2026

Contract Law (Taylor's Version): The Legality of Extended Re-Recording Clauses in Record Label Contracts

Raquelle Rocco

CONTRACT LAW (TAYLOR'S VERSION): THE LEGALITY OF EXTENDED RE-RECORDING CLAUSES IN RECORD LABEL CONTRACTS

Raquelle Rocco[*]

ABSTRACT

The success of Taylor Swift's recent re-recorded albums has prompted multiple record labels to prevent other artists from achieving similar success by extending the duration of re-recording clauses. Whereas these clauses have traditionally prohibited artists from re-recording their music for five to seven years, labels have recently sought to introduce re-recording clauses that forbid artists from re-recording for ten, fifteen, thirty years, or even in perpetuity. Re-recording clauses pose both legal and creative problems for musicians including the limiting of intellectual property rights, the exacerbation of unequal bargaining power, and the stifling of artistic expression and autonomy.

In response to these problems, this Article assesses multiple avenues for rendering extended re-recording clauses unenforceable by applying principles of contract law. Because re-recording clauses restrict post-employment conduct and eliminate competition, this Article posits that, similarly to non-compete clauses, re-recording clauses should be considered void as a matter of public policy, or in the alternative, should be individually scrutinized for their reasonableness. In addition to public policy grounds, unconscionability doctrine can also void re-recording clauses on an as-applied basis due to both procedural and substantive unconscionability in the negotiation and terms of a record label contract. Both public policy and unconscionability principles can be an effective way to meaningfully analyze re-recording clauses, address inequities between labels and artists, and promote artist autonomy.

[*] J.D. Candidate, 2026, Seton Hall University School of Law; B.A., 2021, Marist University.

I. INTRODUCTION

Whether a Swiftie or not, you've probably heard the term "Taylor's Version" at least once within the past six years. That's because on August 25, 2019, Taylor Swift announced her plan to re-record her first six albums, re-releasing them with the modifier, "Taylor's Version," to symbolize full ownership of her music.[1] Swift's decision to re-record resulted from a bitter battle with her former record label for master rights in her music.[2] To date, she has re-released four re-recorded albums, some of which have broken new records and have achieved more sales and streams than their original counterparts.[3]

Swift's ability to re-record her six prior albums rested in the fine print of her record label contract, specifically, the re-recording clause, which restricted her ability to re-record her previous albums for a term of years.[4] Industry-standard record label contracts have typically restricted an artist's ability to re-record their music for between five to seven years following the music's release, or two years after the contract expires.[5] When this term of years expired, Swift was free to re-record and re-release each album.

---

[1] Anne Erickson, *Taylor Swift & Scoot Braud's Feud: A Timeline*, BILLBOARD (Feb. 7, 2024), https://www.billboard.com/lists/taylor-swift-scooter-braun-feud-timeline/braun-acquires-borchettas-big-machine-records-label-group-for-300-million/.

[2] *Id.*

[3] Ben Sisaro, *'1989 (Taylor's Version)' Has a Big No. 1 Debut*, N.Y. TIMES (Nov. 6 2023), https://www.nytimes.com/2023/11/06/arts/music/taylor-swift-1989-taylors-version-sales.html (noting how Swift "has now topped the first-week total of her original '1989' with a remake of the same LP." It was "at No. 1 on the Billboard 200 chart with the equivalent of 1,653,000 sales in the United States – the biggest opening sales week of Swift's career.").

[4] Kylee Neeranjan, *You Belong With Me: The Battle for Taylor Swift's Masters and Artist Autonomy in the Age of Streaming Services*, 33 U. FLA. J. L. & PUB. POL'Y 413, 420 (2023) ("The terms of Swift's original contract with Big Machine stipulated that she could not re-record any of her first five albums until November 2020. Swift's sixth album could not be re-recorded until November 2022), 418 ("The full contract remains private.").

[5] Shaina Zargari, *Better Than Revenge: The Rise of Re-Recording Provisions in Artists' Contracts*, CORNELL J. L. & PUB. POL'Y: The Issue Spotter (Oct. 25, 2024), https://jlpp.org/better-than-revenge-the-rise-of-re-recording-provisions-in-artists-contracts/; *see also* Justin Tilghman, *Exposing the "Folklore" of Re-recording Clauses (Taylor's Version)*, 29 J. INTELL. PROP. L. 402, 411 (2022) ("A standard re-recording clause reads as follows: '[The artist] undertakes that [the artist] will not record for five (5) years from the end of the Term any composition released on Record by [the recording label] or our licenses under this Agreement during the Term or within one (1)

Swift has long been a voice for musicians and has advocated for artist autonomy and fairness in the music industry.[6] She has encouraged other artists to leverage their talents, retain ownership in their creative works, and restructure their contracts with record labels.[7] Her ability to successfully undercut the profits of her former record label was not just a victory for Swift, but for artists more generally. At least, that was initially what many people thought.

