Belmont Entertainment Law Journal

2022 Symposium:

The Evolution of Entertainment

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Foreword

The Belmont Entertainment Law Journal presents its 2022 symposium, "The Evolution of Entertainment." The symposium features panelists covering issues that shape the present and future of entertainment law practice, while also looking at how we got here. To that end, these materials include a list that highlights important entertainment industry terminology, plus an excerpt from a recent case that addressed songwriting and authorship issues. We have also included five student-written blog posts featured on our website, https://www.belmontentertainmentlaw.com/. These posts encompass a wide variety of current events in entertainment law, from artists selling entire catalogs or fighting for their master rights to how the industry is taking advantage of blockchain technology.

Frequently Asked Questions: Music Industry Terminology[1]

What is a songwriter, composer, or lyricist?

A songwriter is someone who applies their creative talent to the creation of musical works, writing the music, and sometimes also the lyrics, usually in a popular music style (e.g., rock, country, hip hop, pop). A composer is someone who applies their creative talent to the creation of musical works, typically composing music in a classical or jazz musical style. A lyricist is someone who applies their creative talent to the creation of musical works, writing lyrics across many styles of music, including musical theater.

A shorthand way of referring collectively to songwriters, composers, and lyricists is to refer to them as *writers*. Writers may be the sole creator of a musical work, or they may collaborate with others in its creation. A writer may also be a recording artist.

What is a self-administered songwriter, composer, or lyricist?

Songwriters, composers, and lyricists are "self-administered" if they have retained the right to register any of their own musical works with The MLC AND collect their own mechanical royalties. Mechanical royalties can be collected either directly or through a business manager, accountant, lawyer, or other representative/agent.

Songwriters, composers, and lyricists who have assigned their rights to register their musical works and collect their mechanical royalties to a music publisher or administrator in the United States do not need to become a Member of The MLC. In these circumstances, the writer's publisher or administrator will handle the collection and registration. If a songwriter, composer, or lyricist works with a music publisher or administrator in any capacity, they should check with that music publisher or administrator before becoming a Member of The MLC.

[1] *Frequently Asked Questions: Music Industry Terminology*, The MLC, https://www.themlc.com/faqs/categories/music-industry-terminology.

What is an interactive stream, permanent download, or limited download?

Digital service providers may provide one or more of these types of user experiences to consumers of their services:

Interactive Stream: A digital transmission of a sound recording where the consumer has control over which sound recording to stream and in what order to stream it. An example of this is the user experience offered by Spotify and Apple Music.

Permanent Download: A digital transmission of a sound recording in the form of a download, where the consumer has unlimited control over how many times to access it. An example of this are the recordings available for download in the iTunes Store.

Limited Download: A digital transmission of a sound recording where the consumer has limited control over either the length of time or the number of times they can access it. An example of this are the recordings available for off-line access by Spotify and Apple Music.

Non-Interactive Stream: A digital transmission of a sound recording where the consumer has limited control over which sound recording to stream, in what order it appears, and how many times to stream it, like a radio broadcast. An example of this is the user experience offered by Pandora Radio and SiriusXM.

The MLC grants licenses to, and collects and distributes royalties from, digital service providers for interactive streams, limited downloads, and permanent downloads. The MLC does not grant licenses to, nor collects royalties from, digital service providers for non-interactive streams.

What are mechanical licenses and royalties?

A mechanical license is permission to reproduce and distribute a musical work in the form of a physical or digital phonorecord. An example of a physical phonorecord is a sound

recording on a CD or vinyl record. Examples of digital phonorecords are sound recordings delivered as interactive streams, limited downloads, or permanent downloads. If a musical work is protected by copyright law, its unauthorized reproduction and distribution is copyright infringement.

