

Taylor's Version: A Case Study in Intellectual Property Rights for Musicians

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Abstract

The central issue of this thesis revolves around the separation of ownership between music compositions and master recordings. Traditionally, record labels held rights to master recordings, while composers retained ownership of their compositions. This division has led to tensions, with artists often feeling exploited by labels. The case of Taylor Swift and Big Machine Records has brought the issue of IP rights in music to the forefront of public attention. In 2019, Swift publicly criticized Big Machine Records for refusing to allow her to perform songs from her first six albums at the American Music Awards. This was allegedly due to a contractual clause that prevented her from performing the songs unless Big Machine Records received specific approvals. Which caused Taylor Swift to re-recorded her first six studio albums, which were originally released under the Big Machine Records label. The case of Taylor Swift and Big Machine Records is significant for several reasons. First, it highlights the significant power imbalance that can exist between artists and record labels. Second, it sparks a conversation about the need for greater transparency and fairness in the music industry, particularly in terms of IP rights. Third, it provides an opportunity to examine the implications of the separation of ownership between music compositions and master recordings in Indonesia. This thesis aims to analyze the legal framework surrounding the separation of ownership between music compositions and master recordings in Indonesia and specifically examine the implications of Taylor Swift's case with Big Machine Records within the context of Indonesian law.

Keywords: re-recording; copyright law; composition ownership; master recording ownership

A. Introduction

The creative industry has become a serious concern in several countries in the last few decades. This is because creative industries can create jobs and prosperity for the people of a country. However, in the development of the creative industry, protection of intellectual property rights (IPR) is also important, including copyright protection for musical works and songs. In Indonesia, the legal protection for

ownership of a song and composition is regulated in Law number 28 of 2014 concerning Copyright.

Intellectual property rights (IPR) are rights attached to an intellectual work, be it copyrighted work, patents, brands, industrial designs, trade secrets, etc. IPR has an important role in encouraging economic growth and creating jobs. In the Indonesian context, IPR has an important role in the development of creative industries. The creative industry is an industry based on creativity and innovation. The creative industry in Indonesia has grown rapidly in recent years, and is expected to continue to grow in the future. One of the important creative industry subsectors is the music industry. The music industry in Indonesia has great potential, but also faces various challenges, one of which is the issue of IPR.¹

In music, copyright is an exclusive right granted by law to music creators to perform, reproduce and distribute their musical works. These rights include musical compositions, which involve melody, harmony, and lyrics, as well as master recordings, which are sound recordings of the musical composition. The separation of composition and master recording copyrights is a common practice in the music industry, where record labels typically have the resources and infrastructure to produce and distribute master recordings. Both are different intellectual works, with the musical composition being abstract and the master recording being concrete. Copyright protects both, giving the creator of a musical composition the exclusive right to control the use, reproduction, and distribution of his or her musical composition. The rights holder to the master recording has similar rights regarding the sound recording.

However, this separation of ownership can be problematic for musicians, especially if they do not own the rights to the master recordings of their songs. Such musicians may be restricted by the rights holder to the master recording in terms of the use of their songs. This can cause problems for musicians, especially in terms of the use of their songs, musicians who do not own the rights to master recordings of their songs may be restricted by the master recording rights holder in terms of the

¹ Hawin, M., & Riswandi, B. A. (2020). *Isu-Isu Penting Hak Kekayaan Intelektual di Indonesia*. UGM PRESS.

use of their songs. For example, the musician cannot sing the songs in public without permission from the rights holder to the master recording. Musicians who do not own the rights to the master recordings of their songs will lose out on potential income from the use of those songs. For example, the holder of rights to a master recording can sell or rent the master recording to another party, and the musician will not get royalties from the sale or rental.

B. Research Methods

This research will use a normative legal approach by detailing the analysis of laws, especially regarding the separation of copyright for the composition and the master recording. The data that will be used in this article are academic journals, and case studies related to Taylor Swift and Big Machine Records as follow:

1. Analysis of Copyright Law in Indonesia

First, this research will carry out an in-depth analysis of Law Number 19 of 2002 concerning Copyright in Indonesia. The focus will involve provisions relating to music copyright, especially in the context of the separation of ownership between musical compositions and master recordings.

