern compression algorithms allow for higher bitrates, which, in turn, means that they're able to achieve high compression ratios with little noticeable loss to the quality of the audio. Bitrate represents the amount of data conveyed per second of audio content, with the general rule of thumb being: smaller bitrates = smaller file sizes. So if you want to maintain good quality, yet still make use of the fact that MP3s are easy to share with friends and family, keep your bitrate above 128Kbps (kilobits per second).



M4A files

What's an M4A/MP4 file?

File Extension: .m4a, .mp4

Format Type: Compressed Lossy

M4A ([MPEG-4 Part 14](#)) files were Apple's response to MP3s. Often seen as the successor to the MP3, this Mac-centric compressed audio format found its true place with the birth of the iTunes Store, where it became the primary format for all music purchases made through the online music store. It is still the preferred format for all audio included in apps that

are released on the Mac and iOS App Stores, as well as Nintendo and PlayStation products. With more and more developers including support for M4A, it's quickly becoming the go-to audio format for compressed audio files.

M4A files are encoded with the lossy Advanced Audio Coding (AAC) codec, which is able to provide the same bitrates as MP3s, yet achieve tighter compression. This results in

smaller file sizes, all while delivering higher audio quality. It's like a golden unicorn, which is why it's become such a popular format for light-weight audio deliveries.

Although many audio players can playback M4A files across various platforms, the audio format still can't compete with MP3's universal compatibility, which is why MP3s still rule the world due to their cross-platform adoption.

Choosing the right format for your project

When deciding which audio format is right for you, the first question you have to ask is whether the file needs to provide uncompressed audio or can it be in a compressed audio format?

Uncompressed lossless

If you're working on releasing your song publicly, you'll want to bounce it in an uncompressed audio format, that way your original master export is at the highest uncompromised quality possible. Additionally, following the [Red Book standard](#) to provide for the ultimate listening experience, CD-quality audio should use uncompressed audio files at 44.1kHz and 16-bit depth. The simple way to think of this is: if you need to share your music in a way that doesn't jeopardize the quality of your music in any way, use an uncompressed

audio format. So both WAV and AIFF will be your best friends here.

PROS: Studio audio quality without compromise

CONS: Large File Size that can be troublesome when trying to share digitally or via email

Compressed lossy

Compressed Lossy

On the other hand, if your intent is to make sharing your music easy and fast, choose a compressed audio format that will provide you with small file size. Yes, it will mean you'll have to trade perfect quality away, but if you know that the person you're sending your song to is going to be listening on headphones on a bus or their car audio system, then you know that extreme audio quality won't matter. At that point, convenience will always win. Additionally, since email providers limit attachment sizes and smartphones have limited storage space, any audio format that can offer smaller file sizes is going to be a winner. For all of those instances, choose a compressed audio format like MP3 or M4A.

PROS: Small file size, perfect for sending via email, direct messages, or storing on mobile devices

CONS: To achieve smaller files, audio quality is compromised. The smaller the file, the worse the audio quality will be.

WAV vs. AIFF

So if WAV and AIFF can both offer the same highest studio-quality audio, which one should you choose? Well, that will really depend on your use case. For starters, the historical prevalence still stands today. WAV files are more popular on Windows, whereas AIFF files keep their ground on Macs. If you're planning to send your audio files to the studio for further overdubbing or mixing, consistency with your session is important, so talk with your sound engineer about what format they plan to use in the session, and make sure your audio bounces match. The great news is, regardless of which of the two formats you choose, you will achieve exactly the same superb audio quality.

MP3 vs. M4A

The majority of desktop and mobile devices sold nowadays come with native support for MP3 and M4A files alike. For higher quality results, I recommend you choose M4A, which can offer higher sonic results at the same settings, all while still resulting in smaller file sizes than MP3. On the other hand, if guaranteed compatibility is what you need most, MP3 will probably be the wiser choice of the two.

Conclusion

I hope that this guide was able to shine some light on the difference between the four basic audio formats and when to use them. Most modern DAWs allow you to bounce your song in multiple formats at once. As a general rule of thumb, I recommend you choose one Uncompressed Lossless audio format (AIFF or WAV) and one Compressed Lossy audio format (M4A or MP3). That way, regardless of what kind of format you need, you have it ready and you don't have to re-open your session just to re-bounce the song in a new format. Additionally, if you have your song bounced in at least one Uncompressed Lossless format, there are plenty of great audio converters on the market that will allow you to convert your song into any of the other audio formats when you need them.