A mechanical license may be obtained through a voluntarily negotiated license between the party requesting the license and the party granting it, or it may be obtained using a "compulsory" license. Section 115 of the U.S. Copyright Act establishes a compulsory license (sometimes also called a "statutory license"). Under the Act, if certain conditions are met, the party wishing to obtain a license is granted one as a matter of law, regardless of what the copyright owner wants, so long as they comply with the rules set forth in the law regarding the operation of the license. The law establishes eligibility requirements and obligations.

Mechanical licenses require the payment of mechanical royalties to the copyright owner or administrator of a musical work. In the case of a voluntarily negotiated license, the royalty rate is negotiated. In the case of a compulsory license, the rate is set by the Copyright Royalty Board (known as the CRB), a three-judge panel within the U.S. Library of Congress.

For more information on the compulsory mechanical license for making and distributing physical phonorecords, read the Copyright Office circular found at https://www.copyright.gov/circs/circ73a.pdf.

What are public performance licenses and royalties?

A public performance license is permission to perform a work at a place open to the public or where a substantial number of people outside of a normal circle of family and friends is gathered. It includes transmitting or broadcasting the work, whether the members of the public capable of receiving the performance receive it in the same place or in separate places, and at the

same time or at different times. **The MLC is not involved in public performance licenses or royalties.**

Public performance licenses for the performance of musical works are generally granted by performing rights organizations, like ASCAP or BMI, as blanket licenses. These organizations collect performance royalties from entities responsible for presenting the performance, such as radio stations, night clubs, and digital service providers, and pay them on to songwriters, composers, lyricists, and music publishers.

Public performance licenses for the performance of sound recordings via digital transmission are generally granted as compulsory licenses under Section 114 of the U.S. Copyright Act. These licenses are administered by SoundExchange, which also collects royalties from non-interactive digital service providers (including webcasters and satellite radio) and pays them on to artists and sound recording copyright owners.

What are synchronization licenses and royalties?

A synchronization license is permission to incorporate a musical work and/or sound recording into an audiovisual work, such as a movie, television show, video game, or music video. Another example of music being incorporated into audiovisual works is the video content created and posted by users of platforms such as YouTube. **The MLC is not involved in synchronization licenses or royalties.**

What are record royalties?

Sometimes also referred to as master royalties, record royalties are payments from record companies to artists based on the legal agreements between them. They typically involve a record company paying the artist a portion of the revenue it receives from the reproduction, distribution, or licensing of sound recordings and music videos that incorporate the artist's

performance. In the case of a self-released artist, the record royalty revenue typically flows directly from the record distributor to the artist. **The MLC is not involved in record royalties.**

What is the Music Modernization Act (MMA)?

The Orrin G. Hatch-Bob Goodlatte Music Modernization Act (MMA) of 2018 or 'Music Modernization Act' for short, is the most significant piece of copyright legislation in decades and updates our current laws to reflect modern consumer preferences and technological developments in the music marketplace. There was unanimous bi-partisan support for the bill in both the House and Senate. The law is organized into three key titles: Title I—Musical Works Modernization Act; Title II—Classics Protection and Access Act; and Title III—Allocation for Music Producers Act.

Title I of the Act, the Musical Works Modernization Act, replaces the existing song-by-song compulsory licensing structure for making and distributing musical works with a blanket licensing system for digital music providers to make and distribute digital phonorecord deliveries (e.g., permanent downloads, limited downloads, or interactive streams). It also establishes a mechanical licensing collective to administer the blanket license, a digital licensee coordinator to coordinate the activities of the licensees, and a designated representative to serve as a non-voting member on the board of the collective.

For more information, visit the MMA page on the Copyright Office website.

Where can I find information about licensing activities that The MLC is not involved with?