In the wake of Swift's re-recording era, record labels have sought to further restrict the autonomy of artists by extending re-recording clauses beyond their traditional five to seven year terms.[8] Labels such as Universal Music Group, Sony Music Entertainment, and Warner Music Group have allegedly begun to introduce re-recording clauses that forbid artists from re-recording for ten, fifteen, thirty years, or even in perpetuity.[9] These extended re-recording clauses send the message that labels want to prevent "Taylor's Version"-like success stories from ever happening again.[10]

The response of record labels is unfortunate—Swift's advocacy for musicians and artists has appeared to have the adverse consequence of more restrictive contracting—the very practice which prompted her to re-record her albums in the first place. The response of record labels is

---

year after the end of the Term.'" (citing Re-recording Restriction Sample Clause, LAW INSIDER, https://www.lawinsider.com/clause/re-recording-restriction (last visited Apr. 2, 2025))).

[6] Anthony Pericolo, *Bad Blood© with Taylor Swift's Album Re-Recording*, HARV. J.L. & TECH. DIG. (Feb. 20, 2021), https://jolt.law.harvard.edu/digest/bad-blood-with-taylor-swifts-album-re-recording.

[7] *Id.* ; Taylor Swift, *Billboard Women in Music 2019: Taylor Swift's Woman of the Decade Speech*, BILLBOARD (Dec. 12, 2019), https://www.billboard.com/music/awards/taylor-swift-woman-of-the-decade-speech-billboard-women-in-music-8546156/ ("I was up on a stage in New York City in 2014 accepting Billboard Woman of the Year and I was talking about the future of streaming. How we needed to make sure that the female artists, writers, and producers of the next generation were protected and compensation fairly.").

[8] Sophie Caraan, *Major Record Labels Are Changing Their Contracts To Prohibit Artists From Re-Recording Their Albums for at Least 10 Years*, HYPE BEAST (Oct. 31, 2023), https://hypebeast.com/2023/10/major-record-labels-universal-warner-sony-change-contracts-prohibit-album-re-recordings-for-10-years; Zargari, *supra* note 5; Tilghman, *supra* note 5, at 411 (citation omitted); Steve Knopper, *Labels Want to Prevent 'Taylor's Version'-Like Re-Recordings From Ever Happening Again*, BILLBOARD (Oct. 30, 2023), https://www.billboard.com/pro/taylor-swift-re-recordings-labels-change-contracts/.

[9] Caraan, *supra* note 8.

[10] Knopper, *supra* note 8.

also a reminder of an unfortunate reality—most musicians do not have the resources, bargaining power, or leverage to negotiate fair contracts or successfully re-record their music like Taylor Swift.[11] That is, while Swift's re-recordings have had a significant impact on the music industry and have prompted public discourse about intellectual property rights, most artists still lack the tools to achieve meaningful, tangible changes in their own individual contracts.[12] Extending the length of re-recording clauses has only made this harder.

The remainder of this Article posits that in applying contract law principles, re-recording clauses should be ruled unenforceable. Part II examines the legal and creative problems posed by extended re-recording clauses. Part III argues that extended re-rerecording clauses are unenforceable ab initio as a matter of public policy because they function as an unfair restraint on trade and competition similarly to non-compete agreements. Further, even if re-recording clauses are not found to be unenforceable ab initio, courts should scrutinize the reasonableness of re-recording clauses similarly to how states scrutinize non-compete agreements. Part IV analyzes re-recording clauses under the framework of unconscionability and argues that unconscionability doctrine can be another avenue for striking re-recording provision from contracts on an individual, as applied basis. The Article concludes with a brief summary and emphasizes that litigation can be an effective tool for artists to advocate for rights in their creative works.

II. THE PROBLEMS POSED BY RE-RECORDING CLAUSES

For musicians who lack the resources, fan base, and bargaining power of Taylor Swift, re-recording clauses create problems from both a legal and creative perspective. Legally, re-

[11] Tilghman, *supra* note 5, at 416.
[12] Cecilia Giles, *Look What You Made Them Do: The Impact of Taylor Swift's Re-recording Project on Record Labels*, U. CIN. L. REV. BLOG (Mar. 27, 2024).

recording clauses disadvantage artists both during initial negotiations and during re-negotiations following the expiration of their record label contract. Creatively, the extended time length of the clause has the power to restrict an artist for most if not the entirety of their music career without legal recourse and thus inhibits artistic expression.

A. *The Legal Consequences of Re-Recording Clauses*

Re-recording clauses restrict an artist's legal rights both at the beginning phases of negotiation and following the expiration of the contract when an artist seeks to renegotiate. Understanding these legal implications requires a brief background of the copyrights that exist in songs and the incentives of both artists and record labels.

