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## The Reality of Masters and Re-Recording: A Case Study on Taylor Swift

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### Abstract

With the ever-evolving music, humanity has advanced in both the genres of music as well as the technology to record it. Due to this advancement, the concept of separate copyright regarding sound recording was made – giving protection to the unique method of recording and publishing music that one may often use.

In the current times, this copyright is owned and practised by the Record Labels, making an unfavourable scene of monopoly. This paper focuses on the reality of Masters attained by the Record Labels while also exploring the aspect of copyright law behind the songs one enjoys listening to in their daily life.

In addition to that, the case study of the popular artist Taylor Swift is also covered in this paper, helping us explore the loopholes that she used to get out of such monopoly; that is, re-recording six of her previous albums. The paper legally analyses the legality behind such a move and the impact it can bring in the future music industry.

**Keywords:** Sound Recording, Copyright, Synchronization Rights, Taylor Swift and Re-recordings.

### Introduction

With the everchanging world, one thing has remained constant for humanity and that is their appreciation for art and music, which one can even trace back to the ancient era. From

folk songs to classical music to country music to raps to the popular pop songs we listen to nowadays; the evolution of music can be a while subject on its own and so is the evolution of the rights of these songs in the legal context and perspective.

While the concept of a patent can be traced back to natural justice, the concept of copyright is relatively new – especially for songs and musical compositions. And with the gradual advancement, the Morden law of copyright developed around music and its related industry, giving many people to opportunity to make a career out of music and its production.

However, unlike other literary works, songs do not come under only one copyright. It is a cluster of related copyrights entangled through each step of its making and releasing – from the writing of the lyrics of the song to the musical notation to the sound recording, every single step has a different type of copyright, making the whole process more complicated than one may think.

Due to this very reason, the workings of the music industry have become as complex as it is now, leaving many new artists unaware of the procedures and vulnerable to being caught in contracts that can be largely disadvantageous to them in the long run of their career.

### The multiplicity of Copyright in a music video

As mentioned earlier, a single song may have many layers and types of copyrights, making its owner diverge as not every singer produces their songs. In fact, there are almost no singers in the industry who started by producing their own songs as new and upcoming artists, which was mostly because it is impossible to advertise and market one's own song on their own as a new artist without any significant contacts or audience.

This is where the Record Labels come in and help the upcoming new artists by producing and marketing their songs with a simple



contract. These contracts usually hold the Masters of the songs into consideration, giving the Record Labels all the rights to the Masters of the new and upcoming singer's albums and songs in exchange for the Label backing them and their performances completely.

Masters, as one may already know, is the original and definitive recording of a song, let it be as a music video, vinyl record or even as a soundtrack in films.<sup>100</sup> Even official online streaming of the song like on Spotify or YouTube comes under this. In the legal context, it is the copyright of sound recording that the Record Labels usually aim to claim through the contracts.

And since the Record Labels are taking a high risk by producing new artists and their performances, the consideration of taking the full rights of the Masters is deemed as fair and just. However, the Synchronisation or Publishing rights still stay with the singer or the author of the songs. Anyone who has written the lyrics and composed the melody of the song along with the musical composition can claim these rights.<sup>101</sup>

In an instance where the singer and lyricist are two different people, the lyricist owns the literary rights of the song while the singer owns the dramatic or performance rights relating to the music and its music video or even live performances sang by them.

Meanwhile, the musical composition also has a completely different aspect of copyright as it is the musical notation and composition of a song – the very 'instrumental' or 'background music' that everyone so often likes and listens to the song for. These people are usually known as 'DJs' in the music industry as they are the ones who remix the songs and their melody in a manner to make a completely new version and variation of the original song.

This is how one may find a multiplicity of copyrights in the production of one single song – the whole process so complex that anyone new to the industry may lose themselves just by trying to understand the basics of it. This is why many new artists end up unknowingly signing up their rights to their Record Labels before realising its long-term effects.

### Record Label Contracts and their effects

Since Record Labels are the production houses of the music industry, many new artists aim to get sponsorship from such Labels through an official artist contract. This would help them get a production company to finance their music and market it while the artist writes and performs their song on the bigger stage with a wider audience than they have ever come across for themselves.