There are many organizations that host industry conferences and events and provide helpful information to their members and the general public on their websites. Here are a few of them:

- Nashville Songwriters Association International (NSAI)

- Songwriters Guild of America
- National Music Publishers Association
- Association of Independent Music Publishers
- ASCAP
- BMI
- SESAC
- Global Music Rights
- The Harry Fox Agency (HFA)
- SoundExchange
- Music Business Association
- The Recording Academy
- United States Copyright Office
- CISAC
- CISAC Member Societies

Everly v. Everly[2]

(*The U.S. District Court for the Middle District of Tennessee ruled last year in a dispute over authorship of a hit song by the music group, the Everly Brothers. Plaintiff Isaac "Don" Everly sued defendants Patrice Y. Everly, Phillip J. Everly, Christopher Everly, The Phillip Everly Family Trust and Everly and Sons Music (BMI) for a declaratory judgment that (1) his brother, the late Phillip "Phil" Everly, did not co-author the 1960 song "Cathy's Clown," and (2) that he owned 100 percent of the U.S. copyright to "Cathy's Clown" and 100 percent of songwriter royalties derived from the song. The defendants counter-claimed, primarily seeking a declaratory judgment that Phil Everly was a co-author of "Cathy's Clown." In a May 4, 2021 ruling, the court ruled in favor of Don Everly. Listed below is a section of the court's opinion addressing the legal framework to determine repudiation of authorship in copyright cases.*)

As the Sixth Circuit has explained, ownership in a copyright "vests initially in the author or authors of the work." 17 U.S.C. § 201(a); *Everly v. Everly,* 958 F.3d 442, 449 (6th Cir. 2020) (*Everly I*). The owner of a copyright has the "exclusive right" to authorize the use and exploitation of a copyrighted work, including the rights to reproduce, perform, display, and distribute copies of the copyrighted work and to "prepare derivative works based upon the copyrighted work." 17 U.S.C. § 106. These ownership rights "may be transferred in whole or in part." *Id.* at § 201(d). Accordingly, in order to monetize a work, the author "commonly sells his rights to publishers who offer royalties in exchange for their services in producing and marketing the author's work." *Everly I*, 958 F.3d at 449 (quoting *Harper & Row Publishers, Inc. v. Nation Enters.*, 471 U.S. 539, 547, 105 S. Ct. 2218, 85 L. Ed. 2d 588 (1985)).

[2] 536 F. Supp. 3d 276, 280-81 (M.D. Tenn. 2021).

Authorship of a work, however, imparts additional rights under copyright law "unaffected by the transfer of ownership." *Id.* Of particular relevance here is that authors possess a "termination right," which allows them to terminate, after a statutorily defined period of time, "the exclusive or nonexclusive grant of a transfer or license of copyright or of any right under a copyright." 17 U.S.C. § 203(a) (providing the right to terminate post-1978 grants between thirty-five and forty years after the grant); *see id.* § 304(c)(3) (providing the right to terminate grants "executed before January 1, 1978" "at any time during a period of five years beginning at the end of fifty-six years from the date copyright was originally secured, or beginning on January 1, 1978, whichever is later"). Importantly, unlike other copyright interests, "termination rights cannot be transferred." *Everly I*, 958 F.3d at 450 (citing 17 U.S.C. § 203(a)(5) (termination "may be effected notwithstanding any agreement to the contrary, including an agreement to make a will or make any future grant"); *id.* § 304(c)(5) (same)).

Copyright claims are subject to a three-year statute of limitations. *See* 17 U.S.C. § 507(b) ("No civil action shall be maintained under the provisions of this title unless it is commenced within three years after the claim accrued."). A copyright infringement claim accrues, and the limitations period begins to run, with each new "infringing act." *Roger Miller Music, Inc. v. Sony/ATV Publ'g, LLC*, 477 F.3d 383, 390 (6th Cir. 2007) (quoting *Ritchie v. Williams*, 395 F.3d 283, 288 n.5 (6th Cir. 2005)). A copyright ownership claim, however, "accrues only once, and if an action is not brought within three years of accrual, it is forever barred." *Id.* (quoting *Zuill v. Shanahan*, 80 F.3d 1366, 1369 (9th Cir. 1996)). An ownership claim accrues, and "[t]he statutory period for any action to establish ownership begins to run[,] whenever there is a 'plain and express repudiation' of ownership by one party as against the other." *Everly I*, 958 F.3d at 450 (quoting *Ritchie*, 395 F.3d at 288 n.5). In *Everly I*, the Sixth

Circuit acknowledged that ownership and authorship claims, while not identical, are similar, and it held that the "express repudiation" test also applies to a claim related to authorship. *Id.* at 452.

