

YOU BELONG WITH ME: THE BATTLE FOR TAYLOR SWIFT’S MASTERS AND ARTIST AUTONOMY IN THE AGE OF STREAMING SERVICES

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“I think artists deserve to own their work. I just feel very passionately about that.”¹

Abstract

Taylor Swift released six chart-topping albums during the tenure of her first recording contract with Big Machine Records, LLC. Upon expiry of the initial contract, Swift made a new home with Republic Records and contracted for her retained ownership of the masters for future works. Soon after, the masters to Swift’s first six albums were sold to an investment fund, preempting Swift from ownership. In an effort to regain control over her life’s work, Swift launched an initiative to re-record each of her first six albums. This note argues that copyright laws enforce a pervasive power dynamic between musicians and record labels, preventing artists from meaningful ownership over their creative accomplishments. Just as the methods for music production and consumption have evolved over time, the laws governing music copyright should evolve accordingly.

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1. Interview by Robin Roberts with Taylor Swift, in New York, N.Y. (Aug. 22, 2019).

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I.	I WROTE DOWN OUR SONG: A HISTORY OF MASTER RECORDINGS AND RELATED RIGHTS	

“What do you sing on your drive home?”²

A. *The History of Recorded Sounds*

Thomas Edison, the man of a thousand patents, laid the foundation for music recording and reproduction with the advent of the phonograph in 1877.³ Edison wrapped tinfoil around a cylindrical, rotating drum.⁴ As it rotated, the drum made contact with a metal stylus, which moved in response to an operator speaking into a diaphragm on the other end.⁵ The movement of the stylus on the tinfoil vibrated the diaphragm, driving air in and out of the mouthpiece, recreating the inputted sound.⁶ Though the resulting “Mary had a little lamb” was barely audible, Edison *technically*

2. TAYLOR SWIFT, *Mad Woman, on FOLKLORE* (Republic Records 2020).

3. Roger Beardsley & Daniel Leech-Wilkinson, *A Brief History of Recording to ca. 1950*, CHARM, https://charm.rhul.ac.uk/history/p20_4_1.html [<https://perma.cc/KA37-BPRC>].

4. *Id.*

5. *Id.*

6. *Id.*

managed to be the first to reproduce a recorded sound with this tinfoil contraption.⁷ Alexander Graham Bell and Charles Tainter upgraded Edison's tinfoil materials with a hard-wax phonograph, improving sound quality tremendously.⁸

The technology evolved over the next few decades when Emil Berliner developed the gramophone in the late 1880s.⁹ Simpler to playback and capable of cheap mass production, the gramophone played sound through the creation of metal discs with etched grooves, which could be easily copied and reproduced by creating a negative version with ridges mirroring the original grooves.¹⁰ The first "celebrity" gramophone recordings featured the voices of the Imperial Russian Opera at the start of the 20th century.¹¹ The use of the hard-wax masters became popular with American recording studios shortly after and remained the preferred method until the early 1920s when two engineers at Bell Telephone Labs developed a method for recording that used purely electronic components.¹² This method of recording, capable of producing clearer sound than the aforementioned mechanical varieties, enabled record companies to capture more of the musician in the studio.¹³

The age of vinyl commenced in the 1950s and dominated through the 1980s until CDs replaced vinyl LPs.¹⁴ In the midst of this, sound recordings first entered into copyright law in the 1970s.¹⁵ Prior to February 15, 1972, individual state laws dictated copyrights for sound recordings.¹⁶ The Copyright Act of 1976 provided the basic framework for modern copyright laws.¹⁷

7. *Id.*

8. *Id.*

9. Beardsley & Leech-Wilkinson, *supra* note 3.

10. *Id.*

11. *Id.*

12. *Id.*

13. Stewart Hilton, *The History of Recorded Music*, MUSICAL U, <https://www.musical-u.com/learn/history-of-recorded-music/> [<https://perma.cc/KJV7-M9MZ>] (last visited Mar. 2, 2023).

14. *Id.*

15. Amanda Jenkins, *Copyright Breakdown: The Music Modernization Act*, LIBR. OF CONG. BLOGS (Feb. 5, 2019), <https://blogs.loc.gov/now-see-hear/2019/02/copyright-breakdown-the-music-modernization-act/> [<https://perma.cc/NH7T-Y9SA>].

16. *Id.*

17. *Copyright Law of the United States (Title 17)*, U.S. COPYRIGHT OFF., <https://www.copyright.gov/title17/> [<https://perma.cc/K8M3-2TEU>] (last visited Mar. 28, 2023).

B. *Music Recordings Today*

Today, every song has two copyrights: one for the sound recording and one for the composition.¹⁸ A “master recording” is a song or performance’s official, original sound recording.¹⁹ Music critic Dan DeLuca opined that masters are “the most authentic superior sonic account of the song. Everything else is a copy, and after that, in the digital world, a copy of a copy.”²⁰ These master recordings are commonly referred to as “masters” and can be played back and reproduced.²¹ Ownership of an artist’s masters furnishes legal rights to license the recordings to third parties and collect royalties on any such licensing.²²

When signing recording artists, music labels will leverage the master rights to recordings for a finite time period with the opportunity for a full-time career as a musician.²³ In exchange for the rights to the artist’s master recordings, music labels will provide the artist with an advance payment, recoupable against the royalties earned from sales.²⁴ The allure of the advance, and the potential for a promising career, often overshadow the negative and restrictive implications that come with signing away the rights to an artist’s masters. Once under contract, artists cannot release records with another label and forfeit ownership of the recording made under contract to the record label.²⁵ Often, the reassignment of master recording rights accompanying recording contracts lasts perpetually.²⁶

Generally, a copyright grants authors the rights to reproduce the work, prepare derivative works, distribute copies of the work, publicly perform the work, and publicly display the work.²⁷ The owners of master

18. Evie Bloom, *What Does It Mean to Own Your Masters?*, AMUSE, <https://www.amuse.io/content/owning-your-masters?cn-reloaded=1> [https://perma.cc/SED3-7C6D] (last visited Mar. 28, 2023).

19. *Id.*

20. Seraphina DiSalvo, *What Is a Master Recording And Why Is Taylor Swift So Mad Hers Just Got Sold?*, PHILA. INQUIRER, <https://www.inquirer.com/entertainment/music/taylor-swift-master-recordings-scooter-braun-20190702.html> [https://perma.cc/W7ED-KF98] (last updated July 2, 2019, 10:33 AM).

21. *What Is the Difference Between Master Recordings and Music Publishing?*, SONGTRUST, <https://help.songtrust.com/knowledge/what-is-the-difference-between-master-recordings-and-music-publishing> [https://perma.cc/CNY4-R8X2] (last visited Mar. 28, 2023).

22. Bloom, *supra* note 18.

23. *Why Owning Your Master Recordings Means Everything*, AWAL (Sept. 19, 2018), <https://www.awal.com/blog/maintaining-ownership-rights-as-an-artist> [https://perma.cc/9P4A-M964].

24. *Id.*

25. *Id.*

26. *Id.*

27. U.S. COPYRIGHT OFF., *HOW SONGWRITERS, COMPOSERS, AND PERFORMERS GET PAID* 3 (2020), <https://www.copyright.gov/music-modernization/educational-materials/musicians-income.pdf> [https://perma.cc/MC9P-TKVV]; 17 U.S.C. § 106.

recordings have no public display rights and a limited public performance right.²⁸

Master recording rights are distinct and separate from the publishing rights accompanying the musical work, including the notes, lyrics, and melody.²⁹ These composition rights are vested in the songwriters, producers, and publishers of a given song.³⁰ These stakeholders have the exclusive right to control the reproduction and redistribution of the work, as well as the right to perform the work publicly.³¹ Record labels and music publishers typically favor the master recording rights to the detriment of the author's publishing rights because these entities make more money from the recordings than the publishing.³²

The copyright for a master recording cannot be used in substitution for the copyright of the musical work.³³ Similarly, composition rights protecting the underlying musical work cannot protect the recorded performance of a given composition.³⁴

II. THERE'S NOTHING LIKE A MAD WOMAN: TAYLOR SWIFT'S DECISION TO RE-RECORD HER FIRST SIX ALBUMS

“He’s got my past frozen behind glass, but I’ve got me.”³⁵

A. *The Fallout*

The love story between Taylor Swift (Swift) and music executives like Scott Borchetta of her former record label, Big Machine Records, LLC (Big Machine), was tainted by bad blood during the summer of 2019.³⁶ In 2005, at the start of her career, Swift signed a contract with Big Machine, stipulating that the record company would retain ownership of

28. U.S. COPYRIGHT OFF., *supra* note 27.

29. *Id.*; Bloom, *supra* note 18; Jenkins, *supra* note 15.

30. Lisa A. Alter, *Protecting Your Musical Copyrights*, WIXEN MUSIC (2012), <https://www.wixenmusic.com/copyright/protecting-your-musical-copyrights> [https://perma.cc/M2JC-H3Z3].

31. Camille N. Anidi, *The Difference Between the Underlying Composition and the Master Recording*, ANIDI L. (Nov. 16, 2020), <https://www.anidilaw.com/blog/the-difference-between-the-underlying-composition-and-the-master-recording> [https://perma.cc/M77V-WZM7].

32. *Music Streaming and Its Impact on Composers & Songwriters*, ECSA (May 6, 2021), <https://composeralliance.org/news/2021/5/music-streaming-and-its-impact-on-composers-song-writers/> [https://perma.cc/DJ3A-FZBR].

