

Reimagining the Music Industry: In Search of a More Perfect Union

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ABSTRACT

This Article challenges the long-standing accepted business model of the music industry, including recording contract terms, ownership of masters, artist recoupment, and copyright terminations. It explores the negative implications of failing to revise these methods and neglecting to create a more equitable relationship between artists and recording companies. Indeed, the music industry is an outlier from almost every commercial industry in its financing structure. As such, this Article suggests that the future industry model should include equity ownership of master recordings. It then reviews the need to revise contract terms and eliminate the unilateral options and the unduly burdensome clauses such as the controlled composition clause. The industry's heavy-handed practice of calculating recoupment on the artists' fraction of the income that is reflected in their royalty rate, as opposed to a more equitable method of using net receipts requires creative adjustments to contracts that provide for artists to gain an ownership interest in their master recordings. Finally, this Article concludes that the current statutory language of the Copyright Act of 1976, as it relates to copyright terminations, is poorly conceived and falls far short of the stated Congressional intent of providing creators with a fair opportunity to recapture their copyrights after a specified period of time. The past two decades have brought technological and informational advances that have allowed artists to thrive without the assistance of deep pocketed recording companies. Major labels must adapt to these changes by making their relationships with artists more equitable. If they do not evolve, they will become a relic of the past.

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I. INTRODUCTION

The music industry promises the hope of gold and platinum records, sold out concert tours, and a life of fame and fortune. Unfortunately for most artists, these hopes quickly fade, buried beneath the archaic and imbalanced business practices of the industry. In an environment perfectly suited to creativity, an artist could create without concern of their creative output being measured by its perceived commercial impact. Likewise, in an environment perfectly suited to commerce, a record company could market recordings without the fear of whether new and inventive works would be well received in the commercial marketplace. This is because most major-record companies are subsidiaries of larger international conglomerates which only view the recorded music business as an entry on the profit and loss ledger.¹ These corporations are most comfortable finding a popular product and simply producing that same product over and over every day, like widgets.² This is the best way to minimize risk and maximize profit.³ However, since the creative industries do not work that way,

1. See Allison Klein, *How Record Labels Work*, HOWSTUFFWORKS (Sept. 23, 2024), <https://entertainment.howstuffworks.com/record-label1.htm> [https://perma.cc/R5JS-EGX9].

2. See Cherie Hu, *In a World of 'Algorithmic Culture,' Music Critics Fight for Relevance*, COLUM. JOURNALISM REV. (Dec. 11, 2018), <https://www.cjr.org/analysis/algorithms-music.php> [https://perma.cc/6L8B-WMS3].

3. See *id.*

companies have developed business practices that allow them to minimize the risk for their investors by tilting the scales so heavily in their favor that they make a profit even when artists take a loss.

There are several unique and complicated strictures that render the standard operations of the music industry unlike any other business. The unique financial structure of producing and marketing music, one-sided options of contracts, imbalanced recoupment practices, complicated nuances of copyright law, and the unnecessarily dense manner in which copyright laws attempt to govern copyright terminations are just a few reasons for the industry's complexity.

To be clear, record companies must make money to thrive. However, the future viability of the industry hinges on finding a way to maintain the delicate balance between the creators of the art and the corporate entities that finance and market this art to the world. In essence, music law must find a way to ensure economic justice for the creators, without whom society would be collectively poorer. Music can heal, reconcile differences, break down walls, and educate audiences about other cultures.⁴ Musical differences can be merged to create common ground and new cultural interactions.

It is no surprise that the power of music is consistently reflected in the consumption of musical recordings and performances around the world. According to the International Federation of the Phonographic Industry (IFPI), global recorded music revenues increased by 10.2 percent in 2023, driven largely by growth in paid streaming subscribers.⁵ IFPI's Global Music Report shows that total trade revenues reached \$28.6 billion in 2023, the ninth consecutive year of growth.⁶ The summary states:

Music has shown time and time again that it can evolve and innovate but the report demonstrates it is the partnership between artist and label which is at the heart of the growth of music markets worldwide with the ensuing positive impact these have on their local economies.⁷

One key phrase must guide the music industry: "It is the partnership between artist and label which is at the heart of the growth. . . ."⁸ But this partnership must not be just a partnership in name alone.

4. *E.g.*, LARRY WAYTE, *PAY FOR PLAY: HOW THE MUSIC INDUSTRY WORKS, WHERE THE MONEY GOES, AND WHY* 47 (2023) (ebook).

5. *IFPI Global Music Report: Global Recorded Music Revenues Grew 10.2% in 2023*, IFPI, <https://www.ifpi.org/ifpi-global-music-report-global-recorded-music-revenues-grew-10-2-in-2023/> [<https://perma.cc/MC8F-BY3H>] (last visited May 30, 2024).

6. *Id.*

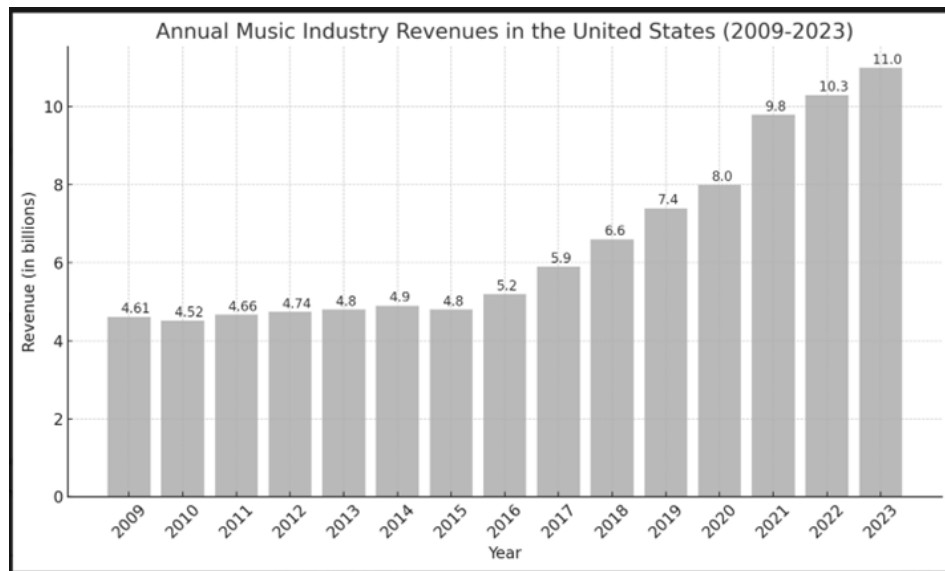
7. *Id.*

8. *Id.*

This Article provides an analysis of some of the peculiarities of this unique industry and suggests a few changes that would aid in creating a true partnership between the record labels and the artists who create the music that serves as the soundtrack of our lives. It discusses issues with the ownership of masters, problematic contractual terms, the unique way the recording industry has avoided paying statutory mechanical royalties, issues of recoupment that are unique to the music industry, and the flaws that exist in the statutory language for copyright terminations.

