

Taylor Swift rewrites the rules for licensing

The singer-songwriter is using her industry clout to secure an unprecedented record deal that will also improve the streaming-related revenue of fellow artists

By Bruce Berman

“With great power comes great responsibility.” It is not clear who said it first – Voltaire or Peter Parker’s (Spiderman’s) Uncle Ben – but what matters is that IP owners believe it.

A casualty of greater information, speed and competition, IP rights have become increasingly easy for businesses and individuals to ignore. Inventors, songwriters, performers and other rights holders share a common challenge: many who use their output believe that it can be shared with impunity.

Taylor Swift does not agree. At 28, Swift is one of the best-selling music artists of all time, having sold more than 40 million albums and 130 million single downloads. She is the third best-selling digital singles artist in the United States and has won just about every music award imaginable.

Swift shares none of the revenue-generating challenges of other artists who are paid fractionally for their streams, when they are paid at all. Instead, she has demonstrated a deep understanding of the music business and a willingness to use her financial clout on behalf of it.

On the radar

Swift’s recent record deal would be news on any level but one clause in her contract has upended the music industry, though it is yet to appear on the radar of patent and other IP owners.

In November 2018, Swift left her label for Universal Music Group’s (UMG) Republic Records. “The key part of her new deal has less to do with Swift herself but the industry writ large,” *New York Magazine* spin-off *Vulture* reported. One stipulation of Swift’s contract states that if UMG sells any of its shares in Spotify, which went public in April, that money must be redistributed to the label’s artists and cannot be recouped. UMG’s 3.5% stake in Spotify has been valued at as much as \$1 billion.

Swift reportedly prioritised that aspect of the deal over negotiating for ownership of her old masters or a bigger cash advance. That is unprecedented. Her Tumblr post explains her motivation:

I [also] feel strongly that streaming was founded on and continues to thrive based on the magic created by artists, writers, and producers.

There was one condition that meant more to me than any other deal point. As part of my new contract with Universal Music Group, I asked that any sale of their Spotify shares result in a distribution of money to their artists, non-recoupable.

The operative term is ‘non-recoupable’. This means if a recording artist is in the red as a result of advances, the

proceeds from the sale of Spotify stock cannot be used to pay this down. The money is expressly for the artists, many of whom have been paid almost nothing for their Spotify streams while helping to build the company’s market value to \$35 billion.

Competitive advantage

Swift is not new to IP issues nor to using her celebrity to benefit others. She removed her music from Spotify in 2014 over the service’s unfair compensation to songwriters. She also famously blacklisted Apple Music when it launched, writing a strongly worded open letter to the company over its failure to pay artists and songwriters during the trial period. Swift has since blessed both services with her music after they met her terms.

As one reporter put it: “Never forget: This is Taylor’s music world; everyone else is just living in it.”

Spotify has virtually reinvented music delivery, issued an historic public offering of its shares, and has settled distribution disputes with hold-out artists who would rather sell CDs. The company appears to be trying to put bad practices behind it as it strives for profitability and competes for music offerings with Apple, Amazon and Google/YouTube. While Spotify is the leader in streaming with 87 million subscribers and more than \$5 billion in annual revenue, it lost \$1.5 billion in 2017 and its survival is not assured.

Swift not only takes herself seriously as a writer, performer and executive; she is also serious about her responsibility to fellow musicians. She understands that the music industry is more than just a handful of top artists who can secure lucrative distribution deals and perform in arenas.

“Taylor Swift has been consistent her whole career about protecting the value of music copyrights not just her own,” says David Lowery, lead singer of Cracker and publisher of the *Trichordist*. “IP holders and users both can learn something from her: protecting IP as a matter of principle lifts all boats.”

Defining moment

Swift’s actions have provided a defining moment for how musicians can interact with technology and those calling the shots in the recording industry.

Patents, too, need champions willing to step up and look beyond quarterly earnings to ensure that the invention ecosystem is balanced and healthy, and can continue to evolve. Businesses need to be inclusive not only when it comes to diversity but also when it involves creativity. New ideas they do not control do not have to be a threat.

Inventors, recording artists, graphic designers, entrepreneurs and others can be the source of important and sometimes disruptive ideas, which must be acknowledged, even when they compete with existing products. Taking a licence is not antithetical to shareholder interests.

Swift’s negotiating tactics with UMG and Spotify, as well as Apple, are more than for effect. Her vision of the future reflects a keen sense of history and an uncanny instinct for survival. Behaviour matters. **iam**

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