33. Anidi, *supra* note 31.

34. *Id.*

35. TAYLOR SWIFT, *It's Time To Go*, on EVERMORE (DELUXE VERSION) (Republic Records 2020).

36. See Nicholas Hautman, *Taylor Swift's Fallout with Big Machine Records, Scooter Braun and Scott Borchetta: Everything We Know*, U.S. WEEKLY (June 23, 2021), <https://www.usmagazine.com/celebrity-news/pictures/taylor-swift-big-machine-records-fallout-everything-we-know/> [https://perma.cc/9DNW-HB46] (explaining the conflict over the acquisition of Swift's master recordings).

the master recordings for the length of a thirteen-year term, an ode to Swift's favorite number.³⁷ The contract also contained an "original production clause," which essentially prohibited Swift from making any future songs sound *exactly* like the original master recordings that Big Machine owned.³⁸ The full contract remains private.³⁹

During her tenure with Big Machine, Swift released six studio albums: *Taylor Swift*, *Fearless*, *Speak Now*, *Red*, *1989*, and *Reputation*; Swift is credited as a songwriter or co-songwriter on each album.⁴⁰ Swift won ten Grammys and earned thirty Grammy nominations for the work she authored and recorded during this time.⁴¹

Upon the expiration of the thirteen-year term of the Big Machine contract, Swift opted against renewing with Big Machine and instead made a "new home" at Republic Records and Universal Music Group.⁴² The new agreement provided that Swift would "own all of [her] master recordings . . . from now on"⁴³ and reflected the shift in audience consumption mechanisms with an intentional focus on revenues from streaming services.⁴⁴ For example, Swift specifically negotiated for the distribution of money to her when Spotify sells shares.⁴⁵

37. Brittany Spanos & Amy X. Wang, *Taylor Swift 'Absolutely' Plans to Re-Record Catalog After Big Machine Deal*, ROLLING STONE (Aug. 21, 2019), <https://www.rollingstone.com/music/music-news/taylor-swift-absolutely-plans-to-re-record-catalog-after-big-machine-deal-874173/> [<https://perma.cc/EX3M-9WRJ>]; Jocelyn Vena, *Taylor Swift Explains Why 13 Is Her Lucky Number*, MTV (May 7, 2009, 1:18 PM), <https://www.mtv.com/news/1610839/taylor-swift-explains-why-13-is-her-lucky-number/> [<https://perma.cc/8F23-LXN4>]. The article quoted Swift, stating "[b]asically whenever a 13 comes up in [her] life, it's a good thing." *Id.* Swift elaborated that "[e]very time [she'd] won an award [she'd] been seated in either the 13th seat, the 13th row, the 13th section[,] or row M, which is the 13th letter." *Id.*

38. Starr Bowenbank, *Exactly How Can Taylor Swift Rerecord All Six of Her Old Albums?*, COSMOPOLITAN (Nov. 12, 2021), <https://www.cosmopolitan.com/entertainment/music/a35491914/how-taylor-swift-will-rerecord-old-albums-explained/> [<https://perma.cc/B3S3-HMMN>].

39. Jeffrey H. Brown, *The Legal Take on the Taylor Swift Rerecording Dispute*, BEST LAW. (Dec. 5, 2019, 8:00 AM), <https://www.bestlawyers.com/article/taylor-swift-recording-contract-controversy/2747> [<https://perma.cc/M9ST-7F98>].

40. Emma Nolan, *Does Taylor Swift Write Her Own Songs? Full List of Her Songwriting Credits*, NEWSWEEK (Jan. 25, 2022), <https://www.newsweek.com/does-taylor-swift-write-own-songs-full-list-songwriting-credits-damon-albarn-1672546> [<https://perma.cc/7LZQ-N3T2>].

41. *Taylor Swift*, RECORDING ACADEMY GRAMMY AWARDS, <https://www.grammy.com/artists/taylor-swift/15450> [<https://perma.cc/8VWY-3424>] (last visited Aug. 04, 2023).

42. Taylor Swift (@taylorswift), INSTAGRAM (Nov. 19, 2018), <https://www.instagram.com/p/BqXgDJBz7d/>; Nicholas Hautman, *Taylor Swift Changes Record Labels 13 Years After Signing with Big Machine: 'My New Home'* (Nov. 19, 2018), <https://www.usmagazine.com/entertainment/news/taylor-swift-changes-record-labels-after-13-years-my-new-home/> [<https://perma.cc/XBT5-6HQ9>].

43. Hautman, *supra* note 42.

44. *See id.* ("[Swift] pushed for Universal to agree that "any sale of their Spotify shares [will] result in a distribution of money to their artists" and it is "non-recoupable" against what those performers owe the label.").

45. *Id.*

On June 25, 2019, Big Machine notified all its shareholders of a pending deal with Ithaca Holdings, LLC (Ithaca), an “investment holding company focused on the media and entertainment and consumer brand sectors” founded by music executive Scooter Braun.⁴⁶ Swift’s father, Scott Swift, was among the shareholders of Big Machine, who met on June 28, 2019, and ultimately approved the deal with Ithaca.⁴⁷ The sale transferred ownership of the master recordings of Swift’s first six albums to Ithaca and Braun.⁴⁸

The deal went public on June 30, 2019, and Swift took to Tumblr, a blog platform she used to connect with fans (“Swifties”), to express her immense dissatisfaction with the deal; in fact, the sale of her masters to Braun was Swift’s “worst case scenario.”⁴⁹ A very public scuffle ensued, and other well-known artists defended either Swift or Braun on social media, including Cher and Justin Bieber.⁵⁰

The complications from the deal with Ithaca had only just begun. Because Swift did not own the rights to her masters, she could not perform a medley of her old songs as she planned to celebrate winning the “Artist of the Decade Award” at the 2019 American Music Awards (AMAs).⁵¹ Swift again took to Tumblr pleading with Swifties to “let Scott Borchetta and Scooter Braun know how [they] feel about this.”⁵² Days before the performance, the executives announced they had “come to terms on a licensing agreement that approves their artists’ performances

46. *Ithaca Holdings*, CRUNCHBASE, <https://www.crunchbase.com/organization/ithaca-holdings> [<https://perma.cc/W7W3-S7FD>] (last visited Mar. 29, 2023).

47. Scott Borchetta, *So, It’s Time for Some Truth...*, BIG MACH. LABEL GRP. (June 30, 2019), <https://www.bigmachinelabelgroup.com/news/so-its-time-some-truth> [<https://perma.cc/2FTQ-5PAH>]. *But see* Taylor Swift, TUMBLR (June 30, 2019), <https://taylorswift.tumblr.com/post/185958366550/for-years-i-asked-pleaded-for-a-chance-to-own-my> [<https://perma.cc/8UXA-RJ6A>] (explaining that Swift “learned about Scooter Braun’s purchase of [her] masters as it was announced to the world”).

48. Talia Smith-Muller, *3 Lessons Taylor Swift’s Rift with Big Machine Can Teach Us About Record Contracts*, BERKLEE ONLINE (Dec. 20, 2019), <https://online.berklee.edu/takenote/3-lessons-taylor-swifts-rift-with-big-machine-can-teach-us-about-record-contracts/> [<https://perma.cc/3YM3-XUHP>].

49. Swift, *supra* note 47.

50. Ellie Woodward, *Here Are All the Celebs Who’ve Spoken Out in Support of Taylor Swift After She Exposed Scott Borchetta and Scooter Braun Again*, BUZZFEED (Nov. 15, 2019), <https://www.buzzfeed.com/elliewoodward/celebs-taylor-swift-scott-borchetta-scooter-braun-drama> [<https://perma.cc/U8GA-GF7P>]; Madison Feller, *Here Are All the Celebrities Who Have Defended Taylor Swift and Scooter Braun so Far*, ELLE (July 1, 2019), <https://www.elle.com/culture/celebrities/a28242033/celebrities-defending-taylor-swift-scooter-braun/> [<https://perma.cc/ARY3-AYXD>].

51. Taylor Swift, TUMBLR (Nov. 14, 2019), <https://taylorswift.tumblr.com/post/189068976205/dont-know-what-else-to-do> [<https://perma.cc/A828-QZRS>] (“I’m not allowed to perform my old songs on television because [Scott Borchetta and Scooter Braun] claim that would be re-recording my music before I’m allowed to next year.”).

52. *Id.*

to stream post-show and for re-broadcast on mutually approved platforms,” including the AMAs.⁵³ Swift took the AMAs stage, donning a white shirt etched with the titles of the six albums she did not own the masters for.⁵⁴

B. *The Re-Recordings*

The terms of Swift’s original contract with Big Machine stipulated that she could not re-record any of her first five albums until November 2020.⁵⁵ Swift’s sixth album could not be re-recorded until November 2022.⁵⁶ Swift repeatedly and publicly expressed her genuine intent to re-record and re-release her original works once it was legal.⁵⁷ Coincidentally around October 2020, seventeen months after acquiring them from Big Machine, Braun sold the six masters to an investment fund for over \$300 million.⁵⁸

Shortly thereafter, Swift officially announced she was “rerecording all of [her] old music” on November 22, 2020, during a virtual acceptance speech at the AMAs as she was declared the 2020 “Artist of the Year.”⁵⁹ However, the “original production clause” from Swift’s 2005 agreement with Big Machine provided that the re-recordings must sound distinguishable from the original masters.⁶⁰

On February 11, 2021, Swift announced that her “new version” of her second album, *Fearless (Taylor’s Version)*, was finished.⁶¹ In the Instagram post’s caption, Swift added that her version of the album

53. Neha Prakash, *2019 AMAs: Taylor Swift Shut Down Feud over Music Rights with Career-Spanning Medley*, GLAMOUR (Nov. 24, 2019), <https://www.glamour.com/story/taylor-swift-performance-2019-amas> [<https://perma.cc/Q48U-DX3Z>].

54. *Id.* (noting that Swifties call these coy references to other Taylor Swift works “Easter Eggs”).

55. Smith-Muller, *supra* note 48.

56. Jessica Derschowitz, *So...Where Are We At With the Taylor Swift Rerecordings?*, VULTURE, <https://www.vulture.com/2023/08/taylor-swift-rerecorded-albums-which-album-is-next.html> [<https://perma.cc/YM8S-BW48>] (Aug. 10, 2023).