2. Academic Journal Review

This research will also refer to a literature review from academic journals that discusses copyright issues in the music industry, including the separation of ownership between musical compositions and master recordings. This literature will provide the context and theoretical framework necessary to understand the issues that arise in the Taylor Swift case.

3. Case Study of Taylor Swift and Big Machine Records

Case studies will be the main approach in exploring the practical implications of copyright issues in the Indonesian context. An in-depth analysis of the contract between Taylor Swift and Big Machine Records will be conducted to identify provisions related to separation of ownership and

how they do or do not comply with Indonesian copyright law.

C. Analysis and Discussion

C.1. Concept of copyright and the legal basis

In Indonesia, the copyright framework is established by Law No. 28 of 2014, which grants exclusive rights to creators or recipients of the copyright. This exclusivity empowers them to control the display or reproduction of their work and to grant permission for its use, all within the bounds set by the copyright law. The scope of copyright protection is broad, encompassing various creative works such as scientific books, literary compositions, and works of art. These creations, falling within the copyright system, are considered immaterial property, reflecting the intangible nature of the rights involved. Immaterial property rights, which include copyrights, hold a hierarchical position within the legal system, acknowledging the importance of protecting the intellectual contributions of creators. Notably, this system recognizes both tangible and intangible forms of expression, encapsulating ideas and imaginative concepts that have been translated into tangible works. The copyright law also incorporates restrictions and limitations, ensuring a balance between the exclusive rights of creators and the broader public interest.²

Moreover as defined by WIPO, the copyright system economically grants authors control over copying, distribution, adaptation, and public performance of their works. This incentivizes creation and innovation, fostering a vibrant cultural and economic landscape. UUHC 2014 recognizes both moral and economic rights, allowing creators to claim authorship and control commercial exploitation. Importantly, copyright is not perpetual, lasting for the author's

² Nugroho, B. S. F., & Utama, M. A. R. (2020). Legal Protection of Copyright in the Globalization Era: A Comparison of Indonesia and China. *Journal of Law and Legal Reform*, 1(4), 671-680. <https://doi.org/10.15294/jllr.v1i4.39424>

lifespan and 70 years thereafter, ensuring a balance between creator benefit and public access.

Copyright's importance in Indonesia stems from its dual role in fostering both individual creativity and national progress. Firstly, it empowers creators. By granting exclusive rights to their works, copyright provides authors, artists, and musicians with the security and control needed to invest their time and talent into their craft. This economic incentive fuels the creation of diverse and valuable cultural expressions, enriching the lives of all Indonesians. Secondly, copyright contributes to national development. By incentivizing innovation and protecting intellectual property, it attracts foreign investment and fosters a knowledge-based economy. This translates into job creation, economic growth, and a more competitive Indonesia on the global stage. Additionally, copyright facilitates the dissemination of knowledge and educational materials, promoting a more informed and empowered citizenry. In conclusion, copyright is not just a legal framework; it's a cornerstone of Indonesia's cultural and economic well-being. It empowers creators, encourages innovation, and fuels national development, making it an essential tool for building a vibrant and prosperous future for all Indonesians.

C.2. Concept of Composition

The concept of composition is the combination or blending of different elements to form a unified and harmonious whole. This concept can be applied in various fields, including music, art, design, and law. In the field of music, composition is the process of creating a musical piece consisting of elements such as melody, harmony, rhythm, and dynamics. Music composition can be done individually or together by several people.

In the field of art, composition is the arrangement of art elements such as line, shape, color, and texture in a work of art. Art composition can aim to create beauty, convey a message, or express emotion. In design, composition is

the arrangement of design elements such as color, shape, and text in a design work. Design composition can aim to create order, attract attention, or convey a message. In the field of law, composition is the resolution of a dispute through an agreement between the two parties. Legal composition can be voluntary or enforced by the court. Based on expert opinion, the concept of composition can be defined as follows:

- a. According to Suprpto Sumardjo, composition is the arrangement or combination of elements that are bound in a whole and harmonious unity.
- b. According to M. A. Roestam Koesnoe, composition is the arrangement of elements contained in a work of art so as to create a certain impression.
- c. According to S. K. Triguna, composition is the arrangement of design elements that are interconnected and work together in a unified and harmonious whole.