In every song there are two copyrights—one for the sound recording, and one for the underlying composition.[13] Publishing rights refer to the underlying composition of a song and are often comprised of the musical elements, lyrics, and structure of the song.[14] Composition right holders possess the "right to control the reproduction and redistribution of the work, as well as the right to perform the work publicly."[15]

By contrast, master rights refer to ownership of the sound recording—an owner of master rights in a song possesses rights to the original sound recording of that song.[16] Master rights provide an individual with the power to license song recordings to third parties, as well as collect royalties on a song that is played.[17] Artists who give up their master rights essentially give up the ability to dictate how the finalized recording of their song is used—this can include licensing

[13] Tilghman, *supra* note 5, at 414-15; Neeranjan, *supra* note 4, at 416.
[14] Neeranjan, *supra* note 4, at 417.
[15] *Id.*
[16] *Id.* at 418.
[17] *What Does It Mean To Own Your Masters*, AMUSE, https://www.amuse.io/en/content/owning-your-masters/?cn-reloaded=1 (last visited Apr. 26, 2025).

deals with third parties such as "TV shows, films, commercials, or…sampling use by other artists."[18]

Re-recording clauses implicate both master rights and publishing rights in the beginning phases of contract negotiation. During initial negotiations, record labels oftentimes bargain for the master rights in an artist's songs due to the value of royalties and licensing deals.[19] Record labels thus "notoriously dislike" re-recordings of songs that they have master rights to because a re-recorded version of a song can undercut the royalties that the label receives.[20] By restricting an artist from creating and gaining rights in a new master at the outset, record labels are able to maximize the value of their master rights by preventing the unwanted competition of another sound recording being on the market.[21] Re-recording clauses prohibit artists from gaining master rights in a new sound recording and protect the interests of record labels who seek to hold exclusive master rights in a particular song.[22]

Re-recording clauses also implicate publishing rights by preventing the reproduction of a musical composition.[23] The publishing rights holder, often a composer or songwriter, typically controls a song's reproduction through mechanical royalties.[24] However, re-recording clauses diminish publishing rights by preventing reproduction. In a situation where a record label owns the master rights to a song and an artist owns the publishing rights, a re-recording clause

---

[18] *Id.*
[19] *Id.*
[20] Zagari, *supra* note 5.
[21] Mark Tavern, *For the Re-Record: Here's What Your Need to Know About Re-Recording Restrictions*, SYNCHTANK (Aug. 6, 2019), https://www.synchtank.com/blog/for-the-re-record-heres-what-you-need-to-know-about-re-recording-restrictions/.
[22] *Id.*
[23] Tilghman, *supra* note 5, at 410-11 ("Rights in a sound recording, while lucrative, do not go beyond the fixed sounds in the sound recording, and thus, sound recording owners are very limited in the ways they can protect their copyrights…Re-recording clauses, or re-recording restrictions, stop an artist from re-recording music they made while under a record label").
[24] Neeranjan, *supra* note 4, at 417.

decreases the value and scope of that artist's publishing right by restricting the artist's ability to dictate reproduction of the song. In essence re-recording clauses maximize the value of the master right and minimize the value of the publishing right. In a situation where an artist owns neither the master rights nor the publishing rights, the artist has no intellectual property rights in their songs and is also prohibited from seeking permission from the publishing rights holder to re-record the songs.

These legal disadvantages created by re-recording clauses prompts the question of why artists agree to these terms in the first place—the answer lies in the different bargaining positions between labels and artists. Many artists "desperate for fame and resources, will enter into agreements with re-recording clauses without considering how much the contract provision can stifle their creation in the future."[25] Simply hoping for the opportunity to sign with a big label, emerging artists contract their master *and* re-recording rights away at the outset of their music careers without realizing the problems and restrictions that signing away such rights can create.[26] As described by artist manager and consultant, Mark Tavern, "[f]or recording artists, [re-recording restrictions] are most often an unwelcome surprise, lying dormant until they prevent the creation of new masters."[27]

At the outset of negotiations, artists begin their music careers with a record label not knowing how successful or valuable their music will actually be—this includes Taylor Swift.[28] In an interview with *Billboard* following her recognition as *Billboard's* Woman of the Decade, Swift explicitly stated "[w]hen I created [these songs], I didn't know what they would grow up to

[25] Tilghman, *supra* note 5, at 409, 414.
[26] *Id.* at 409 (quoting *What Does It Mean To Own Your Masters*, AMUSE, https://www.amuse.io/en/content/owning-your-masters/?cn-reloaded=1 (last visited Apr. 26, 2025)); Tavern, *supra* note 19.
[27] Tavern, *supra* note 21.
[28] Tilghman, *supra* note 26.

be."[29] Fifteen-year-old Swift, who signed her first record-deal, did not know she would become one of the most successful musicians in history, and hence, did not know the power, leverage, and purpose that re-recording would have over a decade later.[30] The same goes for most artists looking to establish themselves in the music industry. Artists negotiate away their intellectual property rights at the outset of their music careers in hopes of fame, oftentimes not realizing the consequences until years later. Thus, re-recording clauses pose legal problems for artists at the beginning of contract formation by restricting the artist's intellectual property rights at the start of their music careers.[31]

These negative legal effects often linger beyond the duration of the contract by exacerbating the already disproportionate bargaining power between labels and artists.[32] In addition to restricting the initial legal rights that an artist maintains in their own music, re-recording clauses limit the amount of assets that an artist can bring to the negotiating table in the

[29] Jason Lipshutz, *Billboard Woman of the Decade Taylor Swift: 'I Do Want My Music to Live On'*, BILLBOARD (Dec. 11, 2019), https://www.billboard.com/music/pop/taylor-swift-cover-story-interview-billboard-women-in-music-2019-8545822/.