57. Spanos & Wang, *supra* note 37.

58. Shirley Halperin, *Scooter Braun Sells Taylor Swift’s Big Machine Masters for Big Payday*, VARIETY (Nov. 16, 2020), <https://variety.com/2020/music/news/scooter-braun-sells-taylor-swift-big-machine-masters-1234832080/> [<https://perma.cc/JD4P-ZDWV>]; see Taylor Swift (@taylorswift13), TWITTER (Nov. 16, 2020), <https://twitter.com/taylorswift13/status/1328471874318311425> [<https://perma.cc/L2PF-E887>] (discussing Swift’s negotiations with Scooter Braun and the sale to Shamrock Holdings).

59. Sarah Curran, *Taylor Swift Announces That She’s Re-Recording All of Her Old Music While Accepting Artist of the Year at AMAs*, ET CANADA (Nov. 22, 2020), <https://etcanada.com/news/716392/taylor-swift-fans-share-their-theories-about-her-not-a-lot-going-on-post/> [<https://perma.cc/34M5-Q7W7>].

60. Bowenbank, *supra* note 38.

61. Taylor Swift (@taylorswift), INSTAGRAM (Feb. 11, 2021), <https://www.instagram.com/p/CLJzk9MjcCe/> [<https://perma.cc/BHE7-CEU7>].

included “6 never before released songs from the vault,” and she released *Love Story (Taylor’s Version)* later that same night.⁶² The full album, *Fearless (Taylor’s Version)*, dropped on April 9, 2021.⁶³ The release was Swift’s third number-one album in under nine months.⁶⁴

On June 18, 2021, Swift announced that *Red (Taylor’s Version)* would drop on November 12, 2021.⁶⁵ Again, Swift teased on Instagram that the re-recording would contain never-before-released songs “from the vault,” this time nine tracks, including a ten-minute version of *All Too Well*, a song many Swifties claim as one of Swift’s best works.⁶⁶ *Red (Taylor’s Version)* became Swift’s fourth number-one album in sixteen months.⁶⁷

Swift still has four original albums for which she has yet to release a *Taylor’s Version*. Swifties have speculated about which release is next, making expert utilization of the many “Easter egg” hints Swift herself has seemingly dropped along the way.⁶⁸ Swift’s sixth studio album, *Reputation*, seems the least likely for re-release as recording contracts often require artists to wait at least five years after a project’s release date before even beginning to re-record.⁶⁹ As such, *Reputation*’s November

62. *Id.*

63. Taylor Swift (@taylorswift), INSTAGRAM (Apr. 9, 2021), <https://www.instagram.com/p/CNbnuyojgrZ/> [<https://perma.cc/8S9S-2N4U>].

64. Ben Sisario, *Taylor Swift’s Rerecorded ‘Fearless’ Is the Year’s Biggest Debut So Far*, N.Y. TIMES (Apr. 19, 2021), <https://www.nytimes.com/2021/04/19/arts/music/taylor-swift-fearless-taylors-version-billboard-chart.html> [<https://perma.cc/WWW9-228B>]. Swift released albums *folklore* and *evermore*, under the new contract with Universal and Public, on July 24, 2020 and December 11, 2020, respectively. Jonathan Ponciano, *Taylor Swift Announces Surprise Release of 9th Album ‘Evermore’ on Friday*, FORBES (Dec. 10, 2020), <https://www.forbes.com/sites/jonathanponciano/2020/12/10/taylor-swift-announces-surprise-release-of-9th-album-evermore-on-friday/> [<https://perma.cc/CL7J-8F8B>]. *folklore* won Album of the Year at the Grammys and *evermore* was nominated for the same award. Daniela Avila, *Taylor Swift Celebrates ‘Evermore’ 2022 Grammy Nomination: ‘No Problems Today Just Champagne’*, PEOPLE (Nov. 23, 2021), <https://people.com/music/grammys-2022-taylor-swift-celebrates-evermore-nomination/> [<https://perma.cc/WYV8-FKF7>].

65. Taylor Swift (@taylorswift), INSTAGRAM (June 18, 2021), <https://www.instagram.com/p/CQRUBXtjZXT/> [<https://perma.cc/63CW-CR8G>].

66. Taylor Swift (@taylorswift), INSTAGRAM (Aug. 6, 2021), <https://www.instagram.com/p/CSPEsteMmE5/> [<https://perma.cc/E6BV-FX8S>]; Ashley Boucher, *Taylor Swift Has a 10-Minute Version of Fan-Favorite Song ‘All Too Well’*, PEOPLE (Nov. 19, 2020), <https://people.com/music/taylor-swift-has-a-10-minute-version-of-fan-favorite-song-all-too-well/> [<https://perma.cc/J6D2-LC5T>].

67. Ben Sisario, *Taylor Swift Earns Her Fourth No. 1 in 16 Months with New ‘Red’*, N.Y. TIMES (Nov. 22, 2021), <https://www.nytimes.com/2021/11/22/arts/music/taylor-swift-red-taylors-version-billboard-chart.html> [<https://perma.cc/8YWG-2W7B>].

68. See Eliza Thompson, *Which Taylor Swift Album Will Be Rerecorded Next? The Wildest Fan Theories and Speculation*, US WKLY., <https://www.usmagazine.com/entertainment/pictures/which-taylor-swift-album-will-be-rerecorded-next-fan-theories/1989-2-13/> [<https://perma.cc/JWD4-BMDR>] (Apr. 14, 2023) (providing that “fans are already thinking about which one of her early albums she’ll rerecord next”).

69. *Id.*

2017 original release precluded Swift's ability to re-record it any time before November 2022.

III. I PROMISE THAT YOU'LL NEVER FIND ANOTHER LIKE ME: COPYRIGHT TERMINATION LAW

"I've come too far to watch some namedropping sleaze tell me what are my words worth."⁷⁰

A. *Copyright Law Origins*

Copyright law has roots in the United States Constitution, specifically in Article I, Section 8, Clause 8.⁷¹ The Founding Fathers reserved to the Legislature the power "[t]o promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries."⁷² Enactment of the United States' first Copyright Act was even on the agenda of the U.S. Congress' first convention in 1789.⁷³ Accordingly, the Copyright Act of 1790 furnished copyright protections for "maps, charts, and books."⁷⁴

Since 1897, the owner of a copyrighted musical composition has retained the exclusive right "to perform the work publicly for profit."⁷⁵ By 1914, the number of performers and performances showcasing copyrighted music was so burdensome that, negotiation for licensed use of the copyrighted materials was practically impossible.⁷⁶ In response, the American Society of Composers, Authors, and Publishers assembled to serve as a "'clearing-house' for copyright owners and users to solve [the] problems" associated with the widespread performance of licensed music.⁷⁷

The United States Copyright Office (USCO) provides that "[i]t is a principle of American law that an author of a work may reap the fruits of his or her intellectual creativity for a limited period of time."⁷⁸ The USCO also provides, in relevant part, that "in the case of sound recordings, [the owner of copyright has the exclusive right] to perform the work publicly

70. TAYLOR SWIFT, *The Lakes, on FOLKLORE (DELUXE VERSION)* (Republic Records 2020).

71. U.S. CONST. art. I, § 8, cl. 8.

72. *Id.*

73. Anandashankar Mazumdar, *Historic Court Cases That Helped Shape Scope of Copyright Protections*, LIBR. OF CONG. (Sept. 9, 2020), <https://blogs.loc.gov/copyright/2020/09/historic-court-cases-that-helped-shape-scope-of-copyright-protections/> [https://perma.cc/84VB-WX9M].

74. *Id.*

75. *Broad. Music, Inc. v. Columbia Broad. Sys., Inc.*, 441 U.S. 1, 4 (1979).

76. *Id.* at 4–5.

77. *Id.* at 5 (citing *CBS v. Am. Soc'y of Composers*, 400 F. Supp. 737 (S.D.N.Y. 1975)).

78. *A Brief History of Copyright in the United States*, U.S. COPYRIGHT OFF., <https://www.copyright.gov/circs/circ1a.html> [https://perma.cc/VT49-FAKM].

by means of a digital audio transmission.”⁷⁹ Copyright claims are registered, and the USCO has recorded copyright-related documents.⁸⁰ Despite the long-recognized importance of copyright protections, protection for sound recordings under federal copyright laws was not recognized until 1971.⁸¹

Section 101 of the Copyright Act provides many relevant definitions for copyright law terms.⁸² Sections 102 through 105 of the Copyright Act shed light on the subject matter of copyright.⁸³

Exclusive rights afforded by copyright exist under Section 106 of the Copyright Act.⁸⁴ Specifically, this section provides the music copyright owner with the rights to reproduction,⁸⁵ adaptation,⁸⁶ public distribution,⁸⁷ public performance,⁸⁸ and public display.⁸⁹

B. *Theories of Copyright Law*

Several theories justify copyright law protections. Two, in particular, are geared specifically toward creators and authors of works.

Incentive theory, for example, serves as a utilitarian justification for copyright law.⁹⁰ Under incentive theory, one believes copyrights are necessary to solve the problem of public goods.⁹¹ Public goods are “‘non-rivalrous’ (meaning that they can be enjoyed by an unlimited number of people) and ‘non-excludable’ (meaning that once they are made available to one consumer, it is challenging to prevent other consumers from gaining access to them).”⁹² Music on a streaming platform would qualify as a non-rivalrous and non-excludable good. Incentive theory is purely consequentialist, believing that creators must receive intellectual

79. *Id.*

80. *Id.*

81. Sound Recording Act of 1971, Pub. L. No. 92-140, 85 Stat. 391 (1971).

82. 17 U.S.C. § 101.

83. *Id.* §§ 102–105.

84. *Id.* § 106.

85. *Id.* § 106(1).

86. *Id.* § 106(2).

87. *Id.* § 106(3).

88. 17 U.S.C. § 106(4).

89. *Id.* § 106(5).

90. See JEANNE C. FROMER & CHRISTOPHER JON SPRINGMAN, COPYRIGHT LAW CASES AND MATERIALS 10 (Jeanne C. Fromer & Christopher Jon Springman, eds., vol. 5 2023) (stating that the utilitarian justification for copyright provides “‘that copyright contributes to the ‘progress of Science’ by maintaining adequate incentives to engage in the production of new artistic and literary works.”).