II. IN SEARCH OF EQUITY OWNERSHIP

Music industry revenues have steadily increased for almost a decade.⁹



*Recorded music industry revenue (in billions) in the United States from 2009 to 2023.*¹⁰

According to the Recording Industry Association of America (RIAA), recorded music revenues in the United States continued to

9. See *Recorded Music Industry Revenue in the United States from 2009 to 2023*, STATISTICA (May 29, 2024), <https://www.statista.com/statistics/298190/music-industry-revenue-usa/#:~:text=Data%20on%20recorded%20music%20industry,reported%20in%20the%20previous%20year> [https://perma.cc/ST93-K9D5].

10. *Id.*

steadily grow from 2015 to 2023.¹¹ Total revenues grew by 8 percent over the eight years, with a record high of \$17.1 billion.¹² Digital streaming on platforms like Spotify and Apple Music continued to be the biggest driver of growth with record levels of engagement in paid subscriptions, continued growth in ad-supported revenues, and growth in contributions from new platforms and services.¹³ At wholesale value, revenues grew 7 percent to a record high of \$11 billion.¹⁴

However, despite this revenue renaissance, artists are making less money in the streaming economy.¹⁵ This is also true for songwriters, who are making significantly less than they earned when physical copies of recordings were the dominant form of music consumption.¹⁶

The primary source of revenue for recording companies is the exploitation of sound recordings.¹⁷ In traditional record deals, including all major-label deals, the record company pays advances to the artist for recording and the associated costs and, in return, the record label claims ownership of the sound recordings.¹⁸ In theory, this leaves all other income outside the reach of the record company recoupment.¹⁹

11. Matthew Bass, *Year-End 2023 RIAA Revenue Statistics*, RIAA (Mar. 26, 2024), <https://www.riaa.com/wp-content/uploads/2024/03/2023-Year-End-Revenue-Statistics.pdf> [https://perma.cc/K39B-L5WK].

12. *Id.*

13. *Id.*

14. *Id.*

15. WAYTE, *supra* note 4, at 125. (“In 2018, 42% (approximately \$18 billion) of industry revenue went to artists and their record companies. However, of this, only about \$5 billion or 12% of total industry revenues, went directly to artists. This represented an historic [*sic*] high mark for both the share of revenues and absolute dollar amount being distributed to artists . . . despite the increasing revenue associated with streaming, artists make very little from this source. As Spotify’s revenues have increased, the amount paid to artists per stream has decreased.”).

16. See Travis M. Andrews, *In the Spotify Era, Many Musicians Struggle to Make a Living*, WASH. POST (Feb. 3, 2023), <https://www.washingtonpost.com/arts-entertainment/2023/02/04/spotify-grammys-songwriters-payment-musicians/> [https://perma.cc/ZE7N-TSA8] (explaining for each dollar of revenue earned on Spotify, 58.5 cents go to the owner of a song’s sound recording (usually a record label), Spotify keeps 29.38 cents, 6.12 cents go to whoever owns publishing rights (usually the songwriter and music publisher), and 6 cents go to whoever owns the mechanical rights (usually the songwriter); Jordan Bromley, *Guest Column: Why Music Streaming Is Good for Creators and Consumers*, BILLBOARD (July 25, 2016), <https://www.billboard.com/pro/5-reasons-subscribe-music-streaming-service/> [https://perma.cc/5BZG-FX2L].

17. See Olsin Lunny, *Record Breaking Revenues in the Music Business, but are Musicians Getting a Raw Deal?*, FORBES (May 29, 2019, 11:31 AM), <https://www.forbes.com/sites/olsinlunny/2019/05/15/record-breaking-revenues-in-the-music-business-but-are-musicians-getting-a-raw-deal/> [https://perma.cc/N7VV-VHTS] (explaining the recorded music business is already in a period of unprecedented growth and it is estimated that it will double in size within ten years, driven primarily by the growth in streaming).

18. See DONALD S. PASSMAN, *ALL YOU NEED TO KNOW ABOUT THE MUSIC BUSINESS* 90 (11th ed. 2023).

19. See *id.*

This all changed with the advent of 360 deals, which were widely introduced in the early 2000s.²⁰

A. Multiple Rights Deals (360 Deals)

The 360 deal, also known as an ancillary rights or multiple rights or passive income participation deal is the new and now standard business model between the artist and music company, which grants the company an economic interest and sometimes controlling rights to the artist's non-record activities in the entertainment industry, including touring, merchandising, film, television, book publishing deals, producer endorsements, licensing, online fan clubs and website ads, live theater and publishing.²¹

Prior to the early 2000s, Multiple Rights Deals were virtually nonexistent.²² However, after the digital phenomenon known as Napster turned the industry on its head, the recording industry was truly hurting for revenue.²³

In response to the Napster lawsuit, the record industry created the concept of Multiple Rights Deals.²⁴ With the record industry in such financial distress that the companies needed new sources of revenue, the record labels began to grab pieces of other income beyond the traditional recoupment from record sales.²⁵ Since record companies accept the full risk of a recording's success, the only way to recoup their investments was through record sales.²⁶ Multiple Rights Deals were a way for record labels to access additional income earned by the artists.²⁷ The other sources of income include merchandising, touring,

20. See *id.* at 105.

21. KENDALL MINTER, UNDERSTANDING AND NEGOTIATING 360 ANCILLARY RIGHTS DEALS, 1 (2015).

22. See PASSMAN, *supra* note 18, at 105.

23. See Mark Harris, *A Short History of Napster*, LIFEWIRE (Feb. 16, 2023), <https://www.lifewire.com/history-of-napster-2438592> [<https://perma.cc/8M8F-8S9J>] (explaining Napster was created as a peer-to-peer file-sharing network in 1999 and quickly became a resource for individuals to trade music files with people all over the world, without having to purchase the music); see also *Decoded: The History of Record Deals*, AWAL [hereinafter *Decoded*], <https://www.awal.com/blog/history-of-record-deals/> [<https://perma.cc/Z7KT-54EL>] (last visited Oct. 19, 2024) ("When peer-to-peer file sharing took off, the record industry lost the keys to its kingdom. Napster shocked the world, and iTunes subtly did the same: Instead of labels selling CDs for \$10 to \$22, listeners were either downloading records for free, or previewing songs and cherry-picking their favorites for 99 cents. With margins shredded, labels had to think up different ways to cover losses. Enter one of music's most notorious deal structures.").