[30] Hannah Dalley & Kirsten Spruch, *Taylor Swift & Scooter Braun's Feud: A Timeline*, BILLBOARD (Oct. 25, 2024), https://www.billboard.com/lists/taylor-swift-scooter-braun-feud-timeline/braun-acquires-borchettas-big-machine-records-label-group-for-300-million/.

[31] Congress has recognized the right of authors to terminate transfers and licenses to reclaim their work. *See* 17 U.S.C. § 203. Under § 203 of the Copyright Act, an author can terminate a transfer or license "thirty-five years from the date of execution of the grant; or, if the grant covers the right of publication of the work, the period begins at the end of thirty-five years from the date of publication of the work under the grant or at the end of forty years from the date of execution of the grant, whichever term ends earlier." However, because § 203 excludes works made for hire, and because record labels typically obtain copyrights to a song prior to the song's creation during initial negotiations, this provision does not provide relief for an artist whose music is considered a work for hire, or for an artist whose music belongs to the record label in the first instance. Thus, while Congress has sought to provide an avenue for artists to reclaim their work after a term of approximately thirty-five years, the structure of record label deals effectively circumvents § 203.

[32] *Why Owning Your Master Recordings Means Everything*, AWAL, https://www.awal.com/blog/maintaining-ownership-rights-as-an-artist/, (last visited Apr. 26, 2025) (emphasizing the long lasting affects of giving up intellectual property right to record labels and stating that "in most of these traditional deals, the artist is prohibited from releasing any records elsewhere with another partner, label, or even artist in some cases. And any recordings made by the artist under the contract are owned by the label – possibly forever.").

future.[33] Traditionally structured deals allow labels to treat masters as "assets."[34] The money generated by masters allows labels to recoup a label's investment of time and resources in an artist.[35]

An artist with more control over their masters and creative works inherently has more assets, and as a result, more bargaining power.[36] The more rights an artist has in their music, the more control that artist has in how that music is performed, licensed, and used.[37] As articulated by Paul Hitchman, President of AWAL, a global music recording business, "owning your master recordings is like having an upper hand. If an artist owns their rights…they are in the best position to negotiate with a record company and obtain the best possible terms and controls."[38] An artists who lacks the ability to re-record their music for ten, fifteen, thirty, or more years, therefore is in a disadvantaged position to renew their contract with their existing label, or pursue a new contract with a new label.

Re-recording clauses can also deprive an artist of bargaining power during renegotiations, because the clause can even potentially prevent an artist from performing their own songs live.[39] As noted by entertainment lawyer, John Seay, "[a] television broadcast is technically a re-record."[40] While in most circumstances labels do not prevent broadcasts in this manner, the potential of labels to inhibit performance under this technical interpretation of the re-recording

[33] *Id.* ("If an artist owns their own rights…they are in the best position to negotiate with a record company and obtain the best possible terms and controls.") (internal quotation marks omitted).
[34] Tavern, *supra* note 21.
[35] *Id.*
[36] AWAL, *supra* note 32.
[37] *Id.*
[38] *Id.*
[39] Amuse, *supra* note 17.
[40] Amy X. Wang, *Can Taylor Swift Really Be Banned From Performing Her Old Albums?*, ROLLING STONE (November 15, 2019), https://www.rollingstone.com/pro/news/can-taylor-swift-be-banned-from-performing-amas-big-machine-913150/.

clause can potentially deprive an artist of bargaining power by making them less marketable or desirable for future performance opportunities.[41]

Ultimately, less autonomy over production and performance means less bargaining power for artists as they attempt to renegotiate contracts with their current label or enter a new contract with a different label. While Taylor Swift was able to negotiate a new contract with a new label allowing her to maintain master rights, most artists lack the fan base and resources that Swift was able to leverage.[42] Not every artist can negotiate their way out of a re-recording clause, and extended re-recording clauses thus exacerbate the already disproportionate relationship between labels and artists.