Unfortunately, what many young and new artists fail to realize is that while finding a Record Label is a good stepping stone in one's musical career, the contract they are binding themselves into with the Label may also affect their career drastically if not read and agreed with carefully before signing.

Most Record Labels put forth the contract that takes a majority, if not all, of the rights of the Masters of the music the artist will produce for a certain amount of time in the future.<sup>102</sup> This essentially gives a major portion of the royalties or economic rights to the Label since the usage of the recording of the song and its performance anywhere would now account for the copyright of the Masters.

The artist, meanwhile, will get the royalties as per their Synchronisation rights as the owner of the songs and their singer.<sup>103</sup> However, these rights are more inclined towards the moral arena than the economic, giving the Record Label an edge on the financial aspect of the albums or songs.

<sup>100</sup> Dmitry Pastukhov, *6 Basics of Music Copyright Law: What It Protects and How to Copyright a Song*, Soundcharts Blog, (Aug. 27, 2022), available at: <https://soundcharts.com/blog/music-copyrights>

<sup>101</sup> *Ibid.*

<sup>102</sup> Dmitry Pastukhov, *A Hard Look at How Record Companies Make Money: Royalty Splits, Types of Record Deals, and the Label Business Model*, Soundcharts Blog, (Aug. 30, 2022), available at: <https://soundcharts.com/blog/splits-and-profits-record-deals-analysis>

<sup>103</sup> *Ibid.*



In a nutshell, the artist would not be able to perform their own songs until and unless the Record Label owning the Masters of those songs allow them to. The biggest example of this case was seen in the AMAs held in the November of 2019 where Taylor Swift was initially prevented from performing her own songs from her own old albums since their Masters were owned completely by her old Record Label the Big Machine Records.<sup>104</sup>

And while it is true that one may need to take permission from both the Record Label and the artist to legally use the song as the Masters' owner and the sync owner respectively, the Label still has an edge over the artist and their performance of their own songs.

### Taylor Swift and her re-recordings

While Taylor Swift may not be the first one to re-record her songs, she sure is the first one to step up to re-recording her complete 6 albums containing 108 songs from the scratch with some new, unreleased songs added to the mix. This made many people question the legality behind these re-recordings, known popularly as the 'Taylor's version' of the old six albums, some of which she had debuted more than 10 years ago.<sup>105</sup>

This all started when Taylor Swift, at the age of 15 years, signed a contract with the popular Record Label named Big Machine Records as a new and upcoming artist.<sup>106</sup> Through this contract, the ownership of the Masters of her next six albums was effectively shifted to the Label and its CEO, Scott Borchetta.

Masters, as mentioned earlier, includes all the rights of the first recording of the songs as well

as their music video, licensing for usage and even the art used for the album representation. Since these rights were now completely owned by the Record Label, Taylor Swift lost all the autonomy of her songs and their selling to any other party. This especially became an issue when she left Big Machine Records in late 2018.<sup>107</sup>

After her departure, her six albums including her self-titled debut album, *Fearless*, *Speak Now*, *Red*, *1989*, and *Reputation* were all acquired by Ithaca holdings owned by Scooter Braun at a value of over 300 million dollars. This whole thing became quite a controversial topic soon after due to the bad blood between Taylor Swift and Scooter Braun.<sup>108</sup>

However, the issue ran deeper than that since Taylor Swift was allegedly given no notice of the such transaction, especially when she and her team were trying to negotiate the ownership of her Masters back herself. This was hindered by the previous owner of the Big Machine Record Label, Scott Borchetta as he allegedly only agreed to sell the Masters back to Swift if she signed another contract with his Record Label for the next ten years.

The Masters of her first six albums were again sold in late 2020 to a new Record Label named Shamrock Holdings,<sup>109</sup> making Taylor Swift give up on attempting to acquire the Masters of her old albums back and instead announce that she would be re-recording all her six albums from scratch to own them completely.