24. See *Decoded*, *supra* note 23 ("When peer-to-peer file sharing took off, the record industry lost the keys to its kingdom. Napster shocked the world, and iTunes subtly did the same: Instead of labels selling CDs for \$10 to \$22, listeners were either downloading records for free, or previewing songs and cherry-picking their favorites for 99 cents. With margins shredded, labels had to think up different ways to cover losses. Enter one of music's most notorious deal structures.").

25. See PASSMAN, *supra* note 18, at 104.

26. See WAYTE, *supra* note 4, at ch. 18..

27. PASSMAN, *supra* note 18, at 105.

songwriting, and other entertainment related activities.²⁸ Historically, the money an artist earned from their concerts was not shared with their record labels.²⁹ In most cases, this was the main source of income for artists.³⁰

Essentially using the same “but for” rationale that lawyers use in torts cases, record labels devised the 360 strategy based on the theory that artists would not be able to be successful as touring entities or selling merchandise but for the investment the labels made in their sound recordings and marketing these recordings.³¹ Using that theory, record companies who traditionally only recouped from record sales are now participating in the income that artists generate from other sources such as tours and merchandising.³² However, this additional incursion into artist income does not come with a relative benefit to the artist.³³ An appropriate benefit to the artist would be shared equity of the masters like a joint ownership. Indeed, joint ownership of masters should be the starting point for recording contract negotiations. Although major-record labels currently continue to leave their artists with little to no benefit, joint ownership is gaining traction among some of the more innovative, independent labels in the industry.³⁴

III. IN SEARCH OF SHORTER CONTRACT TERMS

The term of a record contract is normally measured by delivery of master recordings—in most cases, an album.³⁵ That term will typically commence on the date that the contract is signed and expires six months after the United States commercial release of the initial album recorded under the agreement.³⁶ Alternatively, the term can expire nine months after the artist has delivered their minimum delivery obligation (e.g., one album or ten master recordings).³⁷ The minimum delivery obligations outline what the artist must deliver to

28. *Id.*

29. *See id.*

30. Wayte, *supra* note 4, at ch. 19.

31. *See* PASSMAN, *supra* note 18, at 105.

32. *Id.*

33. @Djvlad, *Dame Dash Breaks Down Why 360 Deals are Bad for Artists*, YOUTUBE (Nov. 25, 2019), <https://www.youtube.com/watch?v=UITKpBo6R-k> [<https://perma.cc/LF8P-YUK7>].

34. *See Should Record Labels Own the Masters?*, OTHER REC. LABELS, <https://www.other-recordlabels.com/should-a-record-label-own-the-masters> [<https://perma.cc/X5KG-BMFX>] (last visited Oct. 19, 2024).

35. PASSMAN, *supra* note 18, at 109–10.

36. *Id.* at 112, 114.

37. *See id.* at 114–15.

the record label to satisfy the requirements of the initial contract period (e.g., the first album).³⁸

In addition to the obligations of the initial contract period, all major-label deals will include a number of consecutive options that are unilaterally exercised by the record label.³⁹ In other words, after each contract period, the record company alone decides whether to continue the contractual relationship.⁴⁰ The artist, on the other hand, has no power to decide differently.⁴¹ Most major-label deals give record companies the right to exercise four to nine separate options, each of which control a newly recorded, separate album.⁴² With artists typically taking eighteen months to two years between album releases, a contract with six options would last approximately fourteen years—longer than the average hit-making period for many artists.⁴³ These typical record deal clauses not only call for the artist to record an initial album with this label, but also lock the artist into the deal for their next five to seven albums if the label exercises its unilateral options.⁴⁴

One way to achieve more equitable deals is through requiring thresholds of success. For example, record deals could require a certain number of sales, streams, or income before the option could be triggered. These thresholds would create a responsibility on the part of the label before granting a right for the option to be exercised. One step beyond this solution would be a bilateral option execution requirement, such that both the artist and the label would have to agree to the option. Such a contractual norm would certainly move the artist-label relationship closer to true partnership, where instead of one party having complete control over whether the contractual relationship would be extended, both parties would have to agree to continue the relationship.

38. JEFF BRABEC & TODD BRABEC, *MUSIC MONEY AND SUCCESS – THE INSIDER’S GUIDE TO MAKING MONEY IN THE MUSIC BUSINESS* 140 (2018).

39. PASSMAN, *supra* note 18, at 109–10.

40. *Id.*

41. *Id.* at 111.

42. *See id.* at 110–11.

43. *See id.* at 113–14. In fact, many hugely influential acts such as D’Angelo, Lauryn Hill, Audioslave, Cream, Creed, Guns ‘n Roses, Jane’s Addiction, The Police, Rage Against the Machine, and others release four or fewer albums during their careers (five for the Police, System Of A Down, and Tool). Joe DiVita, *22 Legendary Bands With 5 or Fewer Studio Albums*, LOUDWIRE (June 26, 2023), <https://loudwire.com/legendeary-bands-five-or-less-albums/> [<https://perma.cc/WFT4-LV2U>].

44. *See* PASSMAN, *supra* note 18, at 109–10; Justin M. Jacobson, *The Artist & Record Label Relationship – A Look At A Standard “Record Deal”*, JACOBSON FIRM (May 30, 2017), <https://the-jacobsonfirm.com/the-artist-record-label-relationship-a-look-at-the-standard-record-deal/> [<https://perma.cc/CJ26-TNHD>].

IV. IN SEARCH OF FULL STATUTORY MECHANICAL ROYALTIES

Recording artists who are also songwriters generate royalties for their musical works and their sound recordings.⁴⁵ The income these singer-songwriters generate from their songs is known as “publishing income,” which comes in several forms.⁴⁶ One such form is a mechanical royalty.⁴⁷

A mechanical royalty is the statutory fee that must be paid to a songwriter whenever her musical works are reproduced in any mechanical form (e.g., when a song becomes a record).⁴⁸ “The term ‘mechanical royalty’ dates back to the 1909 Copyright Law, when Congress deemed it necessary to pay a music publishing company for the right to mechanically reproduce a musical composition on a player-piano roll.”⁴⁹ Shortly after the statute’s passage, music publishers began issuing “mechanical licenses” to companies who were mechanically reproducing songs controlled by the publishing companies.⁵⁰ A “controlled composition” is one that is owned wholly or in part by the artist or the artist’s publishing company.⁵¹ These mechanical licenses generate a mechanical licensing fee each time the songs are mechanically reproduced.⁵² The statutory rate was two cents in 1909 but it has increased periodically over the years.⁵³ From 2006 to 2023, the fee was settled at 9.1 cents.⁵⁴ The most recent 2024 adjustment, however, increased the rate to twelve cents for physical copies and 15.1 percent of revenue for streaming.⁵⁵ Record companies

45. Dmitry Pastukhov, *Music Publishing 101: Copyrights, Publishing Royalties, Common Deal Types, & More*, SOUNDCHARTS BLOG (Nov. 20, 2019), <https://soundcharts.com/blog/how-the-music-publishing-works> [<https://perma.cc/9L9H-65LD>].

