

WHEN MUSIC ROW BECOMES WALL STREET: CREATORS’ INTERESTS IN COPYRIGHT TRANSACTIONS

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I.	INTRODUCTION	15
II.	PRIVATE EQUITY FUNDS IN THE MUSIC INDUSTRY	16
	A. <i>Opportunities for Creators</i>	17
	B. <i>Implications for Creators</i>	18
III.	POTENTIAL SOLUTIONS	21
	A. <i>Copyright Law Revisions and Specifications</i>	21
	1. Shorter Assignment Termination Period.....	23
	B. <i>Private Equity Funds Regulation</i>	24
	C. <i>Changes in Contract Culture</i>	24
IV.	CONCLUSION.....	26

I. INTRODUCTION

Creators often seek to obtain and maintain control over their exclusive rights and copyright protection of their works, especially in musical compositions and sound recordings. Prince famously referenced his own battle over his master recordings with this remark: “If you don’t own your masters, your master owns you.”¹ Attainment of ownership, however, has become more and more difficult for artists to achieve in an increasingly transactional environment. Copyrights, in both sound recordings and their underlying musical compositions, are licensed, sold, and assigned in a multitude of different scenarios and methodologies for equally multitudinous reasons. This phenomenon has become more visible as of late with private equity funds and third parties both expressing and obtaining interest in creators’ and companies’ copyrights.² The increased volume of transactions brings to light the problems that creators are facing with respect to their copyright protections and their access to those protections. There are both opportunities and downfalls for creators,

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1. Will Richards, *New bands: own your masters, it’s more important than you think*, NME (Aug. 13, 2019), <https://www.nme.com/blogs/nme-radar/new-bands-ownership-masters-recording-important-think-2537707#:~:text=In%201996%2C%20Prince%20was%20gave,have%20put%20it%20better%20ourselves> [https://perma.cc/5KWQ-WSDG].

2. See generally Ben Sisario, *This Man Is Betting \$1.7 Billion on the Rights to Your Favorite Songs*, N.Y. TIMES (Dec. 18, 2020), <https://www.nytimes.com/2020/12/18/arts/music/merck-mercuriadis-hipgnosis.html> [https://perma.cc/S4R9-K3YG].

specifically songwriters and artists, in these arrangements. All creators could face the devastation of their work falling into unapproved hands, possibly without their knowledge.

Several potential policy solutions exist in the underlying copyright provisions in addition to business solutions in creators' contractual negotiations, including changes in assignment clauses. These solutions could generate a situation where creators retain or more quickly regain their copyrights while still upholding traditional revenues.

This Essay will integrate current events as well as recent and ongoing litigation to emphasize the everchanging landscape of copyright transactions and creators' rights as a whole. It will specifically explore this problem by first discussing some of the more recently involved parties in these copyright transactions: private equity funds. Next, it will discuss some of the opportunities and implications for creators in these transactions, including several high-profile examples of recent transactions in both publishing and recordings. Then, the potential solutions for creators in the spheres of both statutory policy and business dealings will be explored. While discussing potential solutions, this Essay will spotlight some of the emerging issues surrounding categorizing "works made for hire" and "joint works" before examining termination rights and shorter assignment periods. Before concluding, this Essay will then consider some potential regulations for private equity funds. This Essay will finish by introducing contractual changes that could specifically allow record labels and creators to contract around the current copyright provisions for creators to retain their masters or attain better re-recording clauses.

II. PRIVATE EQUITY FUNDS IN THE MUSIC INDUSTRY

Private equity funds, where investors use pooled money to invest in and take controlling interests in companies,³ have recently assembled significant interest in multiple sectors of the music industry from record labels⁴ to the musical instruments.⁵ These private equity funds are minimally regulated and often spawn conflicts of interest as a result of their holdings and acquisitions having competing or contradictory

3. *Private Equity Funds*, U.S. SECS. & EXCH. COMM'N, <https://www.investor.gov/introduction-investing/investing-basics/investment-products/private-investment-funds/private-equity> [https://perma.cc/L85M-HUG7] (last visited Oct. 3, 2021).

4. Anne Steele, *Scooter Braun Makes \$300 Million Deal for Big Machine Records*, WALL ST. J. (June 30, 2019), <https://www.wsj.com/articles/scooter-braun-makes-300-million-deal-for-big-machine-records-11561893008> [https://perma.cc/LCL4-NXT9].