To be clear, "an authorship claim will not accrue until the putative author's status *as an author* is expressly repudiated; actions repudiating ownership are irrelevant to begin the statute of limitations for an authorship claim because repudiation of ownership is not adverse to the author's claim as such." *Id.* at 453.

There are several means by which an "express repudiation" may occur. The party claiming sole authorship can repudiate the plaintiff's authorship (1) privately in direct communication with the plaintiff; (2) publicly by asserting sole authorship to the world and the plaintiff, including the listed credit on the published work; or (3) implicitly by receiving remuneration for the work to which the plaintiff is entitled. Of course, to repudiate the plaintiff's claims under the latter two theories, the receipt of money and credit must actually be adverse to the plaintiff's authorship status. *Id.* (internal citations omitted). "Regardless of whether repudiation of authorship is made privately, publicly or implicitly, it must come from someone asserting authorship of the work, not from a third party." *Id.* This requirement stems from the inalienable nature of authorship. *Id.* at 454. At the same time, the statements and conduct of third parties may "serve as circumstantial evidence that another putative author has expressly repudiated the plaintiff's rights." *Id.*

Bruce Springsteen rumored to be shopping musical catalogs[3]

Bruce Springsteen is the latest artist rumored to be shopping his musical catalogs, with both his publishing rights and recorded music potentially for sale.

It was common in the 1980s and 1990s for superstar artists to be granted ownership rights in earlier albums as an incentive to re-sign with labels that helped elevate them to superstar status. Artists who benefited from these deals include Garth Brooks, AC/DC, Pink Floyd, Neil Diamond, Bob Dylan, and Michael Jackson. Now, as streaming drives music consumption numbers higher than ever, major labels are paying large amounts of money to get the rights to those legacy acts back.

The latest purchase in the works is Sony's negotiation to acquire Springsteen's catalog. Though details of the negotiations have been kept under wraps, Billboard has estimated that the master recording catalog could value between $145 and $190 million.

Sources have also hinted Springsteen is shopping his publishing catalog, the underlying musical compositions that comprise the recorded works. Combined value of both the publishing and recording rights could be upwards of $350 million. According to the RIAA website, the Springsteen catalog has earned 65.5 million sales in the United States, including 15-times platinum *Born in the U.S.A.* But his music is not just a vestige of the past. Since 2018, the Springsteen catalog has sold the equivalent of 2.25 million albums in the United States.

Now seems to be one of the best times in history for artists who own their copyrights to capitalize on their works. In the past few years, music assets have generated the highest multiples

[3] Nathaniel Hobbs, *Bruce Springsteen rumored to be shopping musical catalogs*, BELMONT ENTERTAINMENT LAW JOURNAL (Dec. 13, 2021), https://www.belmontentertainmentlaw.com/2021/12/13/bruce-springsteen-rumored-to-be-shopping-musical-catalogs/.

in history, with catalogs selling for 25 to 30 times the net publishing share, or 15 to 20 times the net label share.

UMG purchased Bob Dylan's catalog for $300 million. Hipgnosis spent roughly $1.37 billion between March 2019 and September 2020 purchasing several catalogs. Stevie Nicks and Imagine Dragons sold their catalogs for $100 million each, Neil Young's catalog sold for $150 million, and Taylor Swift's catalog was purchased for $300 million.

Although no deal has officially been struck, it will be interesting to see how the latest in a long line of catalog sales will be valued, and which other acts may be inspired by such large numbers to sell their rights as well.