46. *Id.*

47. *Id.*

48. See Kevin Zimmerman, *Understanding Mechanical Royalties*, BMI (Mar. 28, 2005), https://www.bmi.com/news/entry/Understanding_Mechanical_Royalties [<https://perma.cc/W9QK-8Y6H>].

49. *Id.*; See Copyright Act of 1909, Pub. L. No. 60-349, 35 Stat. 1075 (1909).

50. See Jeffrey E. Jacobson, *The Brief History of Mechanical Royalties and Music in the U.S.*, JACOBSON FIRM (Jan. 21, 2021), <https://thejacobsonfirm.com/the-brief-history-of-mechanical-royalties-and-music-in-the-u-s/> [<https://perma.cc/P3HR-WW9Z>]. A mechanical reproduction occurs anytime a song is distributed in recorded form. Examples include sound recordings, digital mp3s, player piano rolls, and greeting cards which include sound recordings. See Zimmerman, *supra* note 48.

51. BRABEC & BRABEC, *supra* note 38, at 106.

52. *Id.*

53. See Zimmerman, *supra* note 48.

54. See Jacobson, *supra* note 50.

55. Kristin Robinson & Ed Christman, *Songwriters Earn 2024 Cost of Living Adjustment for Physical and Digital Sales*, BILLBOARD (Dec. 12, 2023), <https://www.billboard.com/business/publishing/songwriter-royalties-cost-of-living-increase-music-sales-2024-1235553498/> [<https://perma.cc/ETT2-WCVQ>]; Tim Ingham, *Songwriters, Rejoice: Spotify Appeal Fails to Stop Composers Getting Improved 15.1% Streaming Royalty Rate in the US*, NMPA (July 5, 2022),

are required to pay mechanical license fees to song owners.⁵⁶ That is, they must pay twelve cents per song, per copy manufactured and distributed.⁵⁷ For songs that are streamed, as opposed to manufactured and sold, the mechanical royalty is calculated as a function of the revenue that is paid to record companies and publishers by the streaming companies.⁵⁸ The mechanical royalty for streaming is currently 15.1 percent of revenue.⁵⁹

However, labels devised a sly way to reduce their payments to artists through the “controlled composition clause,” a clause that has been standard in all major-label record deals for decades, which governs how the performer gets paid for self-written compositions (controlled compositions).⁶⁰ These provisions tend to be heavily negotiated because they have a major impact on how much money a performer can make as a songwriter.⁶¹

The language of a typical controlled composition clause reduces the mechanical royalty payable to artists in two ways.⁶² First, the fee is reduced to 75 percent of the statutory rate.⁶³ This means an artist who is constrained by a controlled composition clause would be paid nine cents per song instead of twelve cents. That same artist would be paid 11.325 percent instead of 15.1 percent if record labels carried over the controlled composition clause to streaming income. However, the controlled composition clause is typically applied only to physical products.⁶⁴ Second, the total amount payable on an album is typically ten times the reduced rate.⁶⁵ Although the numbers seem small, the loss in royalties can quickly add up to significant losses.⁶⁶ Consider the same example but on a larger scale. This time, the album sells 100,000 copies and should generate \$120,000 in mechanical royalties.⁶⁷ Yet, under the terms of the controlled composition clause, the artist would be paid only

<https://www.nmpa.org/songwriters-rejoice-spotify-appeal-fails-to-stop-composers-getting-improved-15-1-streaming-royalty-rate-in-the-us-mbw/> [<https://perma.cc/SNH4-TSY3>].

56. See Zimmerman, *supra* note 48.

57. See Robinson & Christman, *supra* note 55.

58. See PASSMAN, *supra* note 18, at 142–44.

59. Ingham, *supra* note 55.

60. See BRABEC & BRABEC, *supra* note 38, at 106.

61. *Id.* at 178.

62. *Id.*

63. *Id.*

64. See PASSMAN, *supra* note 18, at 260.

65. *Id.*; In practice, this would mean that an artist who wrote ten songs on an album, would be paid \$0.90 (75 percent of the rate) instead of being paid \$1.20 in mechanical royalties per album mechanically reproduced.

66. Wallace Collins, *Warning to Musicians: Beware of the Controlled Composition Clause*, HYPEBOT (Oct. 16, 2015), <https://www.hypebot.com/hypebot/2015/10/a-warning-to-artists-beware-the-controlled-composition-clause.html> [<https://perma.cc/2V27-CMXV>].

67. See *id.*

\$90,000.⁶⁸ Artists' attorneys are sometimes able to negotiate and remove these clauses.⁶⁹ However, for newer acts who have limited negotiation power, removing the clause is extremely difficult.⁷⁰

Congressional action empowered Copyright Royalty Judges to set the statutory rate that artists should be paid.⁷¹ However, record companies have been able to get away with paying reduced rates simply by making it a part of their standard contracts and generally refusing to negotiate its terms unless the artist has significant bargaining power.⁷² Recently, Bertelsmann Music Group (BMG) announced they will be removing the controlled composition clause from their artist's contracts.⁷³ Hopefully, this is an indicator that this clause will soon be a relic of the past. Its elimination would allow artists to earn the full 100 percent of the statutory rate as opposed to 75 percent of the statutory rate, a difference of potentially hundreds of thousands of dollars for successful recordings.

V. IN SEARCH OF RECOUPMENT AT NET RECEIPT RATE

Record companies invest in their recording projects by allotting funds to their artists that cover all associated costs of producing a commercial recording.⁷⁴ These funds are allotted through artist advances, which include signing bonuses.⁷⁵ In a nutshell, the company pays a sum of money to the artist and then keeps the artist's royalties until it gets its money back.⁷⁶ These payments are known as "advances," meaning that the payment represents a portion of the artist's future earnings.⁷⁷

68. *See id.*

69. *See* PASSMAN, *supra* note 18, at 62.

70. *See* Collins, *supra* note 66.

71. *Mechanical License Royalty Rates*, COPYRIGHT.GOV, <https://copyright.gov/licensing/m200a.pdf> [<https://perma.cc/8Z5A-9M2Y>] (last visited Oct. 19, 2024).

72. *See* PASSMAN, *supra* note 18, at 258.