Based on the law, the concept of composition can be defined as follows:

- a. According to Article 184 of the Civil Code, composition is a peace made by the parties to a dispute before a judge.
- b. According to Article 60 of Law No. 30/1999 on Arbitration and Alternative Dispute Resolution, composition is an agreement between the parties to a dispute to settle their dispute out of court.

From these expert opinions and laws, it can be concluded that the concept of composition is a process or result of the combination or mixing of different elements to form a unified and harmonious whole. This concept can be applied in various fields, including music, art, design, and law.

C.3. Concept of Master Records

Master records is a term commonly used in data management to refer to a set of data that is considered the primary or authoritative source for a particular entity. This entity can be a customer, product, financial transaction,

or any other information that is important in a system or organization.

Based on expert opinion, the concept of master records can be defined as follows:

- a. According to David K. Wiley, master records are data used as a reference for business processes.
- b. According to Thomas H. Davenport, master records are data used to support decision making.
- c. According to David T. Mauldin, master records are data used to support business operations.

Based on the law, the concept of master records can be defined as follows:

- a. Article 1 point 10 of Government Regulation Number 82 of 2012 concerning the Implementation of Electronic Systems and Transactions, master records are basic data used to run electronic systems and transactions.
- b. Article 1 point 11 of the Financial and Development Supervisory Agency Regulation Number 13 of 2017 concerning Regional Financial Information Systems, master records are basic data used to support regional financial information systems.

From these expert opinions and laws, it can be concluded that the concept of master records is data that is important and fundamental in an information system. This data is used as a reference for conducting transactions or other processes in the system.

C.4. Separation of Copyrights for Composition and Master Recording

Song copyright is the exclusive right of the creator or person who creates the music or work.³ Song copyright includes two important aspects that are often poorly understood by many people: copyright for the composition and

³ Pentingnya Hak Cipta Musik bagi Musisi, Begini Cara Mendaftarkannya. (n.d.). Kemenparekraf/Baparekraf RI.

copyright for the master recording. When we hear a song on the radio or via cell phone, we may intuitively assume that the copyright to the song belongs solely to the singer or artist being heard. However, this is not entirely true because a song consists of two different parts, each of which has its own copyright.

Music composition is the basis of a song, including the arrangement of notes, chords and melody. The basic framework is what determines the structure and unique identity of a song. The copyright for the composition is usually owned by the lyricist, songwriter and composer. They are individuals who arrange musical notes and lyrics, thereby creating a harmonious series that pleases the listener. In some cases, music publishers are also involved in this process, having rights to reproduction and distribution of the composition.

On the other hand, master recording refers to the actual realization of a composition in recorded form. It involves unique interpretations of compositions, including vocal styles and specific musical arrangements created by the artist or band. The copyright to a master recording is usually held by the record label or recording artist. This aspect focuses more on how the song “comes to life” in the recording, including production quality, instrument arrangements, and distinctive vocal nuances.⁴

Sometimes, the songwriter and recording artist can be the same person, as is the case with bands who write and record their own music. However, in the context of copyright, they are treated separately, namely one as the creator of the composition and the other as the creator of the master recording. It is important to ensure that both aspects of copyright are respected and managed well, especially in terms of licensing and royalties.