UPDATE:

In what is possibly the largest deal ever linked to a single artist's catalog, it was announced December 16, 2021, that Bruce Springsteen sold his catalog of recorded music and publishing rights to Sony for $500 million.

The deal was struck between Springsteen, Sony Music, and Sony Music Publishing. Sony is the parent company of Columbia Records, where Springsteen has released all his records. Prior to this sale, Springsteen's publishing catalog was controlled by Universal Music Group. Sony now controls Springsteen's impressive catalog of over 300 songs, 20 studio albums, 23 live LPs, 7 EPs, and more.

Songlorious provides custom, handwritten songs[4]

How much would you pay for a custom song, handwritten for any special occasion, and capable of being used commercially?

As it turns out, the cost is low. Songlorious, a product of the pandemic, was founded by Omayya and Ellen Attout. Both had day jobs and a side hustle performing live music prior to the pandemic, but all of that was swept away when Omayya's pay was reduced, Ellen's job closed its doors, and music venues shut down. While trying to support themselves, the Attouts developed a fascinating idea – launching a website that offered custom songs to visitors for a fair price.

The general concept is straightforward. Custom song prices start at $45 for a 30-second acoustic jingle but can cost as much as $230 for a full three-minute song. According to the Attouts, the average order costs close to $179. There are also several available add-ons, such as more complex instrumentation, choice of specific artist, a faster turnaround time, or a commercial licensing fee. When placing an order, customers specify what the occasion is for and if there is a story behind the request. They can also choose from several moods or genres and identify a handful of lyrical elements for writers to include. There is a slight fee for revisions based on preference issues, but any changes are free if Songlorious makes a mistake.

To ensure songs are of a high quality, all artists and writers who join the website must audition by completing a hypothetical order, after which they undergo a training session to make sure each creation is "a five-star song."

[4] Nathaniel Hobbs, *Songlorious provides custom, handwritten songs*, BELMONT ENTERTAINMENT LAW JOURNAL (Dec. 13, 2021), https://www.belmontentertainmentlaw.com/2021/12/13/songlorious-provides-custom-handwritten-songs/.

After launching in June 2020, the website quickly picked up support from artists looking to earn a living after being sidelined by the pandemic. The company continued to pick up momentum, earning a feature on *Shark Tank* that aired Oct. 15, 2021, and earning the Attouts investments from four of the five sharks. Songlorious projects revenues of $2.5 million for 2021 and $5 million in 2022. The company has already paid out more than $650,000 to 160 artists, each of whom was paid 35-50 percent of revenue generated from the songs they write and record.

Songlorious is not the only company tapping into the market for personalized songs. Another platform, Songfinch, was launched in 2016 and is backed by veteran music industry executives. Songfinch hosts more than 650 artists who have collectively created more than 25,000 original songs, and who have been paid more than $2.1 million in 2021. Similarly, Cameo has indicated it may move into the realm of personalized songs. The platform is already utilized by many well-known artists and pulled in more than $100 million in revenue last year, with a shocking 75 percent paid to the talent.

One major concern for the custom-song market is that live performances are beginning to take place in the United States in larger and larger numbers. Many major music festivals this year hosted hundreds of thousands of attendees. Supplemental income on which artists on Songlorious or Songfinch relied during the worst of the pandemic may no longer be necessary. However, the roster of artists on Songlorious seems to have remained highly engaged and willing to continue the work in addition to performing live. We can only wait and see if this market will last or if it will start to dry up as the world gradually recovers from the COVID-19 pandemic.

The path to ownership: How Taylor Swift revived the masters rights discussion[5]

In 2019, artist Taylor Swift posted a raging Tumblr essay in which she called out her record label CEO, Scott Borchetta, for selling the rights to her music to another record label owner, Scooter Braun, before giving her the chance to own her own music. A provision of recording contracts frequently included is one that irreversibly grants the masters rights of all music produced under that contract to the record label. There has been a movement in recent decades that argues this type of provision is entirely unconscionable. An unconscionable contract is one that "shocks the conscience" and generally involves unequal bargaining power, one-sided terms, and inequitable outcomes. Swift revived this discussion in her public feud with Braun, bringing the legal topic of masters ownership into popular media. Swift's feud raises these questions: what legal remedies exist for artists to regain masters ownership, and how they are being played out?