91. See William Fisher, *Copyright Theory*, BERKMAN KLEIN CTR., <https://cyber.harvard.edu/copyrightforlibrarians/Introduction> [https://perma.cc/N9RM-LLZF] (last visited Aug. 7, 2023) (explaining how copyright law incentivizes people to continue producing works that would serve as public goods).

92. *Id.*

property protections to incentivize them to create their works.⁹³ An incentive-minded individual would think that a potential author might not spend all the time and money required to write a book or make a movie if others could freely make and sell copies.⁹⁴

Personality theory, on the other hand, views creative works as personal manifestations of an author's personhood.⁹⁵ Under personality theory, authors have a continuing relationship and bond to their works and should be able to prevent any unapproved changes.⁹⁶ With this frame of mind, "[t]he originator of ideas should then be entitled to personal and [sic] control over their reputation and dignity under the joint forces of law and creativity. Essentially, an individual's personality traits are further 'materialized' as visual or tangible creative property."⁹⁷ Moral rights derive from personality theory, including "an author's rights to be credited for her work, to protect the integrity of her work, to determine when to publish a work, to demand that a work be returned, to be protected from excessive criticism[,] and to collect a fee when a work is resold."⁹⁸

C. *The Judiciary and Copyright Law*

The Supreme Court has addressed many copyright-related questions, opining that copyright law aims to "stimulate artistic creativity for the general public good."⁹⁹ In 1879, the Court set forth the "Idea/Expression Dichotomy" principle in its *Baker v. Selden* ruling, which provided that copyright only protected the expression of an idea rather than an idea itself.¹⁰⁰ The sentiment translates to Section 102(b) of the Copyright Act, which states, "[i]n no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in

93. *Id.*

94. *See id.* ("To maximize social welfare, the government must somehow create an incentive for the novelist to write novels.").

95. *Id.*

96. *See* FROMER & SPRINGMAN, *supra* note 90, at 15 ("[B]ased on the view that 'to achieve proper self-development—to be a person—an individual needs some control over resources in the external environment.'" (citation omitted)).

97. Lily Yuan, *Personality Theory and Intellectual Property*, PERSONALITY PSYCH. (Feb. 3, 2020), <https://personality-psychology.com/personality-theory-intellectual-property/> [https://perma.cc/66ZN-F6C7].

98. Jessica Meindertsa, *Theories of Copyright*, OHIO STATE UNIV, (May 9, 2014), <https://library.osu.edu/site/copyright/2014/05/09/theories-of-copyright/> [https://perma.cc/Y3V9-6DRA].

99. *Twentieth Century Music Corp. v. Aiken*, 422 U.S. 151, 156 (1975).

100. *Baker v. Selden*, 101 U.S. 99, 107 (1879).

which it is described, explained, illustrated, or embodied in such work.”¹⁰¹

The Court clarified that a copyright’s originality level requires independent creation and a modicum of creativity because copyrights intend to protect “the fruits of intellectual labor.”¹⁰² This sentiment is reflected in Section 102(a) of the Copyright Act, stating that the protections are for “original works of authorship.”¹⁰³ The elements of originality, notably, do not require *novelty*, just that the idea originated with the author.¹⁰⁴

In *Eldred v. Ashcroft*, the Court upheld that the constitutional authority of Congress to “prescribe the duration of copyrights” for a “limited time” permitted enactment of the 1998 Copyright Term Extension Act (CTEA), which extended the term of copyrights to “life [of the author] plus 70 years” from the previous life plus fifty years standard.¹⁰⁵

D. Copyright Termination

The termination of a transferred copyright, made pre-January 1, 1978, is governed by Section 304 of the Copyright Act.¹⁰⁶ The section provides that:

[T]he exclusive or nonexclusive grant of a transfer or license of the renewal copyright or any right under it . . . may be effected at any time during a period of five years beginning at the end of fifty-six years from the date copyright was originally secured, or beginning on January 1, 1978, whichever is later.¹⁰⁷

For more modern creations, the language governing the termination of a transferred copyright made after January 1, 1978, is found in Section 203 of the Copyright Act.¹⁰⁸ Section 203 of the Copyright Act provides that:

[T]he exclusive or nonexclusive grant of a transfer or license of copyright or of any right under a copyright, executed by the author . . . [may be terminated] at any time during a

101. 17 U.S.C. § 102(b).

102. *In re Trade-Mark Cases*, 100 U.S. 82, 94 (1879).

103. 17 U.S.C. § 102(a).

104. *Trade-Mark Cases*, 100 U.S. at 94.

105. *Eldred v. Ashcroft*, 537 U.S. 186, 193–94 (2003).

106. 17 U.S.C. § 304(c).

107. *Id.* § 304(c)(3).

108. *Id.* § 203.

period of five years beginning at the end of thirty-five years from the date of execution of the grant.¹⁰⁹

Essentially, authors who assign a copyright after 1978 can reclaim the copyright, terminating the assignment after thirty-five years have passed since assignment. Authors have a five-year window from assignment to do this, meaning from thirty-five to forty years after assignment. Notice of such termination shall be executed, in writing, “not less than two or more than ten years before” the thirty-five-year mark,¹¹⁰ meaning from twenty-five to thirty-eight years after assignment. The USCO must have a record of the copy of notice before the effective date of termination.¹¹¹

Termination rights are not alienable, as specified in Section 203(a)(5), which says “[t]ermination of the grant may be effected notwithstanding any agreement to the contrary, including an agreement to make a will or to make any future grant.”¹¹²

Congress created a termination right for copyright law intending to protect creators against “unremunerative transfers . . . resulting in part from the impossibility of determining a work’s value until it has been exploited.”¹¹³ The right of termination empowers recording artists and songwriters to regain control of their works by renegotiating contracted agreements or entering into entirely new agreements.¹¹⁴ Such an opportunity effectively gives creators a second chance at a better deal.¹¹⁵

109. *Id.* § 203(a)(3).

110. *Id.* § 203(a)(4)(A).

111. *Id.*

112. 17 U.S.C. § 203(a)(5).

113. *Ray Charles Found. v. Robinson*, 795 F.3d 1109, 1112 (9th Cir. 2015) (citing H.R. REP. NO. 94-1476, at 124 (1976)).

114. Kenneth Abdo et al., *Termination of Music Copyright Transfers: The Renegotiation Reality*, ABA, https://www.americanbar.org/groups/intellectual_property_law/publications/landslide/2018-19/november-december/termination-music-copyright-transfers/ [<https://perma.cc/5ARH-AQ3K>].

115. Brittany L. Kaplan-Peterson, *Copyright Termination: A Primer*, CDAS (Jan. 18, 2017), <https://cdas.com/copyright-termination-prime/> [<https://perma.cc/CGG4-QARK>].

IV. ARE YOU READY FOR IT?: MASTER RECORDING RIGHTS DURING THE AGE OF STREAMING SERVICES

“Is it romantic how all my elegies eulogize me?”¹¹⁶

A. *The Streaming Revolution*

Revenue from sales of recorded music increased each year from 2015 to 2021.¹¹⁷ This recent growth can be attributed to a number of things, including a rise in piracy in the 2010s as consumers moved away from physical record consumption and the resulting popularity of streaming services for music consumption, like Spotify and Apple Music.¹¹⁸

A comparison of the statistics of Taylor Swift’s studio album sales reflects the popularization of streaming services. Swift’s 2006 debut album, *Taylor Swift*, sold 39,000 hard copies in its first week.¹¹⁹ The 2008 release, *Fearless*, sold 592,300 hard copies.¹²⁰ Released in 2010, *Speak Now* sold 1.047 million copies.¹²¹ The 2012 album, *Red*, sold 1.208 million copies.¹²² *Reputation* sold around 1.2 million copies during its first week in 2017, and Swift kept the album off streaming services upon its release.¹²³ *Lover* saw 679,000 album sales and 226 million streams in its first week in 2019.¹²⁴ *Fearless (Taylor’s Version)* brought 179,000

116. TAYLOR SWIFT, *The Lakes, on FOLKLORE (DELUXE VERSION)* (Republic Records 2020).

117. See Oscar Heanue, *Streaming Services Are the Future of the Music Industry, but They’re Leaving Musicians Behind*, ON LABOR (Jan. 25, 2022), <https://onlabor.org/streaming-services-are-the-future-of-the-music-industry-but-theyre-leaving-musicians-behind/> [<https://perma.cc/2V6Q-TLPA>] (outlining the resurgence of revenues from recorded music sales following decades-long lows in the early 2010s).

118. *Id.*; Katie Allen, *Piracy Continues to Cripple Music Industry as Sales Fall 10%*, GUARDIAN (Jan. 21, 2010), <https://www.theguardian.com/business/2010/jan/21/music-industry-piracy-hits-sales> [<https://perma.cc/C8R7-9PCD>].

119. Chris Harris, *Taylor Swift Scores First Chart-Topping Debut with Fearless*, MTV (Nov. 19, 2008), <https://www.mtv.com/news/1599721/taylor-swift-scores-first-chart-topping-debut-with-fearless/> [<https://perma.cc/Q2QT-VQH8>].

120. *Id.*

121. Ben Sisario, *Taylor Swift Album Is a Sales Triumph*, N.Y. TIMES (Nov. 3, 2010), <https://www.nytimes.com/2010/11/04/arts/music/04country.html?> [<https://perma.cc/EK6U-GW6U>].

122. Keith Caulfield, *Taylor Swift’s ‘Red’ Sells 1.21 Million; Biggest Sales Week for an Album Since 2002*, BILLBOARD (Oct. 30, 2012), <https://www.billboard.com/music/music-news/taylor-swifts-red-sells-121-million-biggest-sales-week-for-an-album-since-2002-474400/> [<https://perma.cc/4X8H-XT9R>].