B. *The Creative Consequences of Re-Recording Clauses*

Extended re-recording clauses also pose artistic challenges for musicians, whose careers are notoriously short-lived. In the age of streaming, where an artist can record and release music quicker than ever before, the effect of re-recording clauses is worsening because music is being produced and released faster.[43] Even the traditional three to five year term length "is an eternity in today's music streaming business."[44] In an industry full of "one-hit-wonders" and overnight stardom, a ten year re-recording clause can span the entirety of a musician's career.[45]A long music career "depends on the premise that an artist will always have a healthy voice to sing with,

[41] *Id.* ("You don't normally see a label try to prevent an artist from, for example, playing [Saturday Night Live], because it's ultimately good for the label, and is not the type of activity that a re-record restriction is designed to prevent. But in the particular case of Swift—who has publicly announced that she wants to re-record her masters to take back those revenue streams—Big Machine might now see an 'opportunity to get some leverage' by enforcing the full breadth of the re-record clause").
[42] *Id.*; Tilghman, *supra* note 5, at 415.
[43] Tavern, *supra* note 21.
[44] *Id.*
[45] Jacob Osborn, *30 musicians with legendarily long careers*, STACKER (July 18, 2019), https://stacker.com/stories/music/30-musicians-legendarily-long-careers.

a committed fan base, or frankly, the personality to remain in the spotlight," and "most artists have very small windows to capitalize off of their fame and stardom."[46]

Extended re-recording clauses also can prevent artists from reflecting on and celebrating the music that defined and shaped their careers. While Taylor Swift's re-records have gained the most public prominence, it is not uncommon for artists to re-record their music, ten, fifteen, or even thirty or more years after its release—Paul McCartney, Def Leppard, Bob Dylan, and Frank Sinatra are among just some notable artists who have re-recorded some of their catalogs.[47] Multiple artists have re-released their greatest hits to celebrate the twentieth, twenty-fifth, or even fiftieth anniversaries of the music's release.[48] An extended re-recording clause has the effect of preventing artists from celebrating, re-recording, and revitalizing some of the most important music of their careers. The contract term is thus becoming especially problematic in an age where a musician's career can be particularly short but can even be problematic for those who have had notoriously long careers as well.

Finally, from a creative standpoint, re-recording clauses inhibit artistic expression and the free flow of ideas, the promotion of which is explicitly rooted in the Constitution. Article I, Section 8, Clause 8 of the United States Constitution grants Congress the power to "promote the progress of science and useful arts" by securing exclusive rights to authors and inventors for limited times.[49] At the core of the Intellectual Property Clause is the promotion of the arts and incentivization of creativity, invention, and innovation. Congress enacted the Copyright Act

---

[46] Tilghman, *supra* note 5, at 414.
[47] Allison Rapp, *Take Two: Artists Who Re-Recorded Their Music*, ULTIMATE CLASSIC ROCK (Sep. 28, 2023), https://ultimateclassicrock.com/artist-re-recorded-music/; Robert Baird, *New Music from Johnny Cash & Paul McCartney*, STEREOPHILE (Aug. 27, 2024), https://www.stereophile.com/content/new-music-johnny-cash-paul-mccartney.
[48] *Id.*
[49] U.S. Const. art. I, § 8, cl. 8.

under the authority of the Intellectual Property Clause.[50] Under 17 U.S.C. § 101, the purpose of copyright law is to encourage creation of more works that contribute to public knowledge and culture.[51] Re-recording clauses, in their effect, result in the opposite because they are specifically designed to reduce the amount of sound recordings of a particular song.[52] They can apply to music and masters that have never been released, therefore restricting the dissemination of new musical works and ideas.[53]

The contract term stifles artistic expression by preventing artists from releasing different artistic interpretations of previously released songs and reaching new audiences.[54] For instance, Taylor Swift's re-recorded albums are more than just exact copies of her old songs—they serve a different purpose and they have taken on a different meaning from their original counterparts.[55] In addition to representing the reclamation of her music, Swift's re-recorded albums have showcased her vocal maturity, improved production quality, and include "vault tracks"—songs that were previously unreleased and did not make the cut on the original album.[56] These vault tracks also include collaboration and features with other artists, allowing Swift to re-release old, unreleased music with new twists and creative dimensions.[57]

---

[50] 17 U.S.C. § 101 (2024).
[51] *Id.*
[52] Tilghman, *supra* note 5, at 417.
[53] Tavern, *supra* note 21.
[54] *Id.* at 415.
[55] Lilli Libowitz, *"1989 (Taylor's Version)" is so much more than a re-recording*, THE LION'S TALE (Nov. 1, 2023), https://lionstale.org/12729/ae/1989-taylors-version-is-so-much-more-than-a-re-recording/.
[56] *Id.*; Zagari, supra note 5 ("Musicologists have found that Swift's re-records showcase a change in her voice through time, including a more 'breathy, chest-driven singing'; this new vocal change in her re-records may have a different appeal t0 fans than the original albums.).
[57] Jason Lipshutz, *Taylor Swift's 'Taylor's Version' Songs: Every 'From The Vault' Track Ranked (So Far)*, BILLBOARD (Nov. 2, 2023), https://www.billboard.com/lists/taylor-swift-taylors-version-songs-ranked-from-the-vault/babe/.