5. Lauren S. Murphy & Jodi Xu, *Steinway Agrees to Be Bought by Paulson for \$512 Million*, BLOOMBERG (Aug. 14, 2013), <https://www.bloomberg.com/news/articles/2013-08-14/paulson-co-to-buy-piano-maker-steinway-for-512-million> [https://perma.cc/JBZ8-8FSV].

investments.⁶ This combination can actualize problems for the music industry because of its many intricacies and relationships with creators. One such problem in the copyright sphere is where a song's underlying composition and sound recording copyrights can be easily and quickly pitted against each other during and after sales to private equity firms. For example, if a singer-songwriter both writes and records a song but only holds the rights to the underlying composition, their recording could be sold without their approval. This could become problematic in licensing the recording, which requires both the composition and sound recording rightsholders' approval to move forward.⁷ The singer-songwriter could block the sound recording's rightsholder from licensing the recording for a movie and vice versa.

Private equity firms are not the sole interested parties seeking to purchase copyrights. Startups and established companies interested in acquiring and managing catalogs have also gained steam;⁸ while record labels and major publishing companies have been acquiring and selling off copyright interests of their own artists and other creators.⁹ These transfers can be both opportunistic and problematic for creators.

A. Opportunities for Creators

Songwriters can choose to seek out third parties, private equity firms, and companies to purchase their publishing catalogs and raise significant funds in the process. Such a transaction could create new revenue and career opportunities for songwriters and potentially even bring new life to older songs.

Transfers of publishing catalogs are not a new phenomenon. The Beatles' early catalog has been famously shuffled around since the beginning of their career. Paul McCartney ended this series of transactions half a century later by terminating their publishing license in

6. See U.S. SECURITIES & EXCH. COMM'N, *supra* note 3.

7. E.g., *How To Acquire Music For Films*, ASCAP (last visited Dec. 16, 2021), <https://www.ascap.com/help/career-development/How-To-Acquire-Music-For-Films> [<https://perma.cc/QPN2-K9BU>].

8. Mark Latham, *Sweet melody: How private equity is taking a slice of music's digital future*, PRIVATE EQUITY NEWS (Dec. 7, 2020), <https://www.penews.com/articles/sweet-melody-how-private-equity-is-taking-a-slice-of-musics-digital-future-20201207> [<https://perma.cc/U38L-X73S>].

9. Melinda Newman & Ed Christman, *Bruce Springsteen Sells His Masters and Music Publishing to Sony in \$500M Deal*, BILLBOARD (Dec. 15, 2021), <https://www.billboard.com/pro/bruce-springsteen-sells-masters-publishing-sony/> [<https://perma.cc/B8PP-33F2>]; Ben Sisario, *Bob Dylan Sells His Songwriting Catalog in Blockbuster Deal*, N.Y. TIMES (Dec. 7, 2020), <https://www.nytimes.com/2020/12/07/arts/music/bob-dylan-universal-music.html> [<https://perma.cc/TAQ3-4RLA>].

2017.¹⁰ Nevertheless, transactions still continue today. Stevie Nicks and Bob Dylan chose to engage in transactions in late 2020 when Nicks sold a majority stake in her extensive catalog to an independent publisher¹¹ and Dylan sold his full stake of publishing rights to Universal Music.¹² In December 2021, Bruce Springsteen sold both his publishing and master rights to Sony Music and Sony Publishing.¹³ These transactions have been swelling in the midst of the following conditions that encourage such sales for both parties: current low interest rates, potential upcoming tax changes in the United States, individual circumstances, the streaming era, and the record market for transferring rights.¹⁴

B. *Implications for Creators*

However, the sales to private equity firms and startups, potentially without the requisite knowledge and expertise of seasoned music industry professionals, could result in mismanagement of the “crown jewels” of modern music. It is possible that financial woes could cause even the savviest of songwriters to be faced with the decision to sell their life’s work to the highest bidder even with knowledge that bidder does not necessarily have their best interests in mind. This is especially true with economic downturns and the recent unprecedented impacts from the COVID-19 pandemic on the entertainment sector, preventing touring and live performances for nearly two years, which decreased revenue opportunities for creators.¹⁵

10. Dan Rys, *A Brief History of the Ownership of the Beatles Catalog*, BILLBOARD (Jan. 20, 2017), <https://www.billboard.com/articles/columns/rock/7662519/beatles-catalog-paul-mccartney-brief-history-ownership> [https://perma.cc/39R2-GXV3]; Agence France-Presse, *Beatles song rights dispute: Paul McCartney and Sony ATV work it out*, THE GUARDIAN (July 3, 2017), <https://www.theguardian.com/music/2017/jul/04/beatles-song-rights-dispute-paul-mccartney-and-sony-atv-work-it-out> [https://perma.cc/BLF4-HLZC].