123. Andrew Flanagan & Sidney Madden, *First-Week Sales of Taylor Swift’s ‘Reputation’ Vary Widely, Depending Who You Ask*, NPR (Nov. 21, 2017), <https://www.npr.org/sections/the-record/2017/11/21/565761702/first-week-sales-of-taylor-swifts-reputation-vary-widely-depend-who-you-ask> [<https://perma.cc/NJD6-N482>].

124. Brittany Hodak, *Why Taylor Swift’s First-Week ‘Lover’ Sales Total Is a Big Deal*, FORBES (Sept. 1, 2019), <https://www.forbes.com/sites/brittanyhodak/2019/09/01/why-taylor->

pure album sales and 142.98 million on-demand streams during its first week in 2021.¹²⁵ Swift also released *Red (Taylor's Version)* in 2021, which sold 369,000 copies and racked up 303 million streams in its first week.¹²⁶

Globally, streaming services accumulated \$13.4 billion in revenue in 2020, most of which attributes to paid monthly or annual subscriptions.¹²⁷ Spotify operates using a “freemium” business model, characterized by two different tiers of users; the first tier allows users to consume music on Spotify at no cost with advertisements, and the second tier requires a paid subscription for advertisement-free streaming.¹²⁸ Spotify generates revenue from the advertisements viewed by first-tier users and subscription payments made by second-tier users.¹²⁹

The number of subscribers to streaming services grew by 109.5 million in 2021.¹³⁰ The ever-expanding audience of streaming services demands a catalog that grows accordingly. To keep up with the needs of its consumers, Spotify sees a new track uploaded to its platform every 1.4 seconds, meaning Spotify adds roughly 60,000 new tracks every day.¹³¹ An evolving understanding of the law that governs music copyright should mirror this robust evolution of music consumption.

B. *The New Value of Music*

The shift in the method of music consumption has fundamentally changed how music is valued. While in the past, album sales were the leading indicator of a particular album's success, the current metrics

swifts-first-week-lover-sales-total-is-a-big-deal/?sh=3f33264b749c [https://perma.cc/JQB5-6RSZ].

125. chart data (@chartdata), TWITTER (Apr. 18, 2021, 4:06 PM), <https://twitter.com/chartdata/status/1383874683397840899> [https://perma.cc/8GNM-RX73].

126. Sisario, *supra* note 64.

127. Heanue, *supra* note 117.

128. *Premium*, SPOTIFY, <https://www.spotify.com/us/premium/> [https://perma.cc/9BTM-KJK4] (last visited Feb. 27, 2023).

129. See E. Jordan Teague, *Saving the Spotify Revolution: Recalibrating the Power Imbalance in Digital Copyright*, CASE W. RESERVE J.L. TECH. & INTERNET 207, 222 (2012) (discussing Spotify's revenue which is funded through advertising and subscriptions).

130. Chris Willman, *Streaming Music Subscriptions Grew 26% in 2021, with YouTube Music as Fastest Growing DSP in the West*, VARIETY (Jan. 18, 2022), <https://variety.com/2022/music/news/streaming-music-growth-worldwide-youtube-spotify-apple-1235156594/> [https://perma.cc/A4JQ-2HXV].

131. Tim Ingham, *Over 60,000 Tracks Are Now Uploaded to Spotify Every Day. That's Nearly One Per Second*, MUSIC BUS. WORLDWIDE (Feb. 24, 2021), <https://www.musicbusinessworldwide.com/over-60000-tracks-are-now-uploaded-to-spotify-daily-thats-nearly-one-per-second/> [https://perma.cc/B8TX-J44D].

emphasize repeat streams or downloads to popular playlists.¹³² Today, a stream counts only when the listener has consumed the track for at least thirty seconds, regardless of the total time duration of the track.¹³³ This tracking mechanism may disadvantage genres and creators with longer works or works with longer introductions.¹³⁴

Spotify and Apple Music use a “pro rata” model for determining monetary payout from their streaming services.¹³⁵ This model pays right-holders according to market share—how their streams stack up against the most popular songs in a given time period.¹³⁶ It follows, then, that the most revenue is available for the stakeholders with the rights to the most listened-to tracks.¹³⁷ Spotify’s Chief Economist, Will Page, notes that the model, while perceived as “inherently objective and fair,” does not account for “different user behaviors.”¹³⁸ While the model values each stream in the same way, the model also provides a significant advantage to the most popular music stars.

C. Legislative Reform

In response to the digital revolution of music, Congress has considered over 120 proposed amendments to the Copyright Act¹³⁹ and ultimately adopted the 1995 Digital Performance Rights in Sound Recordings Act (DPRSRA), the 1998 Digital Millennium Copyright Act (DMCA), and the 2018 Music Modernization Act (MMA).

The 104th Congress enacted the DPRSA as an amendment to Title 17, the Copyright Act, that “provide[s] an exclusive right to perform sound recordings publicly by means of digital transmissions.”¹⁴⁰ A great deal of debate surrounded H.R. 2576 and S. 1421, the proposed bills from Representatives Hughes and Berman and Senators Hatch and Feinstein,

132. David Curry, *Music Streaming App Revenue and Usage Statistics (2023)*, BUS. OF APPS (last updated Feb. 1, 2023), <https://www.businessofapps.com/data/music-streaming-market/> [<https://perma.cc/3P96-DA3Y>].

133. *Music Streaming and Its Impact on Composers & Songwriters*, *supra* note 32.

134. *Id.*

135. Paula Mejía, *The Success of Streaming Has Been Great for Some, but Is There a Better Way?*, NPR (July 22, 2019), <https://www.npr.org/2019/07/22/743775196/the-success-of-streaming-has-been-great-for-some-but-is-there-a-better-way> [<https://perma.cc/29AZ-VL2S>].

136. *Id.*

137. *Id.*

138. *Id.*

139. See U.S. COPYRIGHT OFF., COPYRIGHT LEGISLATION: 109TH CONGRESS, <http://www.copyright.gov/legislation> [<https://perma.cc/R96L-LH9D>] (listing proposed bills from 2005 to 2006); see also U.S. COPYRIGHT OFF., COPYRIGHT LEGISLATION: ARCHIVE, <http://www.copyright.gov/legislation/archive> [<https://perma.cc/PJ4H-PMWA>] (listing proposed bills from 1997 to 2004).

140. Digital Performance Right in Sound Recordings Act, H.R. 1506, 104th Cong. (1995).

respectively, that would later become the DPRSA.¹⁴¹ In an effort to come to an agreement, Representative Hughes hosted a roundtable with music industry representatives for songwriters, performers, unions, performing rights societies, music publishers, and record companies.¹⁴²

The roundtable of stakeholders drafted a consensus agreement that prioritized the creation of “a compensation system for performance of sounds recordings that are distributed by commercial subscription audio services.”¹⁴³ The consensus agreement also included an exclusive right to authorize digital performance by subscription services.¹⁴⁴ The DPRSRA was formed after review of the consensus agreement, and it serves two main purposes: to create a right to perform sound recordings publicly “by means of a digital audio transmission”¹⁴⁵ and to confirm that certain digital transmissions, known as digital phonorecord deliveries, implicate copyrights in musical works and sound recordings and are subject to the compulsory mechanical license.¹⁴⁶ Phonorecords, as defined by the Copyright Act, are “material objects in which sounds, other than those accompanying a motion picture or other audiovisual work, are fixed by any method now known or later developed, and from which the sounds can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.”¹⁴⁷

President Clinton enacted the DCMA in 1998, which amended existing copyright law to address the relationship between copyright and the internet that was developing at the time.¹⁴⁸ The DMCA contained three main updates, and most notably for music in the streaming age, “encourage[d] copyright owners to give greater access to their works in digital formats by providing them with legal protections against unauthorized access to their works.”¹⁴⁹

In 2018, Congress signed the MMA into law in an attempt to overhaul outdated legislation and address the modern needs of sound recording

141. Marybeth Peters, *Digital Performance Right in Sound Recordings Act of 1995 (H.R. 1506)*, COPYRIGHT (June 28, 1995), <https://www.copyright.gov/docs/regstat062895.html> [<https://perma.cc/R7Z5-F5PM>].

142. *Id.*

143. *Id.*

144. *Id.*

145. 17 U.S.C.A. § 106(6) (West Supp. 1996).

146. *See id.* § 115(1)(A) (“A person may by complying with the provisions of this section obtain a compulsory license to make and distribute phonorecords of a nondramatic musical work, including by means of digital phonorecord delivery.”).

147. 17 U.S.C. § 101.

148. *The Digital Millennium Copyright Act*, COPYRIGHT, <https://www.copyright.gov/dmca/> [<https://perma.cc/TU2R-EVJA>].

149. *Id.*

rights.¹⁵⁰ The MMA addressed the impact of streaming services on publishing royalties by creating a new collection society, the Mechanical Licensing Collective, Inc. (MLC), which issues licenses to streaming services, collects royalties from those services, and distributes those royalties to artists.¹⁵¹ The MLC also creates a public database that logs information for musical works and their owners.¹⁵²

D. *Judicial Interpretation*

The shift to the use of streaming services has also prompted litigated issues. In *Yoakam v. Warner Music Group Corp.*, Warner Brothers Records (WBR) removed Dwight Yoakam's, a country artist's, earliest tracks, approaching the thirty-five-year termination benchmark, from streaming services because they did not want to run the risk of distributing music recordings they did not control.¹⁵³ In doing so, Yoakam argued that WBR prevented him from earning on those tracks because he could not partner with another label or distributor in the meantime.¹⁵⁴ In his complaint, Yoakam contended that:

Every hour that Mr. Yoakam's works are absent from the marketplace, as a result of Mr. Yoakam's inability to exploit the works due to Defendants' false ownership claim and Defendants' refusal to exploit Mr. Yoakam's works, Mr. Yoakam is financially damaged. Mr. Yoakam is unable to earn royalties on these works, his fans are unable to listen to these works, and his streaming count, a quantifier that directly impacts the known value of a song, is detrimentally impacted.¹⁵⁵

V. THESE THINGS WILL CHANGE: RECOMMENDATIONS FOR COPYRIGHT TERMINATION REFORM

Holding musicians to copyright transfers, made at the conception of their career, for decades until their statutory termination rights mature does not advance the aim of copyright law in allowing "an author of a

150. *What is the Music Modernization Act?*, TUNECORE, <https://support.tunecore.com/hc/en-us/articles/360051524372-What-is-the-Music-Modernization-Act-> [https://perma.cc/4YP3-DFVU].