73. *BMG Eliminates 'Poisonous' Controlled Composition Clauses from its US Record Contracts*, MUSIC BUS. WORLDWIDE (Oct. 8, 2020), <https://www.musicbusinessworldwide.com/bmg-eliminates-poisonous-controlled-composition-clauses-from-its-us-record-contracts/> [<https://perma.cc/J9YN-4ZXE>]. Bertelsmann Music Group (BMG) is a German media company and one of the three major labels in the music industry. *See BMG Forms Alliance with Universal Music Group*, UNIVERSAL MUSIC GRP. (Oct. 19, 2023), <https://www.universalmusic.com/bmg-forms-alliance-with-universal-music-group/> [<https://perma.cc/98RX-EZ52>]. BMG labels include RCA, Arista, Zomba, LaFace, Verity, and many others. *Bertelsmann Music Group*, FANDOM, https://ultimatepopculture.fandom.com/wiki/Bertelsmann_Music_Group#Subsidiaries [<https://perma.cc/ER7H-79AV>] (last visited Feb. 5, 2025).

74. PASSMAN, *supra* note 18, at 101.

75. *Id.*

76. *Id.* at 90.

77. *An Artist's Guide to Royalties, Recoupment & Cross-Collateralization*, MARK TAVERN MGMT. (Aug. 1, 2020), <https://www.marktavern.com/blog/2020/8/1/an-artists-guide-to-royalties-recoupment-amp-cross-collateralization> [<https://perma.cc/TPH6-EH4H>].

Record companies receive repayment for these advances through “recoupment.”⁷⁸ Recoupment occurs when the record company applies the artist’s earned royalties toward recovery of its recording costs and other permitted costs.⁷⁹ However, only when all these costs are paid off does the label become obligated to pay royalties to the artist.⁸⁰

These advances paid to artists include payments for record production and production of music videos, with some deals also including advances for tour support and independent promotion.⁸¹ Advances paid for record production, signing bonuses, and tour support are 100 percent recoupable from the artist royalties that are generated from sales and streams of the recordings.⁸² Independent promotion and video production costs are typically recouped at 50 percent of the amount advanced by the recording company.⁸³ Advances are nonreturnable and the record company absorbs the risk of whether the recording will recoup its investment.⁸⁴ Record companies define almost every cost paid in connection with an artist as an advance, whether paid directly to that artist or a third party on their behalf.⁸⁵

In some ways, a record company is similar to a bank, and an advance has some similarities to a bank loan. However, whereas banks require collateral to take on the risk of the loan, record labels require no such collateral. In return for taking on the risk of their investment, record labels insist on owning the master recordings produced by the artist in perpetuity.⁸⁶ Record companies essentially take on the risk that they can “break” an artist (i.e., make an artist successful). If they are successful, then the budget will be recouped, and the record companies will share a small portion of subsequent revenues with the artist.⁸⁷ If the record company is not successful at breaking the artist, the company must eat its costs.⁸⁸

78. PASSMAN, *supra* note 18, at 90.

79. *Id.*

80. *Id.* at 99–100.

81. See Ian Brereton, *The Beginning of a New Age?: The Unconscionability of the “360-Degree” Deal*, 27 CARDOZO ARTS & ENT. L.J. 167, 186 (2009).

82. See PASSMAN, *supra* note 18, at 90–91.

83. WAYTE, *supra* note 4.

84. See PASSMAN, *supra* note 18, at 90.

85. WAYTE, *supra* note 4.

86. See, e.g., *Music Industry Financials: Still Rock N Roll to Me*, PROCFO PARTNERS (Mar. 4, 2022), <https://procfopartners.com/revenue-model/music-industry-financials-still-rock-n-roll-to-me/> [<https://perma.cc/GCD5-Q475>] (outlining Taylor Swift’s dispute with her record label over master recordings).

87. *Royalties 101-Recorded Music, Lesson 6: Royalty Deals*, CURVE, <https://www.curveroyaltysystems.com/royalties-101-recorded-music/lesson-6-royalty-deals> [<https://perma.cc/MPZ2-7QXU>] (last visited Sept. 23, 2024).

88. Brereton, *supra* note 81, at 186–87.

Indeed, this business arrangement sets the music industry apart from most business financial transactions.⁸⁹ For example, in the mortgage banking world, the bank provides the funding to the home buyer to purchase the property.⁹⁰ The funds are then paid to the seller.⁹¹ Over the next fifteen to thirty years, the home buyer repays the mortgage to the bank with interest.⁹² Once the mortgage has been repaid, the home buyer is the owner of the property free and clear.⁹³ Similarly, with a car buyer, the bank provides the funds to purchase the car through a loan.⁹⁴ The buyer then repays the auto loan over a period of years until the principal and interest has been repaid.⁹⁵ At that point, the car is owned free and clear by the purchaser.⁹⁶

However, with standard recording contracts, there are two unique elements of the recoupment process.⁹⁷ First, the record company only applies the artist's royalty share to recoupment, as opposed to the full net receipts.⁹⁸ In other words, even if the record company is clearing \$5.00 on each sale, they are only applying the artist's royalty of \$1.20 to the artist's unrecouped balance.⁹⁹ Second, whereas once a car loan is paid off the buyer owns the car, and a home mortgage payoff grants full ownership of the property to the home buyer, with a recording contract the record company still owns the master recording even after the artist has fully paid for the investment (i.e., recouped the advances and costs).¹⁰⁰

There are very few elements of the music industry that favor the artist. One of these elements is that in the event an artist does not recoup the costs of a recording (a common occurrence), the record company does not have a lien on the artist's personal property or

89. *Music Industry Financials: Still Rock N Roll to Me*, *supra* note 86.

90. Victoria Araj, *What is a Mortgage and How Does it Work?*, QUICKEN LOANS (Nov. 29, 2023), <https://www.quickenloans.com/learn/what-is-a-mortgage> [<https://perma.cc/GHL5-L7HR>].

91. *Id.*

92. *Id.*

93. Meaghan Hunt, *What Happens When You Pay Off Your Mortgage?*, BANKRATE (June 24, 2024), <https://www.bankrate.com/mortgages/what-happens-when-mortgage-is-paid-off/#:~:text=Paying%20off%20your%20mortgage%20is,legal%20owner%20of%20the%20property> [<https://perma.cc/YP2R-Z6ZF>].

94. Allison Martin, *What is an auto loan and how does it work?*, BANKRATE (July 25, 2024), <https://www.bankrate.com/loans/auto-loans/what-is-an-auto-loan/> [<https://perma.cc/GHL5-L7HR>].