### The legality of her re-recordings

While Taylor Swift may not own the Masters of her first six albums, she did own the publishing or Synchronisation rights of those albums – mostly because she was both the lyricist and the musical composer of her own songs. This gave her the actual ownership of the songs while the Record Label only owned the original

<sup>104</sup> Dominic Rushe, *Taylor Swift cleared to perform old songs at AMAs after label backs down*, The Guardian, (Sep. 1, 2022), available at: <https://www.theguardian.com/music/2019/nov/18/taylor-swift-amas-big-machine-record-label>

<sup>105</sup> Kristen de Groot, *Rereleasing 'Red': On Taylor Swift's latest album and music copyright*, PennToday, (Sep. 2, 2022), available at: <https://penntoday.upenn.edu/news/rereleasing-red-qa-taylor-swifts-latest-album-and-music-copyright>

<sup>106</sup> Rhea Rao, *Explained: Why Taylor Swift is re-recording her studio albums, and what it says about copyright battles with mega music labels*, Firstpost, (Sep. 2, 2022), available at: <https://www.firstpost.com/entertainment/explained-why-taylor-swift-is-re-recording-her-studio-albums-and-what-it-says-about-copyright-battles-with-mega-music-labels-10138211.html/amp>

<sup>107</sup> *Ibid.*

<sup>108</sup> Kristen de Groot, *Rereleasing 'Red': On Taylor Swift's latest album and music copyright*, PennToday, (Sep. 2, 2022), available at: <https://penntoday.upenn.edu/news/rereleasing-red-qa-taylor-swifts-latest-album-and-music-copyright>

<sup>109</sup> *Ibid.*



first recording. Thus, to regain the Masters of her six albums, all Taylor Swift needs to do is can re-release them as new ones owned solely by her.

This is exactly what she did once her contract stating the re-recording prohibition period expired, giving her the right to re-release her own music with her own recording equipment and copyright. Essentially, she is making a cover or derivative of her own 'original' songs and releasing them back. This is also one of the major reasons why she re-released songs that are not exactly similar to her old ones.

However, since she owns the publishing rights to her songs, the Record Label currently owning the Masters to her old albums cannot do anything. This move is both backed legally and by the fans who are in support of the 'ethical' version of the albums owned by the true owner and writer of those songs.

Furthermore, since Taylor Swift had blocked any and all usage of her old album in films, TV shows or any other place as the sync owner, the re-recorded version of her album known as the 'Taylor's version' is now being streamed and used in shows instead. This has led to the popularity of her songs and slums increasing even more.

The release of previously unpublished songs along with the re-recorded songs also got the public more inclined to listen to the re-released version, making the value of the old and original albums drop as people stopped streaming those on digital platforms. And while Swift would still get the royalties from the profits of those albums as the sync owner, the amount can be tampered with by the Record Label, making it much more convenient for her to re-record her albums instead.

However, as mentioned by the artist herself, Taylor Swift's aim here is to not reclaim the six albums and her songs in it for economic rights but to own the right to sing and use her past songs freely once again. These 108 songs are her life's work that she wants to claim back as her own without any external hindrance and

that is exactly what she is doing with her re-recordings.

### **Conclusion**

In the end, while the complexity of the musical ownership may seem too troublesome for many, it is the reality and the literal livelihood of many people – making the whole subject an important one since if Taylor Swift is successful in re-recording the entirety of her first six albums and reclaim her Masters, many other artists will follow her step and attempt to gain freedom from their Record Labels.

While the need for Record Labels is still there, the contracts and deals they offer have slowly become quite arbitrary in the recent scenario – especially since the digital distribution of music and its other derivatives have become the major income one can generate. However, these revenues come entirely under the Masters' ownership, making the artist gain very little royalties on such popularity or streaming.

This bold move of Taylor Swift would inspire a lot of artists to properly negotiate their contacts while also inspiring a lot of independent artists to produce their own songs. New and young artists would also be aware of such long-term effects of the contracts offered by the Record Labels, making an entirely new generation of artists emerge who will set a new benchmark and finally curb the exploitation faced by their previous generations.

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