

Taylor Swift is 'Fearless': The Rights to an Artist's Music

Ellen Anderson, Solicitor at Addisons, comments on the copyright dispute between Taylor Swift and the new owners of her original master recordings.

In April 2021, singer-songwriter Taylor Swift released a re-recorded version of one of her first albums, 'Fearless', in an attempt to gain control of the intellectual property rights attached to the recording of the album (known as the 'master recording').

'Fearless' was originally released in 2008 when Swift was 18 years old, after signing a record deal with Big Machine Label Group (**Big Machine**) in 2006. Swift recorded six albums under her contract with Big Machine, which came to an end in 2018. Swift has never owned the rights to the master recordings of these albums.

It is common for artists (especially lesser-known artists, as Swift was at the time) to sign over the intellectual property rights to the master recordings of their music to a record label in exchange for the record label paying to have the music recorded, as well as distributing and promoting the music.

Under American copyright law, two types of copyright subsist in a song:

1. the substance of the song, including the music and lyrics; and
2. the recording of the song.¹

Swift, being the singer-songwriter of her music, owns the rights to the substance of the songs on her albums while Big Machine owned the rights to the master recordings. Big Machine was acquired by Ithaca Holdings in 2019, which then reportedly sold the rights to Swift's master recordings to a private equity company, Shamrock Holdings, for around \$300 million.² Swift claims she was not aware that the rights to the master recordings had been sold.

As the owners of the master recordings, Shamrock Holdings can earn money

from the royalties and licensing fees for Swift's older music, and also have the power to decide where and how the music recordings are used, for example, in TV shows and movies, on streaming platforms or in advertisements.

However, there was a provision in Swift's contract with Big Machine which allowed her to re-record her music from November 2020. This meant Swift could release a re-recording of her first six albums (to which she owns the substantive rights) in an attempt to gain some control over the rights to the master recordings of those albums by creating new sources of copyright owned by her. This does not stop Shamrock Holdings from owning and benefiting from the rights to her original recordings.

In 2018, Swift signed a contract with Republic Records and Universal Music Group, which gave her ownership of the master recordings of any new music she recorded with them. At the end of 2020, Swift began re-recording 'Fearless' and in April 2021, 'Fearless (Taylor's Version)' was released.

Australian context

In an Australian context, it is certainly possible for an artist to be in a similar position to Swift. Under Australian copyright law, there are multiple sources of copyright which subsist in a song including the composed musical work, the lyrics (considered to be a literary work)³ and a separate copyright in the recording of the song (defined as a 'sound recording' in the *Copyright Act 1968* (Cth)).⁴ Subject to contractual arrangements, this means that it is possible for a number of people to claim copyright ownership over different elements of a song.⁵

The 'maker' of the sound recording is the owner of the copyright to that recording⁶ subject to rights of any performers in a recording of a live performance of the song. Where it is unclear who the 'maker' is, an important consideration is who made the arrangements for the recording to be made. For example, and again subject to any agreement, in the traditional case where a record label pays for the recording cost, it is likely to be the owner of the copyright for such a recording.⁷

However, with recent developments in technology, it is becoming increasingly common for artists to record their music themselves and release it online, without the need for a record label to record, promote and distribute the music. Companies known as 'digital aggregators' can also assist musicians in publishing their music onto streaming platforms while allowing them to remain independent and retain valuable control over the music.⁸

In Swift's case, whether releasing re-recorded music makes a substantive difference in taking back control of the intellectual property rights to the master recordings of her music is the subject of debate. It remains likely that at least some of the fans of the original recordings will not be aware of or listen to the new recordings, and that the owner of the rights to the original recordings will continue to be sought after to license the rights to third parties. Nevertheless, Swift's decision to re-record her music has certainly helped shine a light on how intellectual property rights to an artist's music may be controlled and distributed by third parties.

1 Title 17 of the United States Code, Copyright Act of 1976, §102(a).

2 ABC, 'Taylor Swift drops Love Story, first track from the re-recorded Fearless album', ABC (online, 12 February 2021) <<https://www.abc.net.au/news/2021-02-12/taylor-swift-prepares-to-unveil-re-recording-of-fearless-album/13148740>>.

3 *Copyright Act 1968* (Cth), s 31(1).

4 *Copyright Act 1968* (Cth), s 85.

5 *Copyright Act 1968* (Cth), ss 35, 97.

6 *Copyright Act 1968* (Cth), ss 22(3), 97.

7 *Copyright Act 1968* (Cth), ss 22(3), 97(3).

8 Cameron Wilson, 'Here's Why You Can't Listen To Some Of Your Favourite Songs On Music Streaming Services', ABC (online, 17 June 2020) <<https://www.abc.net.au/news/science/2020-06-17/song-unavailable-music-streaming/12355514>>.