In addition to the content and quality of the re-recordings being different, so is the makeup of her fanbase—take myself for example. When Swift originally released her album, Fearless, I was nine years old. When she released Fearless (Taylor's Version), I was twenty-one years old. Her re-releases are different not just in their content, but in the context in which they are being released. The element of time plays a role in how audiences and fans interact with and interpret art, and Swift has creatively and financially benefited from the ability to revisit her creative works over time.[58] Re-recording clauses, especially those of an increasingly long length, inhibit artists from combing the old with the new, and from sharing their ideas and interacting with fans over the course of time. These restrictions are therefore at odds with the purpose of copyright law.

Re-recording clauses negatively impact musicians both in the legal and artistic sense. The problems posed by these clauses of course invoke the inevitable question: what should artists do? While there is certainly more than one answer to this question, this Article focuses upon one potential solution—the interpretation of contract law.

III. RE-RECORDING CLAUSES AS AN UNFAIR RESTRAINT OF TRADE AND VOID AS A MATTER OF PUBLIC POLICY

Part II of this article posits that re-recording clauses should be deemed void ab initio as a matter of public policy. Because the public policy concerns posed by re-recording clauses mirror the concerns that courts and legislatures have already recognized in non-compete agreements, I argue that courts should treat re-recording clauses similarly to non-compete agreements.

[58] Vrinda Jagota, *The Mastery of Swift's Re-Recordings (Taylor's Version)*, CHARTMETRIC (February 14, 2024) https://hmc.chartmetric.com/master-swift-rerecord-taylors-version/ ("Her changes in aesthetic, sonic direction, and persona with each new album have given listeners countless access points to relate to her music. Through the re-record project, she has returned these eras from a new, adult perspective. Listeners can reflect on how she has changed while still revisiting all the moments that made her who she is now.").

This section begins by discussing the similarities between re-recording clauses and non-compete agreements and argues that both serve as restraints on trade and competition. The section then proceeds to discuss how courts have assessed the enforceability of non-compete agreements, with sources that specifically focus on California and Tennessee, due to each state's prominence in the entertainment industry. California has outlawed non-compete agreements altogether, while Tennessee courts increasingly disfavor non-compete agreements and scrutinize them for reasonableness.[59] This section posits that re-recording clauses should be void ab initio as a matter of public policy for the same reasons that courts have struck down non-compete agreements. In the alternative, I argue that courts should assess re-recording clauses on a case-by-case basis by analyzing the reasonableness of factors such as time, territory, and scope.

A. *Re-Recording Clauses and Non-Compete Agreements as Restraints on Trade and Competition*

There are multiple parallels in the structure and impact of re-recording clauses that render them similar to non-compete clauses. A non-compete agreement, or covenant not to compete:

> is an agreement where one party promises not to engage in conduct that would increase competition for the other party for a specific period of time. This conduct can include divulging trade secrets or even privileged information obtained while working under that employer or entering employment with the employer's direct business competitor."[60]

While non-compete agreements can differ in time, territory, and scope, all non-compete agreements ultimately serve the purpose of "forbid[ding] competition by a departing employee

[59] Office of Governor Gavin Newsom, *California Remains the World's 5th Largest Economy*, OFFICE OF THE GOVERNOR (last visited Apr. 3, 2025), https://www.gov.ca.gov/2024/04/16/california-remains-the-worlds-5th-largest-economy/; S.B. 699, 2023–2024 Leg., Reg. Sess. (Cal. 2023), https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202320240SB699; Edward Phillips, *Non-Compete Agreements: It's Not All About You, Employers*, 46 TENN. B.J. 33, 33 (2010).

[60] *Noncompetition Agreement*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/noncompetition_agreement (last visited Apr. 2, 2025).

against the former employer for some set period of time."[61] Employers utilize non-compete clauses across a broad range of disciplines including technology and engineering, sales and business development, finance and accounting, healthcare, marketing, and content creation.[62] "Post-term noncompete clauses in the entertainment industry are not common but might include provisions forbidding an actor from working in a production associated with a rival television network or film studio."[63]

While standardized non-compete agreements are less prevalent in the entertainment industry, re-recording clauses have similar, non-competitive effects.[64] Re-recording clauses in record label contracts ultimately achieve the same two outcomes that non-compete agreements do: (1) they restrict an employee from engaging in a particular type of conduct for a specified period of time, and (2) they prevent competition that would potentially result from an employee engaging in that conduct.[65] By preventing artists from re-recording particular songs, record labels

---

[61] Charles Tait Graves, *Analyzing the Non-Competition Covenant as a Category of Intellectual Property Regulation*, 3 HASTINGS SCI & TECH. L. J. 69, 72 (2011); *Non-Compete Clauses in Employment and Commercial Contracts*, BLOOMBERG L., https://pro.bloomberglaw.com/insights/contracts/non-compete-clauses-in-employment-and-commercial-contracts/ (Aug. 9, 2023) (providing the sample language of a non-compete clause including: [Section #] Noncompetition. Employee shall not, during Employee's employment with Employer and for a period of [twelve (12) months] following the termination of Employee's employment, whether such termination is voluntary or involuntary and regardless of the reason for the termination, [in any geographic region for which Employee had direct or indirect responsibility on behalf of Employer,] perform duties or services for a Direct Competitor, whether as an employee, consultant, principal, advisor, board member, or any other capacity, that are substantially similar to the duties or services Employee performed for Employer at any time during the last [twelve (12) months] of Employee's employment with Employer, or that require Employee to use, disclose, or otherwise take advantage of any Proprietary Information obtained in the course of Employee's employment with Employer. For purposes of this section, a Direct Competitor means any entity that offers or plans to offer products or services that are materially competitive with any of the products or services being manufactured, offered, marketed, or are being actively developed by Employer as of the date Employee's employment with Employer ends.")