151. *Id.*; *The Music Modernization Act*, COPYRIGHT, <https://www.copyright.gov/music-modernization/> [https://perma.cc/8YDY-949T].

152. *What is the Music Modernization Act?*, *supra* note 150.

153. Second Amended Complaint & Demand for Jury Trial at 15, 92, *Yoakam v. Warner Music Grp. Corp.*, No. 2:21-cv-01165-SVW-MAA, 2021 WL 7907790 (C.D. Cal. July 26, 2021).

154. *See id.* at 17 (stating that the plaintiff was precluded from earning from his works because WBR was essentially holding the works hostage).

155. *Id.* at 92.

work [to] reap the fruits of his or her intellectual creativity”,¹⁵⁶ especially when the exercise of the termination rights as they exist is unduly burdensome. Further, the payment schemes for streaming platforms like Spotify have cheated creators and artists out of their fair share of profits.¹⁵⁷

Termination rights were enacted to protect authors and their heirs against unprofitable or inequitable agreements by allowing authors and their heirs to share in the later economic success of their works.¹⁵⁸ The rapid growth in popularity of streaming services has significantly changed the way artists receive compensation for music consumption, and their rights to terminate agreements entered pre-success should change accordingly.

A. *Termination Rights Are Too Complicated to Exercise*

Attempting to exercise termination rights, as they currently exist, often poses complications for musicians. The many eligibility and timing requirements imposed by Section 203 create significant hurdles to overcome.¹⁵⁹ These hurdles lead musicians to “lengthy and expensive litigation” in pursuit of the rights to their own work.¹⁶⁰

A class action complaint, for example, filed in the Southern District of New York, alleged that:

[W]hile the Copyright Act confers upon authors the valuable “second chance” that they so often need, the authors of sound recordings, in particular, who have attempted to avail themselves of this important protection have encountered not only resistance from many record labels, they have been subjected to the stubborn and unfounded disregard of their

156. *A Brief Introduction and History*, U.S. COPYRIGHT OFF., <https://www.copyright.gov/circs/circ1a.html> [<https://perma.cc/F36X-HA9L>]; see also Dylan Gilbert, *It’s Time to Pull Back the Curtain on the Termination Right*, PUB. KNOWLEDGE (Dec. 5, 2019), <https://publicknowledge.org/its-time-to-pull-back-the-curtain-on-the-termination-right> [<https://perma.cc/ZE8U-QWKH>] (“Many artists enter into deals . . . [that] involve [them] granting or licensing the copyright in their work to these business partners for lengthy periods of time; sometimes these transfers are legally binding forever.”).

157. See Gabriela Tully Claymore, *Spotify Explains Royalty Payments*, STEREOGUM (Dec. 3, 2013), <http://www.stereogum.com/1587932/spotify-explains-royalty-payments/news/> [<https://perma.cc/LUD9-LMQK>] (explaining how Spotify distributes royalties and why some artists are upset with this process).

158. See Gilbert, *supra* note 156 (“[T]he termination right offered artists and their heirs a fair shot at ending unfair contracts by reclaiming their rights.”).

159. See generally 17 U.S.C. § 203 (detailing the conditions and effects of an author’s termination of transfers and licenses).

160. Gilbert, *supra* note 156.

rights under the law and, in many instances, willful copyright infringement.¹⁶¹

The notice element required for termination under Section 203, in particular, has prompted litigation. In *Yoakam v. Warner Music Group Corp.*, Dwight Yoakam (Yoakam), a successful country music singer and songwriter, served notice of termination for several singles on his record label, WBR, exactly thirty-five years from the date of the work's publication.¹⁶² The notice was served on February 5, 2019, which proved problematic as the earliest eligible date for termination service for the notice mistakenly listed the singles provided by Yoakam as January 31, 2021.¹⁶³ Because Section 203(a)(4)(A) of the Copyright Act requires a two-year minimum notice period, the service fell five days short according to Yoakam's own listed "effective date of termination" provided in the notice.¹⁶⁴ Yoakam alleged that the error in listing the effective termination date was "inconsequential and harmless" under the harmless error doctrine in 37 C.F.R. § 201.10(e) as he intended effective termination to be the correct date of February 5, 2021.¹⁶⁵ The District Court for the Central District of California ultimately applied the harmless error doctrine to the issue and excused Plaintiff's error in communicating the effective date in the notice of termination.¹⁶⁶

Artists have also encountered disputes over ambiguity in the meaning of "work for hire" in the music industry context.¹⁶⁷ In *Johansen v. Sony Music Entertainment Inc.*, plaintiff David Johansen (Johansen) released five albums with Sony Music Entertainment Inc. (Sony) after entering a recording agreement on or about 1978.¹⁶⁸ Johansen served a notice of termination to Sony on June 15, 2015, and two years later, on June 14, 2017, Sony sent a letter of refusal to Johansen.¹⁶⁹ The letter cited that:

161. Class Action First Amended Complaint & Demand for Trial by Jury at 3, *Waite v. UMG Recordings, Inc.*, 450 F. Supp. 3d 430 (S.D.N.Y. Jan. 27, 2023) (No. 19-CV-01091 (LAK)).

162. *Yoakam v. Warner Music Grp. Corp.*, No. 2:21-cv-01165-SVW-MAA, 2021 WL 3774225, at *1–2 (C.D. Cal. July 12, 2021).

163. *Id.* at *2.

164. *Id.*

165. *Id.*

166. *Id.* at *3.

167. See generally Kyle Jahner, *Musicians Attack Sony's Refusal of Copyright Termination Rights (1)*, BLOOMBERG L. (Feb. 6, 2019), <https://news.bloomberglaw.com/ip-law/musicians-attack-sonys-refusal-of-copyright-termination-rights-1> [<https://perma.cc/72YS-5SU8>] (summarizing the class action dispute between musicians and Sony Music Entertainment Inc. for declaratory judgment and copyright infringement).

168. *Johansen v. Sony Music Ent. Inc.*, No. 1:19-cv-01094 (ER), 2020 WL 1529442, at *1 (S.D.N.Y. Mar. 31, 2020).

169. *Id.*

(a) “the Works are works made for hire,” and thus not subject to termination; (b) “the [n]otice does not adequately identify the specific grant David Johansen seeks to terminate, as the [n]otice broadly makes reference to all grants or transfers of copyright in and to certain sound recordings ‘including, without limitation to the grant dated in or about 1984 between the recording artist David Johansen and Blue Sky Records/CBS, Inc.’”; (c) Sony is unaware of any grant made in 1984, and “to the extent that any grant was made,” the grant was made before 1978 and thus 17 U.S.C. § 203 does not apply; and (d) to the extent there was a grant in 1984, termination could not be effected before 2019.¹⁷⁰

In his demand for trial by jury, Johansen argued that the term “work for hire” could not encompass sound recordings, citing the defined terms of Section 101 of the Copyright Act.¹⁷¹ If an artist were deemed an employee of the music publisher, all of the rights to the work created by the artist would be under the ownership of the employer.¹⁷² The definition in Section 101, according to Johansen, did not include sound recordings as being one of the types of works that can be made for hire.¹⁷³ The section instead defines “work made for hire” as work either:

(1) a work prepared by an employee within the scope of his or her employment; or (2) a work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire.¹⁷⁴

Music publishers have, however, argued that because Section 101 lists compilations as one of the categories, music albums qualify accordingly.¹⁷⁵ Section 101 defines a “compilation” as “a work formed by the collection and assembling of preexisting materials or of data that

170. *Id.*

171. First Amended Class Action Complaint & Demand for Trial by Jury at 23(A), *Johansen v. Sony Music Ent. Inc.*, No. 1:19-cv-01094 (ER), 2020 WL 1529442 (S.D.N.Y. Mar. 31, 2020).

172. Jeanne Hamburg, *The Real-Life Consequences of Copyright Termination*, NAT'L L. REV. (Nov. 1, 2021), <https://www.natlawreview.com/article/real-life-consequences-copyright-termination> [<https://perma.cc/7J8N-A54K>].

173. First Amended Class Action Complaint & Demand for Trial by Jury at 23(A), *Johansen*, 2020 WL 1529442.

174. 17 U.S.C. § 101.

175. Jahner, *supra* note 167.

are selected, coordinated, or arranged in such a way that the resulting work as a whole constitutes an original work of authorship.”¹⁷⁶

The statute of limitations has also been a litigated dispute related to copyright termination rights. In *Scorpio Music (Black Scorpio) S.A. v. Willis*, Victor Willis (Willis), the lead singer of the Village People, was challenged by his music publisher, Scorpio Music S.A. (Scorpio), after serving Scorpio with a Notice of Termination in January of 2011 of post-1977 grants of copyright on some of Willis’s works.¹⁷⁷

One of the issues that Scorpio alleged in their complaint was that Willis’s claim to the copyright in the compositions was somehow time-barred by the statute of limitations.¹⁷⁸ Nevertheless, the District Court for the Southern District of California rejected this argument because Scorpio failed to explain why Willis should have been time-barred from asserting his rights under the law.¹⁷⁹

Contributing to the financial burden of copyright litigation, the Supreme Court has interpreted the phrase “full costs” as it appears in Section 505 of the Copyright Act expansively.¹⁸⁰ The section reads:

In any civil action under this title, the court in its discretion may allow the recovery of full costs by or against any party other than the United States or an officer thereof. Except as otherwise provided by this title, the court may also award a reasonable attorney’s fee to the prevailing party as part of the costs.¹⁸¹

In *Rimini Street, Inc. v. Oracle USA, Inc.*, the Supreme Court found that the best interpretation “[was] that the term ‘full costs’ meant in 1831 what it mean[t] now: the full amount of the costs specified by the applicable costs schedule.”¹⁸² This interpretation means that “copyright cases will [be] longer and be more expensive to litigate” and that “it will be more difficult for victorious litigants to recover their non-increased costs.”¹⁸³

176. 17 U.S.C. § 101.