11. Cathy Applefeld Olson, *Stevie Nicks Sells Majority Stake In Songwriting Catalog*, FORBES (Dec. 4, 2020), <https://www.forbes.com/sites/cathyolson/2020/12/04/stevie-nicks-sells-majority-stake-in-songwriting-catalog/?sh=2c3d9f0239ad> [https://perma.cc/D9C4-CM69].

12. Sisario, *supra* note 9.

13. Newman & Christman, *supra* note 9.

14. Tim Ingham & Amy X. Wang, *Why Superstar Artists Are Clamoring to Sell Their Music Rights*, ROLLING STONE (Jan. 15, 2021), <https://www.rollingstone.com/pro/features/famous-musicians-selling-catalog-music-rights-1114580/> [https://perma.cc/3CVK-K49P]; Faith Blackinton, *What’s behind the boom in iconic boomer musicians selling their songs*, CNBC (Apr. 4, 2021), <https://www.cnbc.com/2021/04/04/why-theres-a-boom-in-boomer-rock-stars-selling-their-songs.html> [https://perma.cc/UPT7-DRSQ]; Nicole Lyn Pesce, *5 reasons musicians like Bob Dylan, Neil Young, and Stevie Nicks are selling their song catalogs right now*, MARKETWATCH (Jan. 6, 2021), <https://www.marketwatch.com/story/5-reasons-why-musicians-like-bob-dylan-and-stevie-nicks-are-selling-their-song-catalogs-right-now-2020-12-15> [https://perma.cc/9RD9-RRXH].

15. E.g. Marisa Henderson & Amy Shelver, *How COVID-19 exposed music industry fault lines and what can be done*, UNITED NATIONS CONF. ON TRADE & DEV. (Sept. 28, 2021), <https://unctad.org/news/how-covid-19-exposed-music-industry-fault-lines-and-what-can-be-done>

A similar set of circumstances also await artists, engineers, and producers when their recordings' masters are sold to other parties. If any of these parties hold the copyrights to the recordings, they can seek out buyers, similar to how songwriters would, to raise likely significant capital for themselves. However, due to contractual structures, it is relatively rare for these parties to hold the copyrights for their works when labels often hold the rights.¹⁶ Though the labels are contractually considered the "author," it is the creatives who are integral for creating the sound of the recordings from the vocal tonalities to the intrinsic and deliberate choices like preamps, microphones, room treatment, and microphone placements. These are the elements that culminate in some of the most recognizable and indispensable aspects of modern analog and digital recording. Because the engineers and artists who record others' songs often do not have any claim to the song or recording's copyrights, they regularly have relatively little input or leverage in any deals that transfer the sound recording copyrights to other parties like private equity funds, companies, or other publishers and labels. It is entirely possible that these parties do not have an existing relationship with the creators, causing potential dissonance. This can be perilous for creators who labored over these recordings just for the copyright holders to sell them to the highest bidders, potentially without their best interests or the recording's preservation and integrity in mind.

Taylor Swift experienced this situation in the summer of 2019 and again in late 2020 when the masters from her first six albums were sold to a private equity fund then resold to another investment company.¹⁷ Swift suggests that she was not able to interject input into the sale nor was she able to place an offer herself in either deals which were against her wishes.¹⁸ Because she is an author or joint author of each of the musical compositions included in the masters, she holds a veto right for synchronization licenses and is exercising that power,¹⁹ but still lacks the ability to reap the significantly larger revenues from streaming and sales

[<https://perma.cc/BW8G-JLGJ>].

16. DONALD PASSMAN, *ALL YOU NEED TO KNOW ABOUT THE MUSIC BUSINESS* 76 (10th ed. 2019).

17. Melinda Newman, *Taylor Swift's Masters Sold Again: Why She Refused to Negotiate with Scooter Braun*, *BILLBOARD* (Nov. 16, 2020), <https://www.billboard.com/articles/business/9485144/taylor-swift-masters-sold-again-scooter-braun-shamrock/> [<https://perma.cc/5YU6-P84H>]; Tim Ingham, *Why Did Shamrock Capital Spend \$300 Million on Old Taylor Swift Albums?*, *ROLLING STONE* (Nov. 17, 2020), <https://www.rollingstone.com/pro/features/why-taylor-swift-scooter-braun-shamrock-1091742/> [<https://perma.cc/2X62-MQNR>].