The House of Representatives acknowledged an unequal bargaining power between artists and large entertainment production companies within the industry when Congress passed the amended U.S. Copyright Act in 1978. This Act included Section 203 governing termination of transfers and licenses. Under this section, artists can terminate, through a termination notice, the grant rights to their work after thirty-five years, enabling the rights and ownership of a work to revert to the creator. The U.S. Senate Committee on the Judiciary wrote that these provisions were "needed because of the unequal bargaining position of authors, resulting in part from the impossibility of determining a work's value until it has been exploited."

[5] Kristen Johnson, *The path to ownership: How Taylor Swift revived the masters rights discussion*, BELMONT ENTERTAINMENT LAW JOURNAL (Jan. 18, 2022), https://www.belmontentertainmentlaw.com/2022/01/18/the-path-to-ownership-how-taylor-swift-revived-the-masters-rights-discussion/.

However, the Act also included an exception to this thirty-five-year rule: the "work made for hire" doctrine. A recording can be deemed a "work made for hire" if it was either "prepared by an employee within the scope of his or her employment" or if "the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire." Under this doctrine, work that qualifies as "work made for hire" will be treated as an exception to the general rule that the copyright of a work vests initially in the author, resulting in the copyright vesting directly in the employer.

Another legal strategy that has been used to counter Section 203 is the statute of limitations. Works created and copyrighted on or after January 1, 1978, but pursuant to an agreement made prior to January 1, 1978, are not covered explicitly under a termination provision and fall into a "gap." There is ambiguity on whether works within this "gap" are legally terminable under Section 203. Consequently, litigation over an artist's right to terminate under Section 203 commonly focuses on whether a work is a "work made for hire" and whether the statute of limitations has run out on works that fall into the "gap." Either finding could prevent termination under Section 203.

One current case in particular may resolve some of these legal issues arising from the applicability of Section 203. Class action Plaintiffs in *Waite v. UMG Recordings* allege UMG Recordings ("UMG") engage in a standard practice of continuing to exploit the Plaintiffs' recordings while refusing to acknowledge their termination notices. Plaintiffs in this class action include Leonard Graves Phillips from California punk rock band The Dickies and Syd Straw from the Golden Palominos. After granting UMG exclusive rights per their recording contracts, each of these Plaintiffs sent a termination notice in compliance with the 1978 Copyright Act to UMG in order to exercise their termination rights and reclaim ownership of their masters.

UMG's legal department notified Plaintiffs on "virtually identical" grounds that the label would not honor the termination notices. Specifically, the label notified several Plaintiffs that the works constituted "works made for hire" and that the statute of limitations had run out to challenge the ownership status of their works.

In this case, Judge Kaplan's August 2020 opinion for the Southern District of New York in response to the first amended complaint provides some guidance for musicians sending termination notices for works created during the "gap." The question of whether gap grants are terminable under § 203 has been left to the courts or Congress. Since Congress has not acted, Judge Kaplan decided this ambiguity issue and concluded that such works were terminable under § 203 because of Congress's original intent. Judge Kaplan reasoned that since Congress created § 203 with the intent an artist could "have an opportunity to share in the economic success of his or her works decades later," it seems "unlikely" that Congress would have intended to bar that opportunity on a technicality like the "gap." This opinion looks favorable for artists sending termination notices on works that fell in the "gap."

Case law is still developing that shows the practicability of Section 203 as artists seek to terminate the grant rights to their work, thirty-five years after it has been created.