177. *Scorpio Music (Black Scorpio) S.A. v. Willis*, No. 11cv1557 BTM(RBB), 2013 WL790940 at *1 (S.D. Cal. Mar. 4, 2013).

178. *Id.* at *2.

179. *Id.* at *4.

180. *See Rimini St., Inc. v. Oracle USA, Inc.*, 139 S. Ct. 873, 879 (2019) (holding that “full costs” are all costs generally available under the federal costs statutes).

181. 17 U.S.C. § 505.

182. *Rimini*, 139 S. Ct. at 880.

183. Scott Alan Burroughs, *Copyright Litigation: Now More Expensive and with More Delay than Ever Before!*, ABOVE THE LAW (Mar. 13, 2019), <https://abovethelaw.com/2019/03/copyright-litigation-now-more-expensive-and-with-more-delay-than-ever-before/> [<https://perma.cc/AM8M-N6H4>].

Another noteworthy ownership battle, similar to Swift's, took place between Prince and WBR, who released Prince's first eighteen albums.¹⁸⁴ In 1993, in an act of defiance against WBR, as Prince began to feel he was losing artistic control over his work, Prince changed his name "in order to signal a fundamental severance from an identity he saw as a wholly owned commodity of Warner."¹⁸⁵ The name change ultimately failed to make Prince's contracts unenforceable, but Prince nevertheless continued his very public campaign against WBR.¹⁸⁶ Prince especially emphasized the power dynamics implicating his "freedom and his own artistic agency" as a black man in a recording contract with white executives.¹⁸⁷ Prince wrote "Slave" on his face in protest of his WBR contract and is quoted to have said "[i]f you don't own your masters, your master owns you."¹⁸⁸

In 2019, a class action suit was filed on behalf of music artists and their estates against Universal Music Group (UMG), seeking \$100 million for damages from the destruction of masters in the 2008 fire on the Universal Studios lot.¹⁸⁹ This fire is often referred to as "the biggest disaster in the history of the music business" because an estimated several thousand master recordings burned.¹⁹⁰ Many master recordings of unreleased material and outtakes were completely lost.¹⁹¹ The Plaintiffs proffered that UMG attempted to minimize their error by "concealing the loss with false public statements."¹⁹²

UMG defended with the notion that because the label had full ownership over the master recordings, it had no obligation to split any of the insurance proceeds gained from the fire with the artists whose music

184. Chris Eggertsen, *What Are Masters and Why Do Taylor Swift & Other Artists Keep Fighting for Them?*, BILLBOARD (July 3, 2019), <https://www.billboard.com/articles/business/8518722/taylor-swift-masters-artists-ownership-labels-rights-prince> [<https://perma.cc/N6Y9-VLKH>].

185. *Id.*; August Brown, *What Today's Artists Learned from Prince's Approach to the Industry*, L.A. TIMES (Apr. 22, 2016), <https://www.latimes.com/entertainment/music/posts/la-et-ms-prince-imaginative-legacy-music-business-20160422-story.html>.

186. See Eggersten, *supra* note 184 ("Once it became clear that his ploy wouldn't work, the singer-songwriter began appearing in public with the word "slave" written on his cheek.").

187. Brown, *supra* note 185.

188. Eggersten, *supra* note 184; Kory Grow, *Prince Releasing Two New Albums this Fall*, CNN (Aug. 26, 2014), <https://www.cnn.com/2014/08/26/showbiz/music/prince-new-albums/index.html> [<https://perma.cc/Y3UL-YKMM>].

189. *Soundgarden v. UMG Recordings, Inc.*, No. LA CV19-05449 JAK (JPRx), 2019 WL 10093965 (C.D. Cal. Dec. 2, 2019).

190. Jody Rosen, *The Day the Music Burned*, N.Y. TIMES MAG. (June 11, 2019), <https://www.nytimes.com/2019/06/11/magazine/universal-fire-master-recordings.html> [<https://perma.cc/AF86-ZJDC>].

191. *Id.*

192. *Soundgarden*, 2019 WL 10093965, at *4.

the fire destroyed.¹⁹³ UMG also argued that it did not breach their contracts with artists under an alleged bailment agreement, as UMG was not “bound to return the identical thing deposited.”¹⁹⁴ UMG maintained a position that ownership of the masters provides full control over the masters and the ability to do anything with the recordings, even destroy them as UMG was under no “obligation to return the master recordings.”¹⁹⁵ This position ultimately undermines the fact that artists can terminate the transfer rights bestowed upon the creator of the content after thirty-five years, as provided by the Copyright Act.¹⁹⁶

B. Artists Are Unfairly Compensated and Unable to Reap the Fruits of Their Intellectual Creativity

Many aspiring artists wield much power to the will of one of the three major American record labels: Universal Music Group, Warner Music Group, and Sony Music Entertainment.¹⁹⁷ These three powerhouses made up 62.4% of global music revenue in 2016.¹⁹⁸ The bargaining power record labels have over artists at the start of their careers may rise to the level of undue influence.

Undue influence occurs “when a fiduciary or confidential relationship exists in which one person substitutes his own will for that of the influenced person’s will.”¹⁹⁹ Undue influence typically takes place behind closed doors with no witnesses.²⁰⁰ Major record labels wield immense power over the artists they are recruiting to sign because the labels have the resources and expertise to bring an artist’s creative dreams to fruition; contracting with one of these major labels increases the

193. See Defendant UMG Recordings, Inc.’s Memorandum of Points and Authorities in Support of its Motion to Dismiss Plaintiffs’ Class Action Complaint at 2, *Soundgarden*, 2019 WL 10093965 (“[N]othing in the underlying contracts at issue (or Plaintiffs’ broad-brush generalizations thereof) even remotely entitles Plaintiffs to any such proceeds.”).

194. *Id.*

195. *Id.* at 16.

196. 17 U.S.C. § 203.

197. See Paul Resnikoff, *Two-Thirds of All Music Sold Comes from Just 3 Companies*, DIGIT. MUSIC NEWS (Aug. 3, 2016), <https://www.digitalmusicnews.com/2016/08/03/two-thirds-music-sales-come-three-major-labels/> [<https://perma.cc/T9ZK-CP7S>] (“The three major labels—Sony Music Entertainment, Warner Music Group, and Universal Music Group—are currently enjoying a surge in streaming revenues from companies like Spotify and Apple Music.”).

198. *Id.*

199. Mary Joy Quinn, *Defining Undue Influence*, ABA (Feb. 1, 2014), https://www.americanbar.org/groups/law_aging/publications/bifocal/vol_35/issue_3_feb2014/defining_undue_influence/ [<https://perma.cc/NC69-8YP4>].

200. *Id.*

chances that an artist will become successful by helping them achieve creative and commercial success and building a long-term career.²⁰¹

The three major record labels received partial ownership in Spotify in exchange for licenses to their sound recordings; combined, the three major record labels own about 18% of Spotify stock, while Merlin, the conglomeration of independent labels, owns about 1%.²⁰² This transfer of equity seemed to be negotiated to account for a lower royalty rate for payments to artists based on Spotify streams, which Spotify itself is licensed to set.²⁰³

Multiple recording artists, including Gwen Stefani, Radiohead, and Taylor Swift herself, have spoken out against Spotify and their low royalty payments by withdrawing their music from Spotify, at least temporarily.²⁰⁴ Swift said, “I’m not willing to contribute my life’s work to an experiment that I don’t feel fairly compensates the writers, producers, artists and creators of this music.”²⁰⁵ As evidenced in Figure 1 below, the complicated payout scheme Spotify employs resulted in an average monthly earning of \$145,000 for the top ten most streamed albums in 2013.²⁰⁶ According to Spotify, it compensated Taylor Swift over two million dollars during the year leading up to her withdrawal from the app, although her record label contended she received less than \$500,000.²⁰⁷

201. See *Driving Long-Term Creative and Commercial Success*, INT’L FED. OF THE PHONOGRAPHIC IND., <https://www.ifpi.org/our-industry/investing-in-music/> [<https://perma.cc/U3Y4-NQWF>] (“When artists choose to partner with a record company they benefit from the support of agile, highly responsive global teams of experts dedicated to helping them achieve creative and commercial success and building their long-term careers.”).

202. Helienne Lindvall, *Behind the Music: The Real Reason Why the Major Labels Love Spotify*, GUARDIAN (Aug. 17, 2009), <https://www.theguardian.com/music/musicblog/2009/aug/17/major-labels-spotify> [<https://perma.cc/Y68Q-Y45R>].

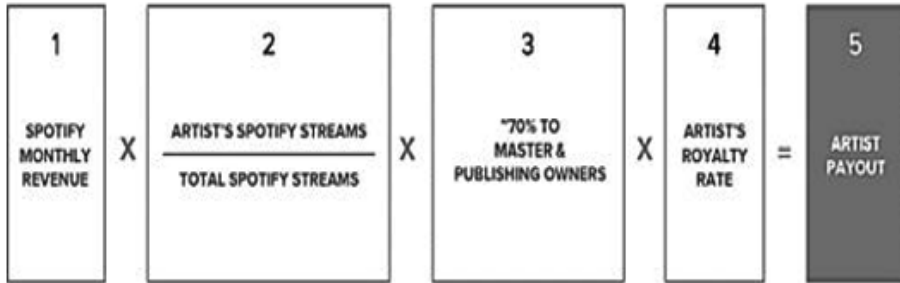
203. See Teague, *supra* note 129, at 221 (“In other words, the labels may have been happy with lower-than-fair royalty rates, since they stood to earn money from Spotify through other avenues.”).