18. Newman, *supra* note 17; Ingham, *supra* note 17.

19. Jason Lipshutz, *Billboard Woman of the Decade Taylor Swift: 'I Do Want My Music to Live On'*, *BILLBOARD* (Dec. 11, 2019), https://www.billboard.com/amp/articles/columns/pop/8545822/taylor-swift-cover-story-interview-billboard-women-in-music-2019?_twitter_impression=true [<https://perma.cc/SBA2-YR4G>].

associated with the recordings without the ownership of the sound recording copyright.²⁰

In response, Swift planned to re-record these albums to obtain ownership of the new masters and try to position those as alternatives for the original recordings in streaming, synchronization licenses, and more.²¹ She released the first of these re-recordings in early 2021 and the second in late 2021.²² The first released re-recording, *Fearless (Taylor's Version)*, appears to have achieved this positioning feat based on equivalent album units, inclusive of both streams and sales, through its first six weeks of release, according to Billboard.²³

Singer JoJo also undertook a re-recording journey after a heated legal battle²⁴ with her former record label responsible for her first recordings and the absence of her first two albums on streaming services.²⁵ JoJo re-recorded and released new versions of these albums in late 2018.²⁶ Re-recording old hits is not a new phenomenon, however. Artists like Def Leppard and Journey went through this process in the past decade and artists like Frank Sinatra and Chuck Berry re-recorded decades before that.²⁷

Taylor Swift and JoJo are not the only artists to recently and publicly address their attitudes towards such transactions. Anita Baker also expressed frustrations over her lack of control of her masters but revealed in September 2021 that she has regained control of her masters—a rare win for artists fighting for sound recording rights.²⁸

20. Ingham, *supra* note 17.

21. Lipshutz, *supra* note 19.

22. Chris Willman, *Taylor Swift Bumps Up Release of 'Red (Taylor's Version)' by a Week*, VARIETY (Sept. 30, 2021), <https://variety.com/2021/music/news/taylor-swift-red-shifts-release-date-taylor-version-1235077968/> [<https://perma.cc/9R6Q-KPH3>].

23. Jason Lipshutz, *Here's How 'Fearless (Taylor's Version)' Performed in Its Sixth Week Compared to Taylor Swift's Original 'Fearless'*, BILLBOARD (May 26, 2021), <https://www.billboard.com/articles/business/chart-beat/9578591/taylor-swift-fearless-chart-comparison-week-6> [<https://perma.cc/TBQ3-L3XK>].

24. JoJo & Dee Lockett, *JoJo Spent Nearly a Decade Fighting Her Label and Won. Here's What She Learned, in Her Own Words*, VULTURE (Nov. 2, 2015), <https://www.vulture.com/2015/10/jojo-fighting-the-major-label-man-in-her-own-words.html> [<https://perma.cc/9HN5-RH64>].

25. Taylor Weatherby, *JoJo On Rerecording Her First Two Albums After Legal Battle: 'This Is Closing a Chapter For Me.'* BILLBOARD (Jan. 15, 2019), <https://www.billboard.com/music/pop/jojo-interview-new-versions-the-high-road-old-albums-8493194/> [<https://perma.cc/4YF3-6U4M>].

26. *Id.*

27. Annie Zaleski, *The Rhymes And Reasons Behind Re-Recording Your Own Classics*, NPR (Apr. 12, 2021), <https://www.npr.org/2021/04/12/986430235/the-rhymes-and-reasons-behind-re-recording-your-own-classics> [<https://perma.cc/FX34-M3QQ>].

28. Okla Jones, *Anita Baker Says You Can Stream Her Music Again*, ESSENCE (Sept. 5, 2021), <https://www.essence.com/entertainment/anita-baker-says-you-can-stream-her-music-again/> [<https://perma.cc/RH4S-86T8>].