Miramax LLC v. Tarantino: NFTs meet copyright and contract law[6]

In 2020, the non-fungible token (NFT) marketplace erupted. NFTs are unique, digital collectibles that are often sold by artists and creators to their fans. Artists and creators can create, or "mint," NFTs on blockchain-based marketplaces, such as OpenSea. When an NFT is sold, the buyer receives the NFT in her digital wallet. Since the NFT is embedded on an immutable, transparent blockchain, the buyer can seamlessly prove her ownership of the NFT.

Today, NFT sales have surpassed an aggregate of $14 billion. Fans continue to demand NFTs as A-list creators embrace the new technology to develop creative sales campaigns.

In November 2021, the award-winning screenwriter and film director, Quentin Tarantino, dove headfirst into the space by announcing his own *Pulp Fiction* NFT collection. Each NFT in the collection represents a chapter from *Pulp Fiction* and includes those scanned pages from the original, handwritten script. While Tarantino fanatics were eager for the opportunity to own an NFT from the collection, Miramax, the studio behind *Pulp Fiction*, filed a complaint against Tarantino in federal court in the Central District of California. (*Miramax, LLC v. Tarantino*, (C.D. Cal. 2021)).

Although Tarantino wrote and directed *Pulp Fiction,* Miramax owns the intellectual property associated with the film. Primarily, Miramax claims that these scanned pages constitute derivative works, and the sale of them infringes upon its copyright because Tarantino's 1993 contractual agreement does not grant him a license for the sale of NFTs. Additionally, Miramax objected to Tarantino's use of the *Pulp Fiction* branding in association with the sale.

[6] Aaron Steinberg, *Miramax LLC v. Tarantino: NFTs meet copyright and contract law*, BELMONT ENTERTAINMENT LAW JOURNAL (Feb. 7, 2022), https://www.belmontentertainmentlaw.com/2022/02/07/miramax-llc-v-tarantino-nfts-meet-copyright-and-contract-law/.

While Tarantino granted Miramax extensive rights in *Pulp Fiction,* the contract defines "Reserved Rights" that were retained by Tarantino, which include the "soundtrack album, music publishing, live performance, print publication (including without limitation screenplay publication, 'making of' books, comic books and novelization, in audio and electronic formats as well, as applicable), interactive media, theatrical and television sequel and remake rights, and television series and spinoff rights." Miramax argues that NFTs, as a one-time sale, do not equate to the publication of the screenplay which Tarantino reserved the right to do in his contract.

However, Tarantino believes that the sale of a unique, scanned screenplay excerpt falls within his "screenplay publication" reserved rights. Since Tarantino is selling a single copy of each NFT in his collection, the question arises whether the selling of a single, unique copy constitutes a "publication."

The court will look to copyright law's definition of "publication" in 17 U.S.C. § 101, which defines the term as "the distribution of copies…of a work to the public by sale or other transfer of ownership." Furthermore, the court will look to industry custom at the time the parties entered into the 1993 agreement.

In the event that the dispute does not settle, this lawsuit could provide interesting insight into a court's interpretation regarding intellectual property associated with NFT sales. A finding in favor of Tarantino could result in an explosion of other content creators launching NFTs in conjunction with sought-after mementos.

Streaming services fail to pay modern royalty rates: What will it take?[7]

Despite the best efforts of lobbyists and music advocacy organizations, music streaming services like Spotify and Amazon are still refusing to pay updated royalty rates to songwriters and publishers for music use on digital streaming platforms. Even the new law set forth in the Music Modernization Act mandating an increased royalty rate determined by the Copyright Royalty Board has not been enough to make music streaming sites pay their fair share of royalties to the songwriters whose creations fuel such platforms. Continued litigation on the matter has many industry professionals asking themselves, "what will it take to get streaming services to pay?" In order to understand the issue, it is necessary to recognize the complexity of the Music Modernization Act and why streaming services continue to actively dispute increased royalty rates.