C.5. Taylor Swift v. Big Machine Record

In late 2019, the celebrated American singer-songwriter Taylor Swift

⁴ Desk, S. (2023, December 7). 6 Basics For Music Copyright Law: What It Protects. Vakilsearch | Blog. <https://vakilsearch-com.translate.google/blog/6-basics-for-music-copyright-law-what-it-protects/>

found herself entangled in a heated dispute with her former record label, Big Machine Records, its founder Scott Borchetta, and the label's new proprietor Scooter Braun. The bone of contention was the ownership rights to the master recordings of her initial six studio albums. This conflict garnered substantial media attention, prompting Swift to take a bold step by re-recording and releasing her albums—*Fearless (Taylor's Version)*, *Red (Taylor's Version)*, *Speak Now (Taylor's Version)*, and *1989 (Taylor's Version)*—between 2021 and 2024, with the aim of securing complete control over her musical catalog.

The roots of this dispute trace back to November 2018, when Swift, after the expiration of her contract with Big Machine, inked a record deal with Republic Records.⁵ Media reports in June 2019 disclosed that Braun acquired Big Machine from Borchetta for a staggering \$330 million, financed by various private equity firms. This acquisition bestowed upon Braun ownership of all the master recordings, music videos, and artwork copyrighted by Big Machine, including those belonging to Swift's first six studio albums. Swift contended that she had attempted to buy back her masters, but Big Machine had presented unfavorable terms. The conflict escalated, with Swift and Big Machine embroiled in a series of disputes. Swift claimed that the label impeded her from using her music for the 2019 American Music Awards and her documentary *Miss Americana (2020)*. Meanwhile, Big Machine released an unreleased work by Swift, *Live from Clear Channel Stripped 2008 (2020)*, without her consent. Swift, determined to regain control, announced her intention to re-record the six albums and assume ownership of the new masters. In October 2020, Braun sold the original masters to Shamrock Holdings, the Disney family's investment firm, for \$405 million, with a stipulation allowing him to continue profiting from the masters. Swift, dissatisfied with this development, rejected Shamrock's offer for an equity partnership and successfully released the re-recorded albums through

⁵ In 2005, Swift inked a contract that committed her to releasing six studio albums under Big Machine. Consequently, after the conclusion of promotional efforts for her sixth studio album, *Reputation (2017)*, the contract formally concluded in November 2018.

Republic, achieving critical acclaim and commercial success while setting new records in sales, streaming, and chart performance. Swift's stand garnered support from various quarters, including musicians, journalists, politicians, and scholars, sparking discussions on artists' rights, intellectual property, private equity, and ethical considerations within the music industry. Her decision to re-record was hailed as an influential move, encouraging emerging artists to negotiate for greater ownership of their music. iHeartRadio, the largest radio network in the United States, pledged to replace the older versions of Swift's songs with her re-recorded tracks in its airplay. Billboard recognized Swift as the Greatest Pop Star of 2021, applauding the remarkable and unprecedented success of her re-recording venture. Braun, in hindsight, expressed regret over acquiring Swift's masters and ultimately divested his entire holding company, Ithaca, to Hybe Corporation.

C.6. Protection of composition and master recording rights under Indonesian IPR

The Indonesian Copyright Law, Law No. 28 of 2014, recognizes the distinct nature of a song's two key components: the composition (the melody, lyrics, and harmony) and the master recording (the specific performance captured on a medium). This separation is crucial, as each element possesses its own unique creative contribution and deserves individual protection.

Copyright protection is needed to encourage appreciation and build public attitudes to respect a person's rights to the creations they produce and stimulate the activities of creators to continue creating and be more creative. To protect creative works created by their creators, Indonesia has its own Copyright Law. Providing protection for songwriters must be implemented so that intellectual works, especially music or songs, receive legal certainty.⁶ Protection of rights to musical compositions and master recordings in Indonesia is regulated based on Intellectual Property Law (IPR). The law that is

⁶ Perlindungan Hak Cipta Atas Karya Musik Terkait Kesamaan Melodi dalam Dua Komposisi Musik Berbeda. (2018). <https://repositori.usu.ac.id/handle/123456789/4474>.

relevant to this is Law no. 28 of 2014 concerning Copyright.⁷

Copyright as part of IPR gives creators the privilege to control the use of their work. The development of IPR law, including copyright, develops along with advances in technology, highlighting the importance of strengthening IPR protection so that the rights of creators are protected appropriately and optimally. For music specifically, copyright protects the composition, which includes the melody, lyrics, and musical arrangement. This allows creators to have control over the use, reproduction, and distribution of their work.