III. POTENTIAL SOLUTIONS

The influx of interest from investors, companies, and third parties in the ownership of creators' copyrights has been exacerbated in the streaming age with the new potential revenue opportunities continuing to climb. These conflicts between creators and copyright owners or buyers will likely continue to mound as more and more transfers occur. Creators have several potential solutions to retain, regain, and profit from their creative works through copyright law revisions, private equity fund regulation, and changes in contract culture. Record labels and organizations can also be a part of these changes to achieve a compromise that keeps their business models intact while still providing creators meaningful access to their works to avoid possibly significant conflict later.

A. Copyright Law Revisions and Specifications

Much of the conflict between creators and their copyrights is a direct result of contract provisions, which in turn could allow third parties to easily purchase and potentially exploit the creators' works from record labels. These contract provisions usually consider masters as works made for hire,²⁹ meaning the artists do not have a termination provision under 17 U.S.C. § 203—a significant power for creators. Works made for hire are somewhat ambiguous but are outside of a traditional employment arrangement. The agreement must be in a writing and is limited to certain types of commissioned works, none of which explicitly include sound recordings.³⁰ Record labels suggest that masters fit into the included category of collective works.³¹ The 1976 U.S. Copyright Act's definition of a collective work is “a work, such as a periodical issue, anthology, or encyclopedia, in which a number of contributions, constituting separate and independent works in themselves, are assembled into a collective whole.”³² Although an album could be comprised of works from different authors that are then assembled into a “collective whole” or even a single recorded song could include contributions from several individuals, albums or songs are not perfect fits as definitive collective works.

Congress attempted to put an end to this blurred area of commissioned works in 2000 with an amendment to the Digital Millennium Copyright Act (DMCA) that explicitly included sound recordings in the categories of commissioned works applicable in works made for hire, but was quickly met with the creative community's backlash and was ultimately

29. PASSMAN, *supra* note 16, at 336.

30. 17 U.S.C. § 101.

31. PASSMAN, *supra* note 16, at 335–36.

32. 17 U.S.C. § 101.

removed.³³ An amendment unambiguously stating the opposite—that sound recordings cannot be works for hire—could be a proposed solution to this blurred area as well, though it would likely be met with as much, if not more, backlash as the original amendment from industry executives.³⁴

Marybeth Peters, the then Register of Copyrights, proposed a middle ground in her Congressional statement regarding the DMCA amendment. Classifying sound recordings as joint works with the artists, musicians, and potentially producers as authors could provide a solution.³⁵ 17 U.S.C. § 203 provides that, if a multitude of joint authors, a majority of authors could enact a termination; though only one author is necessary to decide for works terminated under Section 304.³⁶ Conversely, and perhaps a more realistic compromise, if sound recordings were to be considered in the commissioned categories of works made for hire, Peters suggests that “key contributors” should have termination rights, and those contributors’ contributions would be exempt from the works made for hire provisions, allowing creators to retain their termination rights and thus potentially avoid conflict later on.³⁷

In early 2020, the Southern District of New York explored works made for hire in the recording context in *Waite v. UMG Recordings, Inc.* case.³⁸ *Waite* suggested that contract provisions establishing recordings as works made for hire are inconsistent with the goals of Section 203 due to unequal bargaining power between the parties and a three-year statute of limitations to dispute works made for hire provisions.³⁹ Although the court did not entertain declaratory relief for the artists earlier this year, upon the plaintiff’s amendment and joinder in August 2020, the court expressed its interest in entertaining such relief.⁴⁰ This case and others like it that are probable to emerge in the near future could create

33. Scott Okamoto, *Musical Sound Recordings as Works Made for Hire: Money for Nothing, Tracks for Free*, 37 U.S.F. L. REV. 783, 792–94 (2003). See also *Sound Recordings as Works Made for Hire Before the Subcomm. on Courts and Intellectual Prop. and H. Comm. on the Judiciary*, 106th Cong. (2000) (statement of Marybeth Peters, Register of Copyrights), <https://www.copyright.gov/docs/regstat52500.html> [<https://perma.cc/U3RP-YG5E>] [hereinafter Peters Statement].

34. See Steven Bolaños, “*Knock, Knock, Knockin’ on [Congress’] Door*”: *A Plea to Congress to Amend Section 203 of the Copyright Act of 203*, 41 WESTERN ST. U. L. REV. 391, 406–07 (2014).

35. See Peters Statement at Joint Authorship section.

36. Peters Statement at Joint Authorship section.

37. Peters Statement at Analysis of Amendment and Recommendation section.

38. 450 F. Supp. 3d 430 (S.D.N.Y. 2020).