Passage of the Music Modernization Act ("Act") has changed the landscape of the music industry in four primary ways. The Act spawned creation of the Mechanical Licensing Collective ("MLC"), changed the legal standard the Copyright Royalty Board ("CRB") may consider when establishing mechanical royalties for internet streaming, expanded copyright protection to the creators of pre-1972 sound recordings, and led to passage of The Allocation for Music Producers Act. The Act, which became law on Oct. 11, 2018, in part changed the way Copyright Royalty Board judges decide statutory royalty rates, including those for digital streaming.

The history of the Copyright Royalty Board began in 2004 with passage of the Copyright Royalty and Distribution Reform Act ("CRDRA"). The CRDRA established a panel of three judges – the Copyright Royalty Judges – to oversee statutory licensing of copyrighted works.

[7] Lauren Degen, *Streaming services fail to pay modern royalty rates: What will it take?*, BELMONT ENTERTAINMENT LAW JOURNAL (Feb. 9, 2022), https://www.belmontentertainmentlaw.com/2022/02/09/streaming-services-fail-to-pay-modern-royalty-rates-what-will-it-take/.

The goal of this newly established panel was to encourage more frequent review of royalty rates pertaining to statutory licensing of music. The law requires one of the three judges to have extensive knowledge in copyright law, one to have a background in economics, and one to have a minimum of five years of judicial or quasi-judicial experience. Collectively, the group has the power to determine royalty rates for usage of copyrighted works in the United States.

Prior to the passage of the Act, Section 115 of the Copyright Act allowed any person seeking a compulsory license to reproduce a song to pay a statutory mechanical license in exchange for the use. The Copyright Royalty Board established this statutory rate by applying a legal standard that does not consider market value of the work. This approach led to extremely low rates being paid out to songwriters and music publishers once streaming took over the music industry. However, the Act changed the legal standard used by the Copyright Royalty Board to determine royalty rates by allowing the judges to consider free-market conditions. This change helped even the playing field for songwriters' compensation through establishing rates by consideration of the entire music industry ecosystem rather than by historical legal standards.

Despite the positive changes which resulted from the new legal standard used by the Copyright Royalty Board to determine royalty rates, implementation of the initiative has been more difficult. Per the terms of the Act, the updated standards to be used by the Copyright Royalty Board to determine royalty rates first went into effect for the 2018-2022 time period. (84 FR 1918) This new royalty rate, which was set to increase pre-2018 royalty rates from 10.5 percent to 15.1 percent, was determined by the Copyright Royalty Board on Jan. 27, 2018. Four years later, Spotify and other major streaming services are still battling songwriters, the National Music Publishers Association, and other creative advocates in court to dispute this increase. As a result, the streaming services have yet to pay the increased royalty rates to songwriters for the

use of their works on such platforms. This is a hotly contested issue in the music industry. Songwriters and artists depend on streaming services for exposure, listener growth, and to reach new audiences, yet they are not being fairly compensated for the creations which streaming services need to fuel their platforms.

In the meantime, the Copyright Royalty Board is beginning to establish the royalty rate for the next five-year period – 2023 to 2027 – despite the fact previously established rates are not yet being paid out. Additionally, Spotify, Apple, Amazon, Google, and Pandora filed documents last October with the CRB proposing significantly lower royalty rates for interactive streaming platforms than the 2018 CRB decision sets forth. (Johnson v. Copyright Royalty Bd. (D.C. Cir. 2020)) Enactment of this proposal would set back much of the progress that songwriter advocates have made in recent years. The National Music Publishers Association is proposing that songwriters effectively earn 20 percent of all revenue generated by streaming services. Spotify and Pandora proposed decreasing the rate back to the pre-2018 10.5 percent of total service revenue rate and Amazon proposed a 10.54 percent rate, while Apple and Google proposed no change from the final 2018-2022 rates. The Copyright Royalty Board ultimately holds tremendous power in protecting the future of songwriters in the United States. As advocates wait for the CRB to make its final decision on the appealed 2018-2022 rates, they also optimistically hope for even more favorable streaming rates for the 2023-2027 period.