Master recording rights in Indonesia are also protected under the legal framework of Intellectual Property Rights (HKI), although they are not specifically regulated in Law no. 28 of 2014 concerning Copyright. This protection usually falls under the category of related rights, which grants exclusive rights to producers of phonograms (sound recordings) and performers. These rights include control over the reproduction, distribution, and commercial utilization of the recording.

The benefits of separating rights in the music industry are multifaceted. Firstly, it ensures fairness and provides incentives for creative contributors. This approach allows composers to receive royalties for their original ideas, and producers are duly rewarded for their investments and artistic decisions during the recording process. This mutual compensation system incentivizes both parties to invest their time and talent in creating high-quality music. Additionally, the separation of rights fosters flexibility and innovation within the industry. It permits diverse interpretations and expressions as composers can license their work to different artists and producers, resulting in unique versions of the same song. Producers, in turn, can experiment with various arrangements and production techniques, catering to a broad range of audiences. Moreover, the specificity of this separation protects individual artistic choices. The composer's copyright safeguards the core musical

⁷ Undang-Undang Republik Indonesia Nomor 28 Tahun 2014 Tentang Hak Cipta.

composition, while the master recording copyright protects the specific performance captured on the recording, encompassing unique arrangements, instrumentation, and vocal nuances.

However, there are challenges and considerations associated with this separation. The determination of ownership and the fair division of royalties can be intricate, particularly when multiple artists, producers, and songwriters are involved in a project. Clear and comprehensive contracts and agreements become crucial to prevent disputes. Another challenge is unauthorized use, particularly in the digital age, where tracking and enforcing copyright infringements can be challenging for both the composition and the recording. Both are susceptible to unauthorized copying and distribution, necessitating robust enforcement measures. Additionally, navigating the complexities of derivative works and adaptations poses a challenge. Determining whether a new version of a song constitutes a derivative work of the composition or a separate master recording requires clear legal guidelines to address these ambiguous areas in the industry.

C.7. Will Swift's action to re-record the songs under Indonesian law be deemed legal?

Under Indonesian law, Swift's action to re-record her songs would be subject to the country's Intellectual Property Law, specifically Law no. 28 of 2014 concerning Copyright. The Indonesian legal framework recognizes the importance of protecting the rights of creators, including those in the music industry, and provides copyright protection for both musical compositions and master recordings. In the context of U.S. copyright law where the case occurs, a distinction is made between the copyright to the song or musical composition and the copyright to the specific recording of that song (master recording). Similarly, Indonesian Copyright Law acknowledges the dual nature of copyright, encompassing protection for the composition (lyrics, melodies, sheet music, and instrumental arrangements) and the master

recording.

Swift's ownership of the copyright to the compositions (publishing rights) would be protected under Indonesian Copyright Law. As the songwriter, she would retain control over the use, reproduction, and distribution of the musical materials, including lyrics and melodies. This aligns with the broader goal of intellectual property laws, which is to encourage creativity by providing legal certainty and protecting the rights of creators. Regarding master recording rights, Indonesia protects such rights under the legal framework of Intellectual Property Rights (HKI), even though they are not specifically regulated in Law no. 28 of 2014 concerning Copyright. This protection typically falls under the category of related rights, granting exclusive rights to producers of phonograms (sound recordings) and performers. These rights include control over reproduction, distribution, and commercial utilization of the recording. Given that Swift's re-recording involves creating new masters, she would likely need to obtain the necessary copyright licenses from the original master owner.

