

Ownership of Master Recordings in the Music Industry: Swift Winds of Change?

by Sher Hann Chua and Payton Hoff

At the end of June 2019, Taylor Swift took to social media to express her dismay over the purchaser of her former label who now owns the rights to her master recordings. While it is common for artists to not own their master recordings, fans were surprised to learn that one of the world's biggest popstars had few legal grounds to dictate who controls her master recordings. This incident came shortly after the New York Times' expose of a 2008 fire at a major music label's archive which destroyed at least 118, 000 master recordings from hundreds of artists, such as Dolly Parton, The Who, Cher, and Ella Fitzgerald. These two events have ignited debate over whether record labels are the best entities to be in control of master recordings, and they are only the tip of the iceberg of a complex discussion in the music industry about the difficulties artists face to gain control of their intellectual property, and how technological developments are shaking the current industry model.

What Are Master Recordings?

A master recording is the original sound recording of a piece of music. All other copies of the song are derived from the master recording. Under the U.S. Copyright Act of 1976, sound recordings are "*works that result from the fixation of a series of musical, spoken, or other sounds but not including sounds accompanying a motion picture or other audiovisual work.*" A sound recording must also be fixed on a medium that can be perceived, reproduced, or otherwise communicated. In Thailand, the Copyright Act B.E. 2537 (1994) defines a sound recording as "*a work which consists of a sequence of music, sounds of a performance, or any other sound recorded on any kind of medium which can be replayed by using a necessary device which is suitable for such medium*". It is important to note that the copyright in the actual recording of a song is distinguishable from the copyright in the composition of the song itself.

The copyright owner of the master recording has the rights to exploit the work. For example, such master rights holder has the power to grant third-party licenses for the master recording. These licenses could include the rights to reissue or remix the original sound recording. The owner of the master recording is also able to gain profits from the publication or streaming of such songs.

Traditionally, under a contract between a record label and artist, the record label retains the rights in such master recordings in perpetuity, or until the expiry of the copyright of these recordings. In return, an artist receives royalties from the commercialization of these rights. The simple reasoning behind this model is for the record labels to obtain returns and rewards for the financial risks they take in investing in or supporting an artist from marketing to production. On the other hand, an artist who owns the rights in her master recordings would be able to retain creative control of her work, and can release her music at her own bidding through whichever channel she feels appropriate.

We Are Never Ever Getting Back... Our Master Recordings?

In 1978, the U.S. Congress passed Section 203 of the U.S. Copyright Act, which allows artists to reclaim the rights to their master recordings after 35 years. Over the past few years, some acts who recorded their songs in the 1970s have come to reclaim their master recordings by relying on this provision. However, this is exposing gray areas of the law surrounding recording contracts and intellectual property rights. The intent of Congress was to allow artists to regain controls of their master recordings, but depending on the language of the original recording contract signed, some artists may face roadblocks under doctrines such as work-made-for-hire. Furthermore, the process to retain these rights is costly and on the burden of the artist. Because of these obstacles and the way in which record labels have traditionally used copyright for their own benefit, many artists question whether or not copyright law as it stands today is in their favor.

Taylor Swift is certainly not the first artist to publicly dispute with a label over the ownership of their masters. Only in 2017 was Paul McCartney able to settle a lawsuit with a label in order to regain copyrights to the Beatles catalog. In Thailand, the Thai singer Montchai Raksachart, better known by its stage name "Maithai Jaitawan", found himself in trouble with his former record label and the police in 2013 when he continued performing the hits which he had previously performed while under a contract with the major music publisher, after the termination of his contract. More recently, in 2018, singer-songwriter Arm Chutima came under the spotlight when it was reported that she was not able to sing her own songs at her concert, as she has relinquished her rights in her songs, which have been acquired by her record label for THB 10,000 (approx. USD 320) per title. Thai law does not currently have similar provisions which allow artists to recapture the copyright ownership of their songs, and parties must rely on the provisions of their contractual agreements.

Strategies For The New Era

While many popular artists today have signed with labels in a time when the only reliable way to publish music and make it known was to go through the support of an established record label. Under these circumstances, aspiring artists often had little bargaining power when entering into such recording contracts. Today, more and more up-and-coming artists are able to utilize the

Internet to make their music known to the world. Many younger artists publish their music on platforms such as YouTube or SoundCloud, and are still able to amass large followings. With the increased accessibility to recording studios, as well as professional recording equipment, some of these artists have also turned to DIY-methods of recording to reduce the involvement of record labels. By not being a party in a label contract, these artists are able to control their master recordings and other intellectual property rights. Chance the Rapper is a notable modern Grammy-winning artist who self-releases his music and owns his masters. If an artist later chooses to sign with a label, that artist can then use the leverage of his or her fame and following to negotiate a more favorable deal with the label.

An artist who chooses to sign on to a record label should also seek professional legal advice to negotiate the record deal. Artists who wish to own their master recordings must ensure that they have written agreements with every party involved in the recording process, such as the production company or record label, the recording studio, sound engineers, and any other musicians or bands involved. Artists may wish to secure a clause specifying the reversion of master recording rights after a specific period of time – an option that is more likely to be agreed to by record labels as compared to the complete retention of these rights, as the label is likely to have maximized its revenue from a particular song within the first few years from the release of the song.

In the upcoming years, artists will continue to face an uphill battle with their intellectual property rights. But the rapid growth of streaming services along with the allure of being an independent artist will likely make labels reconsider their agreements with artists. In Taylor Swift's case, having gained a significant amount of leverage through her following over the years, she successfully secured an agreement with her new label in November 2018 which allows her to own the rights to her masters. While swift changes to the industry practice remain an unlikely scenario, with more artists pushing for ownership of the masters, the music industry and copyright law will likely experience a shift in favor of the artists in the years to come.

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