39. *Id.* at 438.

40. See *Waite v. UMG Recordings, Inc.*, No. 19-cv-1091 (LAK), 2020 WL 4586893 at *10 (S.D.N.Y. Aug. 10, 2020). Please note that this class action suit is still ongoing as of Essay publication.

significant ramifications for creators and record labels regardless of how the cases are decided.

The situation becomes more complicated for third parties to an alleged work for hire because of a circuit split as to whether there is a relationship to uphold the work for hire between the contracting party and the third party like an engineer or producer.⁴¹ As artists become more autonomous and their relationships with other creators continue to strengthen, this conflict could become even more significant, especially as producers and engineers now have the ability to receive royalties through the AMP Act.⁴² Engineers and producers are also particularly impacted when portions of their recorded works are infringed and sampled, potentially preventing these creators from effectively fighting their infringement claims because of others owning the copyright in contention.

1. Shorter Assignment Termination Period

Another way to ameliorate creators' ownership issues arises in creators' assignment rights. 17 U.S.C. § 201(d) provides creators the opportunity to establish assignments of their copyrights while 17 U.S.C. § 203 allows creators to terminate any assignment, other than works made for hire, they made thirty-five years after the assignment.⁴³ This thirty-five-year term is statutorily set. Termination can allow creators to regain control of their work, such as songwriters being able to recall their songs back from publishers after thirty-five years, though this thirty-five-year period is somewhat lengthy.

Many copyrighted works may have lost their luster and revenue capabilities after three and a half decades, leaving the creators the rights and protections for the work but with a limited ability to profit extensively. A shorter termination period of fifteen or twenty years could create a more formidable arrangement for creators while still allowing the assignee the ability to realize profit from the transaction. This arrangement would allow songwriters the ability to recall all of their rights or reassign to the same publisher or another for more desirable terms after a shorter period as well. This would not solve the problem artists face regarding their master recordings or publishing rights but could be a compromise that allows creators to gain control faster than they would under the current provisions.

41. *Urbont v. Sony Music Entertainment*, 831 F.3d 80, 86 (2d Cir. 2016).

42. *See generally* Orrin G. Hatch–Bob Goodlatte Music Modernization Act, Pub. L. 115-264, tit. III, 132 Stat. 3676 (2018).

43. 17 U.S.C. § 203. *See also* Margo E. Crespin, *A Second Bite of the Apple: A Guide to Terminating Transfers Under Section 203 of the Copyright Act*, THE AUTHOR'S GUILD (2005), <https://www.authorsguild.org/member-services/legal-services/terminating-transfers/> [https://perma.cc/XET7-DV79].

B. *Private Equity Funds Regulation*

Private equity funds are emerging as a potential powerhouse of copyright purchasing and management. However, private equity funds, as discussed above, are notoriously private. More public accountability on their financial structure, intentions, transactions, conflicts of interest, and members could provide creators with more information about who has purchased or potentially could purchase the rights to their works. This could perhaps further allow these creators to facilitate their own relationships with these entities. Such information would also permit creators to make more informed decisions if they are looking to sell their rights to an organization with which they identify with or hold similar values to. Conversely, this information would be immensely helpful to artists whose labels or publishers sold the rights to their creations to such organizations so that they too would have access to information regarding the new owners of the rights to their works.

Such reforms would likely need to be made at the federal level to effectuate change. Most recent discussions among federal legislators have been centered on private equity funds' practice of acquiring companies that subsequently become bankrupt.⁴⁴ In the federal agency space, the Securities and Exchanges Commission is currently undertaking its own investigation as to potential reforms relating to transparency, fees, and conflicts of interests.⁴⁵

C. *Changes in Contract Culture*

Changing standard contract provisions is one of the most readily available ways to address creators' potential ownership problems. First, contracts could include assignment provisions instead of classifying sound recordings as works made for hire. Doing so would allow artists to assign their rights to the record labels upon signing their contract, instead of having ownership originally lie with the label. This allows the creators to retain their Section 203 termination rights. Olivia Rodrigo, one of 2021's biggest breakout pop stars, attained just that—she retains control of her masters through her record deal's provisions.⁴⁶

44. Thomas Franck, *Sen. Warren, other Democrats revive legislation to crack down on private-equity buyouts*, CNBC (Oct. 20, 2021), <https://www.cnbc.com/2021/10/20/top-democrats-revive-legislation-to-crack-down-on-private-equity-buyouts.html> [https://perma.cc/F45B-PE3N].