204. Iris Lee, *Are Musicians Really Making Less Money Now?*, IMONEY (Dec. 4, 2014), <https://www.imoney.my/articles/are-musicians-really-making-less-money-now> [<https://perma.cc/4LK4-8N2P>].

205. Lisa France, *Taylor Swift to Spotify: You Belong with Me*, CNN (June 9, 2017), <http://money.cnn.com/2017/06/09/media/taylor-swift-streaming-spotify-tidal-amazon/index.html> [<https://perma.cc/YL68-3LA5>].

206. Gabriela Tully Claymore, *Spotify Explains Royalty Payments*, STEREOGUM (Dec. 3, 2013, 4:55 PM), <http://www.stereogum.com/1587932/spotify-explains-royalty-payments/news/> [<https://perma.cc/J4UF-KMAG>].

207. David Johnson, *See How Much Every Top Artist Makes on Spotify*, TIME (Nov. 18, 2014, 1:19 PM), <http://time.com/3590670/spotify-calculator/> [<https://perma.cc/BK2T-RYBM>].

Figure 1²⁰⁸

In modern recording contracts, record labels fund the recording and promotion processes.²⁰⁹ In consideration for taking on those responsibilities, record labels become the sole owner, co-owner, or licensee of the copyrighted sound recording.²¹⁰ The record label can distribute physical and digital albums for profit as an owner or licensee.²¹¹ Labels hold even more power because of the “360 deal” development that has swept the industry, as streaming services have replaced physical record sales as the “dominant revenue source for recorded music.”²¹² A 360 deal permits the label to share in *all* the revenue a signed artist generates, including concert ticket and merchandise sales and motion-picture acting.²¹³ These 360 deals, also known as multiple rights agreements, have become the industry standard among major and independent record labels.²¹⁴

C. Proposed Solutions

While the challenges faced by artists wishing to terminate transferred copyrights have no clear solution, the music industry ought to take steps

208. Claymore, *supra* note 206.

209. See DONALD S. PASSMAN, *ALL YOU NEED TO KNOW ABOUT THE MUSIC BUSINESS*, 61–63 (7th ed. 2009) (diagramming the many functions of a major record label including, but not limited to, production, finance, sales, promotion, and marketing).

210. See *Estate of Brown v. Arc Music Grp.*, 830 F. Supp. 2d 501, 513 (N.D. Ill. 2011) (holding that the publishing agreement between Frederick Music Co. and artist, Lawn, gave Frederick Music licensing rights as a co-owner of Lawn’s song).

211. See Teague, *supra* note 129 (explaining how Spotify required permission of the major labels to license their recordings); Molly Hogan, *The Upstream Effects of the Streaming Revolution: A Look into the Law and Economics of a Spotify-Dominated Music Industry*, 14 *COLO. TECH. L.J.* 131, 145 (2015) (“The second scheme for triggering royalties under § 106(4) and § 106(6) grants the rights of public performance to publishers (on behalf of songwriters) and labels (on behalf of artists).”).

212. PASSMAN, *supra* note 209, at 9 (10th ed. 2019).

213. Douglas Okorochoa, *A Full 360: How the 360 Deal Challenges the Historical Resistance to Fiduciary a Fiduciary Duty Between Artist and Label*, 18 *UCLA ENT. L. REV.* 1, 12 (2011).

214. *Id.* at 12–13.

to “restore fairness and functionality to the system for artists and licensees alike.”²¹⁵

The advent of streaming services has certainly revolutionized the method of music consumption by the consumer. The advent of streaming services has not, however, revolutionized the amount of creative effort and time put into conceptualizing today’s most popular music compared to that of twenty years ago. As such, artists should not suffer because technology has increased their reach and fan base.

In an ideal world, in order to rectify the financial exploitation of artists by streaming platforms, the three largest record labels should turn over their equity shares to artists. The distribution of the ownership shares to these record labels has directly impacted the amount of money that artists receive for the popularity of their music from royalties.

Other artists should follow in Taylor Swift’s re-recording footsteps. Swift’s decision to re-record her first six albums effectively devalues the third-party ownership of her original master recordings. It follows that the profits that had been accumulating from the streams of her original six albums are now hindered, as Swifties lean away from streaming the “stolen version” of the songs and loyally stream “Taylor’s Version,” encouraging others to follow suit.²¹⁶ This move by Swift will hopefully encourage other artists facing similar battles for control over their masters to reclaim their music and produce re-recordings, where possible.

One would be remiss in failing to acknowledge the immense capital Swift needed to record, produce, market, and distribute entirely new recordings of her previous albums. Such an opportunity is not a realistic option for smaller artists stripped of master recording rights by a record label.

Therefore, I recommend that Congress amend the current procedures governing copyright termination in the Copyright Act to account for the impacts of the modernization of the music industry on smaller artists. Reframing the time period for termination rights should be a priority for legislators wishing to address this issue. The thirty-five-year waiting period required by the Copyright Act is too long for today’s music industry, especially considering how quickly streaming services revolutionized music consumption.

215. Gilbert, *supra* note 156.

216. See Sophia Cardone, *Sounds with Sophia: Steam “Taylor’s Version” and not the “Stolen Version”*, THE POST (Dec. 2, 2021), <https://www.thepostathens.com/article/2021/12/taylor-swift-music-industry-scooter-braun-stolen-music-taylors-version> [<https://perma.cc/C8MJ-EFAY>] (encouraging the audience to stop listening to Swift’s old recordings because of the conflict with Scooter Braun).

Daniel Elk and Martin Lorentzon launched Spotify as a small start-up in 2008 in Stockholm, Sweden.²¹⁷ Since its founding, Spotify has amassed 406 million users, including 180 million subscribers across 183 markets, making it the world's most popular audio streaming subscription service.²¹⁸ This transformation took place in just fourteen years. A record label's legal hold over an artist's transferred copyright can last more than twice as long a time period as this transformation. Artists should be able to make decisions in this digital age within a time frame shorter than thirty-five years because the entire industry could, theoretically, revolutionize several times during this period.

A significant period of time should still be attached to the transfer of copyright because record labels often assume great risks when signing new artists for music deals. It logically follows that not every artist signed to a record label will make huge profits for the label and succeed in album sales or streaming. Therefore, the termination of the transfer of copyright to a record label should not be able to happen instantly. Instead, record labels and artists should reach a compromise in formulating a new time period for copyright termination. Inspiration for this compromise should come from other areas of intellectual property law which serve the same or similar goals in advancing and protecting creativity.

Congress should consider an approach for copyright termination that more closely aligns with the time period for the expiration of patents. Patents grant "the patent holder the exclusive right to exclude others from making, using, importing, and selling the patented innovation for a limited period of time."²¹⁹

The aim of granting exclusive rights to an inventor through a patent is to "encourage the investment of time and resources into the development of new and useful discoveries."²²⁰ Patent protection serves to advance the same purpose as the copyright protection from Article I, Section 8, Clause 8 of the U.S. Constitution.²²¹ Patents expire twenty years after the filing date and then the patented material is available for public use.²²²

Amending the copyright termination term to twenty years, like patents, instead of the current thirty-five-year term, provides an acceptable compromise for record labels who take risks when signing

217. *How Spotify Came to be Worth Billions*, BBC (Mar. 1, 2018), <https://www.bbc.com/news/newsbeat-43240886> [<https://perma.cc/8AS5-S8Y7>].

218. *About Spotify*, NEWSROOM, <https://newsroom.spotify.com/company-info/> [<https://perma.cc/574H-KA4L>] (last visited Mar. 4, 2021).

219. *Patent*, CORNELL L. SCH. LEGAL INFO. INST., <https://www.law.cornell.edu/wex/patent> [<https://perma.cc/9MK3-6P2K>] (last visited Mar. 2, 2023).

220. *Id.*

221. U.S. CONST. art. 1, § 8, cl. 8.

222. *Patent*, *supra* note 219.

new artists. Additionally, the shortened time period advances both the incentive and personality theories of copyright law explored earlier.

The twenty-year-period would further advance the incentive theory because it still serves to deter unlawful distribution of public goods and would incentivize production because protections would still exist for creative works.

This period would also more significantly advance the personality theory. Seemingly, at the root of Swift's discourse with her former record label and Scooter Braun over the rights to her masters was the personal connection she felt to the music she created and performed over her entire career. Permitting an artist like Taylor Swift to terminate the transfer of master recording rights, which she contracted for many millions of streams and dollars ago, sooner restores artists' relationship with their works. The termination would also serve to alleviate the sense of exploitation Swift, and other artists felt with Spotify when paying out lower royalties in exchange for equity shares for the large record labels.

VI. LONG STORY SHORT, IT WAS A BAD TIME: CONCLUSION

“Long live the walls we crashed through. I had the time of my life with you.”²²³

Taylor Swift's decision to re-record her first six studio albums did much more than showcase the growth of the singer's vocal range since her teens and provide Swifties with nostalgia. The re-recordings shed light on just how tough it is for even one of the world's most popular and wealthiest artists to regain the rights to her master recordings. No exorbitant amount of money offered would enable Swift to reclaim her life's work. The personal connection artists feel to their work serves as justification for reform in this field of copyright termination law.

The advent of streaming services has completely revolutionized the music industry and the way society consumes music. Just as music consumption has changed, the laws governing music copyright should change accordingly.

The power struggle will continue to pervade labels and artists in negotiating recording contracts. Protections must be implemented for artists who begin their careers by signing away the rights to their masters. Moreover, a balance must be struck among giving artists free rein to reclaim their masters, protecting record labels who make large expenditures, and taking risks on artists who do not ultimately return large profits.

Copyright termination law provides a getaway car for artists to reclaim their work after everything has changed, a reality Taylor Swift

223. TAYLOR SWIFT, *Long Live*, on SPEAK NOW (Republic Records 2010).

knows all too well. To avoid spilling teardrops on their guitar, artists should fearlessly fight for their wildest dreams. Taylor Swift chose to speak now and begin again with “Taylor’s Version.”