[62] Amber Boyd, *Top 5 Professions Most Likely to Require Employee Non-Competes*, AMBER BOYD L., https://www.amberboydlaw.com/top-5-professions-most-likely-to-require-employee-non-competes (last date visited Apr. 2, 2025).

[63] Katarina Ulich, *Defining the Relationship: California's Noncompete Laws and Exclusivity in the Acting Industry Leading Up to the 2023 SAG-AFTRA Strike*, 97 S. CAL. L. REV. 1087, 1112 (2024), https://southerncalifornialawreview.com/2024/08/04/defining-the-relationship-california8217s-noncompete-laws-and-exclusivity-in-the-acting-industry-leading-up-to-the-2023-sag-aftra-strike/.

[64] *Id.* at 1090.

[65] Grant R. Garber, *Other Developments in Intellectual Property: Noncompete Clauses: Employee Mobility, Innovation Ecosystems, and Multinational R&D Offshoring, © 2013 Grant R. Garber.*, 28 BERKELEY TECH L. J.

are in effect restricting the post-employment conduct of musicians in the same way that non-compete agreements restrict the post-employment conduct of employees. A non-compete agreement that prevents an engineer from engaging in particular projects with an employer's direct competitor is functionally similar to a re-recording clause that prevents an artist from recording a particular song with another record label.

Re-recording, like non-compete agreements, also eliminate competition.[66] Record labels employ re-recording clauses "to prevent an artist from undercutting the label's profitability in its sound recording. Re-recording clauses, or re-recording restrictions, stop an artist from re-recording music they made while under a record label so that the record label can exploit its exclusive rights in the sound recording."[67] In a similar vein, non-compete agreements also limit competition by restricting worker mobility and employment opportunities.[68] Non-competes have the effect of preventing competition between employers by restricting worker options, similarly to how re-recording clauses have the effect of preventing competition of other sound recordings by limiting an artist's options to re-record.

Thus, although non-compete clauses apply more broadly to a range of employment sectors, there are stark parallels between non-compete agreements and re-recording clauses both in form and in function—both clauses restrict post-employment conduct, and both clauses prevent unwanted competition on behalf of employers. Non-compete agreements often restrict an employee from "activities involving services or products which compete, directly or indirectly"

1079, 1095 (2013) ("An employment-context covenant not to compete is a clause in an employment contract that expressly forbids an employee from competing with their employer upon termination.").
[66] Tavern, *supra* note 21.
[67] Tilghman, *supra* note 5, at 410-11.
[68] Rob Meyer, *Effectively Utilizing The Sherman Act to Address the Anticompetitive Use of Non-Compete Clauses in Tennessee Labor Contracts*, 16 TENN. J. L. POL'Y 34, 34 (2023).

with the employer.[69] Within the context of record label contracts, re-recordings constitute a service or product that competes directly with the original master recording owned by the record label. Thus, because these clauses operate similarly, this Article posits that courts should evaluate them similarly when analyzing the term's enforceability.

B. *Re-Recording Clauses as Void Ab Initio in the Interest of Public Policy*

While non-compete, clauses have been heavily litigated, re-rerecording clauses have not. Due to their similarities, however, an assessment of the legal treatment of non-compete agreements can inform how courts should approach re-recording clauses. Re-recording clauses should be found void against public policy, just as non-compete agreements have in recent times. In the alternative, courts should scrutinize re-recording clauses by assessing the term's reasonableness in time, territory, and scope.

United States contract law has recognized that the freedom to contract is not without limits.[70] Both artists and labels have a broad freedom to bargain for terms favorable or unfavorable to them, however, this freedom can be limited by public policy concerns.[71] In some instances, courts have "generally voided entire contracts or particular contract provisions if they are deemed to be void ab initio as against public policy."[72] Non-compete agreements are an example of this public policy limitation.[73] States differ in their treatment of non-compete

[69] *Employment Agreement,* § 8.1, TMSR HOLDING CO., LTD. (Mar. 31, 2015), https://contracts.justia.com/companies/tmsr-holding-co-ltd-5207/contract/52702/#clause-id-88905.
[70] Tilghman, *supra* note 5, at 414 (citation omitted).
[71] *Id.* at 414 ("The record labels' freedom to contract should not be inhibited because of an artist's failure to do their own due diligence before entering an agreement. The Freedom to contract, however, 'is not absolute.'")
[72] *Id.* at 413.
[73] *State Noncompete Law Tracker*, ECONOMIC INNOVATION GROUP (last visited April 3, 2025), https://eig.org/state-noncompete-map/ ("Noncompetes are currently governed at the state level, and as a growing body of research shows that noncompetes suppress wages, reduce job mobility, and stifle innovation, states are moving rapidly to restrict them.").