45. Chris Witkowsky, *SEC explores potential reforms around private equity fee, expense disclosure*, BUYOUT INSIDER (Sept. 15, 2021), <https://www.buyoutsinsider.com/sec-explores-potential-reforms-around-private-equity-fee-expense-disclosure/> [https://perma.cc/3J8S-J8JC].

46. Callie Ahlgrim, *Olivia Rodrigo has full control of her masters because she paid attention to Taylor Swift's battle over her own music*, INSIDER (May 7, 2021), <https://www.insider.com/olivia-rodrigo-owns-master-recordings-taylor-swift-battle-2021-5> [https://perma.cc/2R4G-YVPT].

Although this assignment clause would be an easy fix on paper, there would be major drawbacks for record labels that invested resources into the recordings with now potentially less revenue opportunities and more risk. However, provisions like higher royalty rates for the label during and potentially after the assignment period or creators licensing part, but not all, of their ownership rights could be implemented to attempt to counter this. A shorter statutory termination period could also be imperative here where the creators could assign all of their rights for the full, but shortened, assignment period then regain their works after fifteen to twenty years instead of the current thirty-five-year period. Conversely, assignment of rights could be tied to creators' obligations to turn in additional works through earn back provisions.⁴⁷

Alternatively, contractual language that gives creators a veto, right of first refusal, right of knowledge over any potential or pending sale of their works, or a combination of these provisions, would also be beneficial for creators.⁴⁸ These suggestions would allow creators to be aware of the possible transfer and potentially allow them to make their own bid to gain the rights to their works. The veto right, specifically, would give the artist immense authority to dictate where the rights to their work should not go.

Additionally, lenient re-recording provisions with shorter wait periods could also be incorporated into record contracts to allow those creators who wish to make, and likely fund, their own versions of their recorded works more quickly so as to not lose valuable time and relevance. It appears that record labels are already beginning to shift in the opposite direction from this, with Universal Music Group reportedly increasing the wait period for re-recording but increasing royalties.⁴⁹ Although re-recording is a potentially promising route that could provide creators significant creative control, re-recordings have not always returned profits like their original counterparts.⁵⁰

Of course, renegotiating terms of the current contract with more favorable terms for the creators could also be another method for both songwriters and recording artists and could avoid later problems.⁵¹ Such negotiation, however, would be most favorable to established artists with the leverage to achieve favorable terms.⁵²

47. See Lipshutz, *supra* note 19.

48. See Lipshutz, *supra* note 19.

49. Anne Steele, *As Taylor Swift Rerecorded Her 'Red' Album, Universal Reworked Contracts*, WALL ST. J. (Nov. 12, 2021), <https://www.wsj.com/articles/as-taylor-swift-rerecorded-her-red-album-universal-reworked-contracts-11636741201> [<https://perma.cc/7DVE-VNAA>].

50. See Tim Ingham, *Taylor Swift Plans to Re-Record Her Hits. Here's What She Might Be Facing*, ROLLING STONE (Dec. 9, 2019), <https://www.rollingstone.com/pro/features/taylor-swift-plans-to-re-record-her-hits-heres-what-she-might-be-facing-923019/> [<https://perma.cc/V98B-MALX>].

51. See Bolaños, *supra* note 35, at 407–09.

52. E.g. Karl Fowlkes, *Can You Really Own Your Own Masters?*, MEDIUM (Feb. 21, 2019),

IV. CONCLUSION

Sales of creative works can be both beneficial and devastating to creators. The increased volume and profitability of such transactions, especially to third parties and private equity funds, introduce new opportunities but creators, especially recording artists, can be deprived of a vast proportion of the revenue and a meaningful voice over the control of their works. This problem is likely to be exacerbated as pandemic-related economic problems plague creators and as more and more musical works reach their potential termination age. Measures like copyright reform, private equity fund regulation, and a change in contract culture could ameliorate creators' problems and allow both the creative and business spheres to coexist in instances where creators want more access to the ownership of their works. The ability for creators to maintain their artistic integrity is paramount. Being able to retain or more quickly regain control over their works, or have greater transparency regarding sales and licensing of their works, would allow creators to better facilitate such integrity. This can likely be achieved while still maintaining record labels' and publishers' functions and business structures through contractual provisions that can provide an arrangement that does not compromise creators' rights.