The audio world is filled with many options, and the four basic formats above are just a few of over a dozen different audio formats. Ultimately, whatever use case you may have,

you'll find an audio format that's able to fulfill your needs—including a few Compressed Lossless file formats. Now that you know how to use the basics, I can't wait to hear the music you create.

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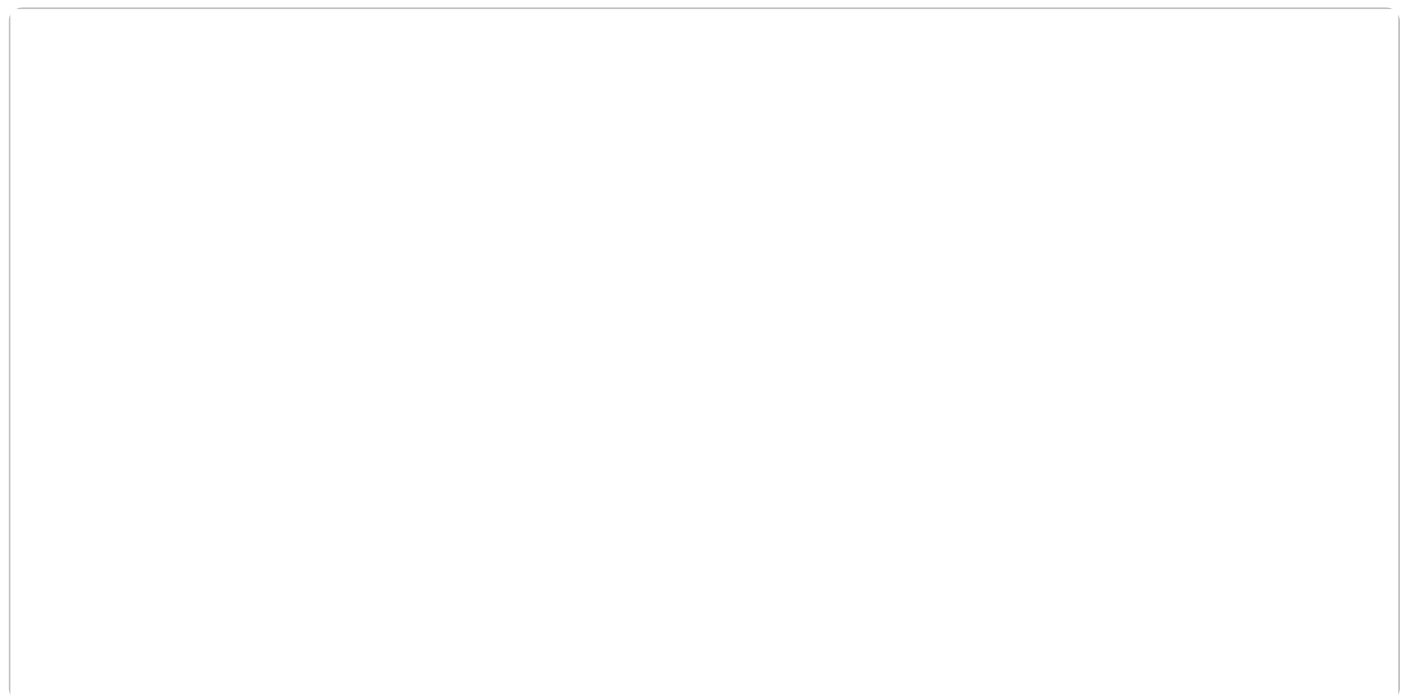
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Definition of WAV

: a usually uncompressed [lossless](#) computer file format used for the storage of digital audio data MP3 involves [lossy](#) compression, which means that MP3 files are not the same as the original WAV files found on CDs.— Mark Chussil, *PC Magazine*, 20 Feb. 2001


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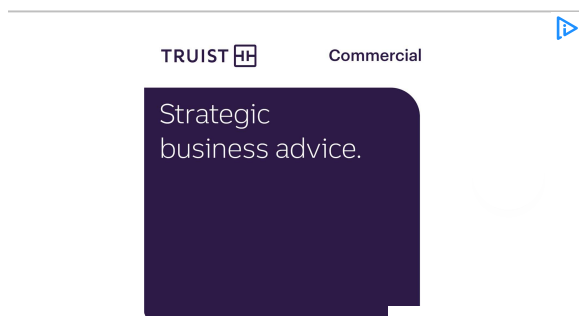
“WAV.” *Merriam-Webster.com Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/WAV>. Accessed 6 Jun. 2022.

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