95. *Id.*

96. Holly D. Johnson, *How to Get Your Car Title After Loan Payoff*, BANKRATE (June 13, 2024), <https://www.bankrate.com/loans/auto-loans/obtaining-your-car-title-after-loan-payoff/> [<https://perma.cc/6JV4-CGWF>] (edited by Rebecca Betterton).

97. See Mark Tavern, *An Artist's Guide to Royalties, Recoupment & Cross-Collateralization*, MARK TAVERN MGMT. (Aug. 1, 2020), <https://www.marktavern.com/blog/2020/8/1/an-artists-guide-to-royalties-recoupment-amp-cross-collateralization> [<https://perma.cc/ZW3X-9WBj>].

98. *See id.*

99. *See id.*

100. *See id.*

collateral.¹⁰¹ Instead, the label's only recourse to recoup is the sales and streams of the recordings.¹⁰² Similarly, in Multiple Rights Deals, record labels will hold on to the artist's royalties from touring and merchandising as a way to recoup their expenses.¹⁰³

IV. IN SEARCH OF RECOUPMENT TRIGGERING ARTIST OWNERSHIP

For most of the twentieth century, it was rare to hear complaints from artists regarding the fact that record labels owned the master recordings the artists produced.¹⁰⁴ However, in the late 1990s and the twenty-first century, artists have been far more vocal regarding the inequity of record labels retaining ownership of the artist's master recordings, as more and more artists declare, "I want to own my masters."¹⁰⁵ Many artists, led by those in the hip hop genre, are routinely turning down major-label deals in favor of distribution and marketing relationships where they can maintain ownership of their master recordings.¹⁰⁶ An artist who owns their master recordings has the legal right to freely appropriate and maximize their opportunities to generate income from the masters.¹⁰⁷ It gives them full control over their music.¹⁰⁸ With ownership of their master recording, the artist can license the recording to third parties such as TV shows, films,

101. See *id.*

102. Ramsey Brown, *Record Label Advances: Everything They DON'T Tell You*, OMARIMC, <https://www.omarimc.com/record-label-advances/> [<https://perma.cc/6KLZ-2E2K>] (last visited Oct. 5, 2024).

103. *Id.*; see also Matt W., *Unraveling Music Artist Advances: An In-Depth Guide to How They Work*, UNCHAINED MUSIC, <https://www.unchainedmusic.io/blog-posts/unraveling-music-artist-advances-an-in-depth-guide-to-how-they-work> [<https://perma.cc/P8XT-H8Y8>] (July 28, 2023) ("When an artist receives an advance, the record label or industry entity expects to recoup the investment through the artist's future earnings. As the artist starts earning royalties from music sales, streaming revenue, or other income sources, the label will deduct a portion of these earnings to repay the advance.").

104. See generally Deana Sumanac-Johnson, *Masters Matter: Taylor Swift's Feud Shows Why Ownership Can be Crucial to Musicians*, CBC (July 5, 2019, 3:00 AM), <https://www.cbc.ca/news/entertainment/why-master-recordings-matter-taylor-swift-universal-fire-1.5199774> [<https://perma.cc/ML9H-LWTL>].

105. See Jermaine Harris, *Musical Artists Who Own Their Masters and Why It Matters (2024)*, BREVE MUSIC STUDIOS (Feb. 23, 2024), <https://brevemusicstudios.com/musical-artists-who-own-their-masters> [<https://perma.cc/8XFY-BLM7>].

106. See, e.g., Shanique Yates, *21 Savage Says His Owning His Masters Will Provide His Family With Generational Wealth*, AFROTECH (Sept. 1, 2021), <https://www.afrotech.com/21-savage-masters-bank-account-rapper-generational-wealth> [<https://perma.cc/WQ4N-6N5M>].

107. Harris, *supra* note 105.

108. *What Does It Mean to Own Your Masters?*, AMUSE, <https://www.amuse.io/en/categories/industry/owning-your-masters/> [<https://perma.cc/AGY4-UTZG>] (last visited Oct. 5, 2024).

108. *Id.*

commercials, or sampling use by other artists.¹⁰⁹ If the master belongs to the record company, these rights are retained by the label.¹¹⁰

As technological advances create a level playing field with regard to record production and democratize the manufacturing and distribution process, artists no longer need record labels to finance their recordings.¹¹¹ Consequently, artists are questioning whether they should part with the ownership of their masters in return for record label affiliation.¹¹² If record labels continue to insist on owning 100 percent of master rights, the future will include fewer traditional major-label record deals and will instead be populated by artists entering into distribution and marketing agreements that allow the artists to retain ownership of their valuable master recordings.

VI. IN SEARCH OF REVISED COPYRIGHT TERMINATION LANGUAGE

Intellectual property is the most valuable asset for entertainment companies in general, and music companies in particular.¹¹³ Indeed, it is such a valuable asset that the industry is built upon record companies taking on the full risk of success for the sound recordings they produce.¹¹⁴ The primary deliverable or product that is marketed by recording companies is a master sound recording.¹¹⁵ The rights surrounding these sound recordings are governed by copyright law.¹¹⁶ However, unlike copyrights in other types of original works, such as books, paintings, and sculptures, copyrights in the music

109. *Id.*

110. *Id.*

111. Mark Sutherland, *Going it Alone: Why Artists are Ditching Major Labels to go Independent*, ROLLING STONE (Jan. 25, 2023, 11:44 AM), <https://www.rollingstone.co.uk/music/going-it-alone-why-artists-are-ditching-major-labels-to-go-independent-26150/> [https://perma.cc/JV8G-ASLN].

112. *See id.*

113. Cf. Nikola Iliev, *Real Value of Record Labels*, FORBES (Jun. 12, 2023, 9:45 AM), <https://www.forbes.com/sites/forbesbusinesscouncil/2023/06/12/real-value-of-record-labels/> [https://perma.cc/73GD-K9X8]; Kary Oberbrunner, *Intellectual Property: Your Company's Most Valuable Asset*, FORBES (Jan. 11, 2024, 8:30 AM), <https://www.forbes.com/sites/forbesbusinesscouncil/2024/01/11/intellectual-property-your-companys-most-valuable-asset/> [https://perma.cc/CMT7-H9T4].

114. *See Iliev, supra* note 113.

115. Rania Aniftos, *Billboard Explains: What Role Do Record Labels Play?*, BILLBOARD (Mar. 31, 2023), <https://www.billboard.com/music/music-news/record-labels-billboard-explains-1235296400/> [https://perma.cc/8KWM-QBHK].