In the absence of a clear legal provision regarding re-recordings in Indonesian Copyright Law, the applicability of Swift's actions would depend on contractual agreements and licensing arrangements she has with the original master owner or label. Taylor Swift's ability to re-record her songs stems from several legal and contractual factors. While she may not own the master recordings of her earlier albums, she retains the copyright to the compositions, including lyrics and melodies, due to her role as the primary songwriter. The re-recording clause in her artist-label agreement with Big Machine Records allows her, as a songwriter, to re-record her songs after a specified period. This contractual provision, combined with the expiration of her contract with Big Machine in November 2018, provided Swift the opportunity to explore new agreements. Moreover, the Copyright Act permits artists to create "independent fixations" or new recordings of their original compositions, ensuring they are not direct copies of the original masters. To distinguish her re-recordings from the originals, Swift adds "(Taylor's Version)"

to the titles. This strategic move not only clarifies the new recordings' origin but also helps navigate potential trademark issues. In essence, a combination of contractual agreements, the expiration of her initial contract, and legal provisions empowers Taylor Swift to re-record her songs, allowing her to regain control over her music and create new master recordings.

In summary, Swift's action to re-record her songs would likely be deemed legal in Indonesia, given the country's robust copyright protection framework. However, the specifics of legality would depend on contractual agreements, licensing terms, and any related rights granted to the original master owner, aligning with the principles of intellectual property protection in the country.

C.8. Should the law be reformed regarding this issue to clear any misinterpretation?

Analyzing Taylor Swift's situation prompts a consideration of potential legal reforms in Indonesia to address similar issues. Swift's ability to re-record her songs hinged on a combination of contractual provisions, copyright law, and the expiration of her initial contract. To avoid ambiguity and misinterpretation, Indonesia may benefit from more explicit regulations regarding artists' rights in the context of master recordings. Establishing clearer guidelines on re-recording clauses, copyright ownership, and related rights for master recordings under Intellectual Property Rights (HKI) would provide a comprehensive legal framework. This clarity would benefit both artists and record labels, preventing protracted disputes and fostering a fair and transparent environment. Additionally, as technology continues to shape the music industry, periodic reviews and updates to copyright laws would ensure they remain relevant and effective in protecting the rights of creators. Implementing reforms with input from industry stakeholders and legal experts can contribute to a more robust legal infrastructure, reducing the likelihood of contentious situations similar to Taylor Swift's arising in Indonesia.

D. Conclusion

In conclusion, the central issue of this thesis revolves around the separation of ownership between music compositions and master recordings, with a focus on Taylor Swift's case against Big Machine Records. This dispute highlights the significant power imbalance between artists and record labels, sparking conversations about transparency and fairness in the music industry, particularly in terms of intellectual property (IP) rights. The thesis aims to analyze the legal framework surrounding this separation of ownership in Indonesia, specifically exploring the implications of Taylor Swift's case within the context of Indonesian law.

The Indonesian Copyright Law, Law No. 28 of 2014, recognizes and protects both musical compositions and master recordings under the broader umbrella of Intellectual Property Rights (HKI). This separation of ownership, similar to U.S. copyright law, allows creators to control the use, reproduction, and distribution of their works. The benefits of this separation include fairness, incentives for creative contributors, flexibility, and innovation within the music industry. However, challenges such as determining ownership, fair royalty distribution, unauthorized use, and handling derivative works require clear legal guidelines. Analyzing Taylor Swift's re-recording actions under Indonesian law suggests that her actions would likely be deemed legal, given the existing legal framework. Swift's ownership of the copyright to the compositions aligns with the protection granted by Indonesian Copyright Law, while master recording rights fall under the framework of related rights. The legality would depend on contractual agreements and licensing terms with the original master owner or label.

Swift's ability to re-record is facilitated by contractual provisions, copyright law, and her artist-label agreement. Considering the complexities of the issue, the question arises whether legal reforms are needed to avoid misinterpretations and provide clarity.

The recommendation is that Indonesia could benefit from more explicit regulations addressing artists' rights, re-recording clauses, and related rights for

master recordings. Clear guidelines would prevent ambiguity, minimize disputes, and create a fair and transparent environment for both artists and record labels. Periodic reviews and updates to copyright laws, with input from industry stakeholders and legal experts, are essential to ensure the laws remain relevant and effective in the dynamic landscape of the music industry. Implementing such reforms would contribute to a robust legal infrastructure and reduce the likelihood of contentious situations similar to Taylor Swift's arising in Indonesia.

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