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# INTELLECTUAL PROPERTY LESSONS FROM TAYLOR SWIFT - ARE YOU READY FOR IT?

JEANNE L. SEEWALD



It is hard to deny that the career of Taylor Swift is red hot. It is difficult to read or listen to the news without hearing something about her music, Eras Tour, or her personal love story. When people look at her, they see a celebrity in the media or a performer onstage in glamorous costumes, not realizing that a large part

of her career is due to her successfully navigating the intellectual property issues that permeate every aspect of her career. Hopefully, there are no haters (as so aptly argued against by our bar president in the March Adverse Witness); however, whether you are a fan or cannot tolerate it, there are many intellectual property lessons to learn from her journey.

Swift has taken strong steps to protect her trademarks since as early as 2007 at age 18. She has protected lyrical phrases such as “Shake It Off,” “Look What You Made Me Do,” “Players Gonna Play,” “I’ll Write Your Name” and “Nice to Meet You Where You Been?” as trademarks to ensure that no one else can use them with products and services similar to those she offers. This helps her to maintain control over her own image, reputation, and brand. She has over 170 federal trademark registrations and applications in process (including several relating to her new double album *The Tortured Poets Department*) and owns these through a company she established to register intellectual property, TAS Rights Management, LLC. She has pursued trademark registration for her name, initials, signature, names of albums, festivals, fan clubs, song titles, song lyrics, and tour names. The applications and registrations cover a wide variety of merchandise and services including performances, tours, musical recordings, digital media, clothing, stationery and toys. All of these actions had the goal of building a strong, recognizable brand and it is impossible to say Swift has not accomplished this goal, as she is considered a super star and one of the most recognizable and successful recording artists in the world.

Another aspect of trademark law Swift has embraced is the use of trademarks of others. A highly noted instance of this tactic is the incorporation of Christian Louboutin shoes into the current Eras Tour. The shoe company announced in March 2023 it would be the official shoe designer for the Eras Tour, and Swift and her dancers perform in styles with the recognizable red soles. The terms of any contractual arrangement between Swift and Louboutin are not public information, but this is another example of her using trademarks to enhance her brand by partnering with one of, if not the most, recognizable shoe designers in the world.

Swift also has enhanced her reputation in the music industry with her use of copyright law to her advantage. You may have heard of “Taylor’s Version” songs. These are re-releases of her previously recorded music. The impetus for these re-recordings was that a part of the copyright of each of her recordings did not belong to her. Copyright protects the expression of an idea in a tangible form such as lyrics, music or recordings. The author initially owns the copyright to what is created; however, the copyright can be sold or licensed.

There are multiple components of the copyright of music: (1) lyrics composition – which is the lyrics of the song; (2) music composition – which is the music; and (3) master sound recordings – which is the recorded performance of the song. At the start of Swift’s career in 2005, Big Machine Records was enchanted with her country style and song-writing ability and, as perhaps a naïve 15-year-old teenager, Swift signed a 13-year record deal for her first six albums. Swift at least had her eyes open to the value of keeping the ownership of the lyrics and music composition of her songs, but her record label owned the master sound recordings. In 2018, she left Big Machine Records and, in 2019, she announced that her former label was blocking her from singing songs from her older albums. She seemed haunted by the fact that she could not sing her old songs without the permission of the owner of the master recordings, and she tried to buy back her master recordings. Instead of selling to her, Big Machine Records sold its assets to Swift’s former music manager, Scooter Braun, and he subsequently sold Swift’s music portfolio to an investment firm for a reported amount in excess of \$300 million. This created



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significant bad blood between Swift and Braun as she had hoped Braun would be a better man by selling the master recordings to her. To use the master recordings, Swift would be required to license or buy them back from the investment group. Swift decided she could not tolerate it and she began re-recording older albums.

Re-recording is allowed because the U.S. Copyright Act provides that the exclusive rights of the owner of a sound recording do not include making or duplication of another sound recording that consists entirely of an "independent fixation of other sounds." Because she retained the copyright in the music and lyrics, she is allowed to use those elements of the original songs to create new master recordings that are virtually identical as long as they are new, independent recordings. She was the mastermind behind re-recording her albums with the end game being owning all her music and has released "Taylor's Versions" of four of her earliest albums. Her use of "Taylor's Version" is to indicate that it is a new recording, to differentiate the re-recordings from the originals, and could be an effort to block trademark claims about the use of the same title of an original song.

The issue of re-recordings was not considered a critical issue prior to the rise of streaming services because re-recording and releasing on a wide scale was much more difficult. It is thought that Swift's Big Machine Records contract contained a five-year prohibition on re-recording songs (determined as of the date a record was recorded) and she had to wait for this time period to re-record. The five-year period was the previous standard in the industry. However, considering the new Taylor's Versions, it is anticipated that record labels will now extend the prohibition period for re-recording of songs to 10, 20, or even 30 years to prevent artists from copying Swift's actions. Although Swift's actions in re-recording her songs were seen as a win for artists, ultimately other artists may be held to more stringent contract provisions in the future.

From an intellectual property standpoint, Swift's experience illustrates the complexity around copyright ownership, particularly in the music industry, and the need for artists to have strong legal advice when negotiating contracts with record labels. After signing with Republic Records following her departure from Big Machine

Records, Taylor indicated that she knows all too well the pain of losing her copyrights and stated on Instagram, "I'll own all of my master records that I make from now on." The original versions of the songs still exist, and it was a delicate situation as fans had the option to download either the original or the Taylor's Version, but Swift has encouraged her fans (known as Swifties) to stream the Taylor's Versions, which would clearly reduce the income of the investment group.

Re-recording her songs proved hugely profitable. It is reported that in 2022, Taylor's Version of her album *Red* was streamed 961.6 million times while Big Machine Records' original version was streamed 254.7 million times. Swifties are loyal and powerful. These numbers likely surpassed Swift's wildest dreams of success of the re-recordings and were better than revenge against Braun's actions. Spotify reported that in 2023 her music had 29.1 billion streams and, overall, Luminate reported her songs accounted for 1 of every 78 on-demand U.S. audio streams in 2023. These numbers underscore the brilliance of the Taylor's Version re-recordings as Swift profits from her re-recordings and still receives royalties from the original albums.

The goal of this article was to show intellectual property concepts at work in the real world. Call it what you want, but Swift's success was not an accident. She realized early in her career the importance of protecting her valuable intellectual property and is reaping the benefits of those important steps.

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