116. Sadie Lorence, *It's a Bitter Sweet Symphony: Licensing Complexities and Copyright Law in the Music Industry*, PFORZHEIMER HONORS COLL. 1, 5 (Mar. 15, 2023), https://digitalcommons.pace.edu/honorscollege_theses/374 [https://perma.cc/M72J-NDJ3].

industry are more complex because there are two separate copyrights that are implicated in any master recording.¹¹⁷

A. Exclusive Rights under Copyright Law

The foundation of copyright law is built upon the principle that authors, by virtue of having created an original work, should have the exclusive right to exploit and benefit from the exploitation of their creation.¹¹⁸ This exclusive right to exploit would also include the right to refrain from publication altogether.¹¹⁹ The author's exclusive rights are enumerated in Section 106 of the Copyright Act of 1976.¹²⁰

B. Copyrights of Musical Works

With musical works, there are two copyrights that are in play: (1) the copyright in the underlying song, which is typically transferred by the songwriter to an outside publisher; and (2) the copyright in the sound recording, which is typically transferred by the

117. *What Musicians Should Know About Copyright*, U.S. COPYRIGHT OFF., <https://www.copyright.gov/engage/musicians/> [<https://perma.cc/6AKY-WAAC>] (last visited Sept. 30, 2024).

118. JULIE E. COHEN, LYDIA PALLAS LOREN, RUTH L. OKEDIJI & MAUREEN A. O'ROURKE, COPYRIGHT IN A GLOBAL INFORMATION ECONOMY 7 (Aspen 4th ed., 2015) ("By granting the bundle of rights . . . copyright law provides a legal entitlement to the copyright owner to exclude others from enjoying certain benefits of the work. This enables an author to recoup her investment in the creation of the work.").

119. See 17 U.S.C. §§ 302–03. Copyright in unpublished works extends for the same term as published works under the 1976 Act, life of the author plus seventy years. *Id.* If the work was created under the 1909 Act and was unpublished, the copyright term is life plus seventy, with expiration no earlier than December 31, 2002, and if the work is subsequently published before December 31, 2002, then the term is life plus seventy with expiration no earlier than December 31, 2047. *Id.*

120. Exclusive rights of the author include:

(1) to reproduce the copyrighted work in copies or phonorecords; (2) to prepare derivative works based upon the copyrighted work; (3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending; (4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly; (5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and (6) in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.

17 U.S.C. § 106. These rights extend for the life of the copyright. See COHEN ET AL., *supra* note 118, at 7. The power to license these exclusive rights to others is at the foundation of the relationship between creators and the corporate entities with which they enter into contractual relationships. *Id.* Under the Copyright Act of 1976, which went into effect on January 1, 1978, the term of copyright protection lasts for the life of the author plus seventy years. 17 U.S.C. § 302(a).

recording artist to a record company.¹²¹ For example, the popular song “Lady Marmalade” was written by Bob Crewe and Kenny Nolan.¹²² Crewe, Nolan, and their respective publishing companies would be the owners of the copyright in the underlying song. In 1975, Patti LaBelle had a number one hit with Epic Records for the original recorded version of the song.¹²³ That recording has its own copyright, a sound recording copyright owned by Epic Records.¹²⁴ In 2001, as part of the film *Moulin Rouge*, the song was rerecorded by Christina Aguilera, Lil’ Kim, Mya, and P!nk.¹²⁵ This recording, also a number one hit, had its own sound recording copyright, owned by Interscope Records.¹²⁶ Theoretically, the song may be recorded by a new artist countless times and would generate a new sound recording copyright each time. However, no matter how many recordings there are, there will never be more than one copyright for the song itself. The copyrights in the songs and the sound recordings can be reclaimed by the original author through copyright termination after a specified period of time.¹²⁷

C. Sound Recordings

“Sound recordings” are most simply defined as the collection of sounds that are embodied in a recording.¹²⁸ If you record yourself singing a song on your phone, the resulting recording is a sound recording. If you chose to exploit that recording commercially, you would be required to obtain a license from the underlying song’s copyright owner.¹²⁹ If it were a song that you wrote, then you would own

121. 6 *Basics of Music Copyright Law: What it Protects and How to Copyright a Song*, SOUNDCHARTS BLOG (Dec. 31, 2023), <https://soundcharts.com/blog/music-copyrights> [https://perma.cc/8GFU-9PXV].

122. *Music Publishing Rights Dispute Throws “Lady Marmalade” Songwriter’s Royalties Into a Black Box*, IAM MEDIA (May 1, 2019), <https://www.iam-media.com/article/music-publishing-rights-dispute-throws-lady-marmalade-songwriters-royalties-black-box> [https://perma.cc/TUQ3-6B8W].

123. *Labelle Chart History*, BILLBOARD, <https://www.billboard.com/artist/labelle/chart-history/hsi/> [https://perma.cc/6FDZ-MU6G] (last visited Sept. 30, 2024).

124. *Patti* & LaBelle – Lady Marmalade: The Best Of Patti And LaBelle*, DISCOGS, <https://www.discogs.com/release/553557-Patti-LaBelle-Lady-Marmalade-The-Best-Of-Patti-And-LaBelle> [https://perma.cc/UD3S-UJZL] (last visited Sept. 30, 2024); *Epic Records*, MUSIC BUS. WORLDWIDE, <https://www.musicbusinessworldwide.com/companies/sony/sony-music-group/sony-music-entertainment/epic-records/> [https://perma.cc/32LF-6UKW] (last visited Oct. 8, 2024) (stating that Epic Records is owned by Sony Music Entertainment).

125. *Christina Aguilera Chart History*, BILLBOARD, <https://www.billboard.com/artist/christina-aguilera/chart-history/hsi/> [https://perma.cc/DKK2-6EGR] (last visited Sept. 30, 2024).

126. *Christina Aguilera, Lil’ Kim, Mya & Pink – Lady Marmalade*, DISCOGS, <https://www.discogs.com/release/311625-Christina-Aguilera-Lil-Kim-Mya-And-Pink-Lady-Marmalade> [https://perma.cc/SXG8-KHKL] (last visited Sept. 30, 2024).

127. 17 U.S.C. § 203.

128. *Id.* § 101.

129. *See id.* § 106

the copyright in that song by virtue of having fixed it in a tangible medium of expression (i.e., the sound recording on the phone).¹³⁰ It is unlikely that a random recording of you singing into your phone would have much commercial value. But what if we change the facts and say this is a voice memo by Michael Jackson made while recording a song he had just written? What if that recording had been made the day before he died? And what if the recording had never been released but was now going to be the title song for a biopic that Spike Lee was creating on the life of Michael Jackson? Now the song has astronomical commercial value because of these additional facts.

The potential for commercial exploitation of any sound recording will rely heavily upon the viability of the underlying collection of sounds that are being recorded. In other words, some sound recordings are inherently more likely to attract a large commercial demand and are thus more valuable than others.

D. Terminations of Copyright Transfers

Copyright termination is the right of creators to recapture the copyrights they transferred to other entities, typically record companies and music publishers, after a specified number of years.¹³¹ The codification of these rights can be found in Section 203 of the Copyright Act of 1976.¹³² Unfortunately, while the statute aims to assist creators in obtaining more remunerative transfers, the statutory language inadvertently creates an undue burden upon original authors that potentially has punitive consequences.¹³³ This is problematic on several fronts. First, the statute allows the termination to occur only within a five-year window from the end of year thirty-five to year forty.¹³⁴ Second, the original author must give notice at least two years before the stated termination date.¹³⁵ Finally, if the author fails to give notice

130. See *id.* §§ 101–02.

131. *Notices of Termination*, COPYRIGHT.GOV, <https://www.copyright.gov/recording/termination.html> [<https://perma.cc/GGP4-FQ5V>] (last visited Oct. 1, 2024).

132. 17 U.S.C. § 203 (“In the case of any work other than a work made for hire, the exclusive or nonexclusive grant of a transfer or license of copyright or of any right under a copyright, executed by the author on or after January 1, 1978, otherwise than by will, is subject to termination.”).

133. See H.R. Rep. No. 94-1476, at 124 (1976); Dylan Gilbert, Meredith Rose & Alisa Valentin, *Making Sense of the Termination Right: How the System Fails Artists and How to Fix It*, PUB. KNOWLEDGE 1, 6 (Dec. 2019), <https://publicknowledge.org/wp-content/uploads/2021/11/Making-Sense-of-the-Termination-Right-1.pdf> [<https://perma.cc/EM54-QFSS>].

134. 17 U.S.C. § 203(a)(3).

135. *Id.* § 203(a)(4)(A).

within the specific time period, they completely lose the right to terminate the copyright transfer.¹³⁶

Although the legislative intent was to prevent unremunerative transfers (i.e., transfers that do not reflect the actual value of the works) and give creators a second bite at the apple for transferring their copyrights, in practice it creates unnecessary hurdles for the creators it purports to protect.¹³⁷

Authors of musical works are rarely in a strong bargaining with record companies and publishers at the early stages of their careers. Unfortunately, this is precisely when their initial deals are consummated, and usually these deals are the ones under which their most commercially successful works are produced.¹³⁸ As such, the opportunity to terminate their copyright transfers and create new contractual relationships is paramount to satisfying the stated intention of Congress when the termination statute was drafted.¹³⁹

The legislative purpose of the statute would be more efficiently communicated and fairly apportioned by changing the language of Section 203(a)(3) of the Copyright Act of 1976 to effectuate an automatic reversion of copyright after a specified period of time.¹⁴⁰ For example, the language could be changed to “termination of grants shall occur by operation of this statute at the end of the thirty-five year period after the date of the execution of the grant.” In addition to the above change, the notice provision, which currently requires two to ten years notice,¹⁴¹ would be improved by either eliminating this requirement altogether or changing it to read as follows:

“The termination shall be effected by serving an advance notice in writing, signed by the number and proportion of owners of termination interests required under clauses (10) and (2) of this

136. See *id.* § 203(a)(3) (“Termination of the grant may be effected at any time during a period of five years beginning at the end of thirty-five years from the date of execution of the grant; or, if the grant covers the right of publication of the work, the period begins at the end of thirty-five years from the date of publication of the work under the grant or at the end of forty years from the date of execution of the grant, whichever term ends earlier.”); *id.* § 203(b)(6) (“Unless and until termination is effected under this section, the grant, if it does not provide otherwise, continues in effect for the term of copyright provided by this title.”).

137. See H.R. Rep. No. 94-1476, at 124 (1976); Gilbert et al., *supra* note 133, at 6.

138. See Gilbert et al., *supra* note 133, at 20.

139. See COPYRIGHT LAW REVISION: REPORT OF THE REGISTER OF COPYRIGHTS ON THE GENERAL REVISION OF U.S. COPYRIGHT LAW 53 (1961) (“The primary purpose of [the reversionary provision] was to protect the author and his family against his unprofitable or improvident disposition of the copyright. The renewal copyright was intended to revert to them so that they could negotiate new contracts for the further exploitation of the work.”).

140. See Amy Gilbert, *The Time Has Come: A Proposed Revision to 17 U.S.C. § 203*, 66 CASE W. RES. L. REV. 807, 819 (2016).

141. 17 U.S.C. § 203(a)(4)(A).

subsection, or by their duly authorized agents, upon the grantee or the grantee's successor in title.

(A) The notice shall state the effective date of the termination and the notice shall be served not less than one year before the date of the termination. A copy of the notice shall be recorded in the Copyright Office before the effective date of termination, as a condition to its taking effect.

(B) The notice shall comply, in form, content, and manner of service, with requirements that the Register of Copyrights shall prescribe by regulation."

These proposed changes would eliminate a common scenario that plays out with various artists who have no knowledge of their rights to terminate copyrights. When artists are finally made aware of their rights, they unfortunately discover that the notice period to terminate a transfer has already passed for some or all their works.¹⁴² Because of the currently unforgiving statutory language, the artist is left with no recourse and has lost their opportunity to terminate the copyright transfer. This Article's recommended changes to the statute would make this scenario a thing of the past.

VII. CONCLUSION

The music industry is continuously adjusting to the rapid changes in the way music is created, produced, marketed, and consumed. Twenty-first century changes, including technological advances in distribution and access to information, have created an environment where modern-day artists are far more suspicious of entering into long-term contracts with record labels where the record companies have total control of their careers and 100 percent ownership of their masters.¹⁴³ If music industry stakeholders do not adjust to this new paradigm, they will find the record business to be totally unrecognizable and irrelevant in the near future. This Article suggests that the best strategy for long-term survival, continued growth, and success is for record labels to proactively create an environment where the artist-label relationship is truly a partnership. This new paradigm would include artists having equity in the ownership of their masters, shorter contract terms for record deals, full statutory rates on all mechanical royalties, recoupment being measured at net receipts

142. See Gilbert et al., *supra* note 133, at 6.

143. See Cecilia Giles, *Look What You Made Them Do: The Impact of Taylor Swift's Re-recording Project on Record Labels*, U. CIN. L. REV. BLOG (Mar. 27, 2024), <https://uclawreview.org/2024/03/27/look-what-you-made-them-do-the-impact-of-taylor-swifts-re-recording-project-on-record-labels/> [https://perma.cc/E8QR-6EQN].

instead of the artist's royalty rate, recoupment triggering artist ownership of masters, and revised copyright termination language that simplifies the process for terminating transfers of copyright. Only when record labels truly embrace artists as their business partners will the music industry be a more perfect union.