agreements, however there has been a general trend in disfavoring non-compete agreements and approaching them with legal apprehension.[74]

In April 2024, the Federal Trade Commission announced a final rule banning noncompete agreements nationwide.[75] Federal Trade Commission Chair, Lina M. Khan, in announcing the ban, stated that "[n]oncompete clauses keep wages low, suppress new ideas, and rob the American economy of dynamism…The FTC's final rule to ban noncompetes will ensure Americans have the freedom to pursue a new job, start a new business, or bring a new idea to market."[76] Shortly after the FTC's announcement, a district court issued an order stopping the FTC from enforcing the ban.[77] While the FTC's rule is still pending appeal, it nonetheless speaks to the increasingly negative attitudes towards non-competes and their restraint of trade and employment opportunities. Four states have banned non-compete agreements in their entirety, while thirty-three states have enacted legislation restricting non-competes in some capacity.[78]

Among the four states that have banned non-compete agreements, California, home to the fifth largest economy in the world and a beacon for entertainment, is one of them.[79] Senate Bill No. 699, enacted in 2023, declares that "every contract that restrains anyone from engaging in a lawful profession, trade, or business of any kind is, to that extent, void, except under limited statutory exceptions."[80] The California statute refers not just to non-compete clauses, but also broadly to "other contract clauses" involving restraint to pursue one's profession."[81] California's

---

[74] *Id.*
[75] *FTC Announces Rule Banning Noncompetes,* FEDERAL TRADE COMMISSION (Apr. 23, 2024), https://www.ftc.gov/news-events/news/press-releases/2024/04/ftc-announces-rule-banning-noncompetes.
[76] *Id.*
[77] *Id.*
[78] *State Noncompete Law Tracker*, *supra* note 73.
[79] Officer of Governor Gavin Newsom, *supra* note 59.
[80] S.B. 699, 2023–2024 Leg., Reg. Sess. (Cal. 2023), https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202320240SB699.
[81] *Id.*

ban on non-competes is thus a more broad restriction on an employer's ability to limit a former employee's future employment options.[82]

Under the language of S.B. 699, re-recording clauses should fall within this category of "other contract clauses" that restrain an individual's ability to pursue their profession.[83] Like non-competes, re-recording clauses "favor[] anticompetitive employers over innovative departing employees."[84] The same public policy concerns that California, and the FTC, have cited in their reasoning for banning non-compete agreements are at play in re-recording clauses—restrictions on post-employment conduct, the limiting of an employee's ability to pursue one's legal profession, and the stifling of economic competition.[85]

While no court has extended their analysis of non-compete agreements to re-recording clauses, individuals have increasingly begun to criticize restrictive contract clauses more broadly in the entertainment industry, and have recognized some of the intersections between non-compete agreements and intellectual property right.[86] One law review article has posited that California's non-compete agreement ban should extend to post-term and in-term exclusivity provisions that prevent actors and actresses from working elsewhere during and after the term of their employment.[87] The article points to the similarity between non-compete agreements and exclusivity provisions, noting that exclusivity clauses "hinder competition by restricting the free movement of talent and ideas."[88]

---

[82] *Id.*
[83] *Id.*
[84] Graves, *supra* note 61, at 71.
[85] Federal Trade Commission, *supra* note 75; S.B. 699, 2023–2024 Leg., Reg. Sess. (Cal. 2023), https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202320240SB699.
[86] *See generally* Ulich, *supra* note 63; Garber, *supra* note 65; Graves, *supra* note 61.
[87] *See generally* Ulich, *supra* note 63, at 1093.
[88] *Id.* at 1090.

Other articles have also recognized the negative impact that non-compete agreements can have on the ideals that drive intellectual property law.[89] While courts have rarely placed non-compete agreements within the category of intellectual property law regulation, doing so reveals a number of additional public policy concerns—namely restrictive covenants, by incentivizing monopolies, restrict "the use of non-secret, public domain information" and restrain employees.[90] Employers often justify their non-compete agreements as protection of their intellectual property, however, non-competes can function as a "crude overprotection" that instead stifles creativity and the free-flow of ideas.[91] Non-competes, rather than protecting intellectual property, "negatively affect[] the development of innovation ecosystems."[92] Re-recording clauses similarly function as a "crude overprotection" of a label's master rights by restricting artists from using "non-secret, public domain information"—songs that already exist in the public domain.[93]

Thus, courts should strike down re-recording clauses as void ab initio because they implicate the same public policy concerns as non-compete agreements. Re-recording clauses restrict post-employment behavior, stifle competition, and interfere with an artist's ability to lawfully pursue their profession. Furthermore, these clauses are at odds with the overarching policy goals of intellectual property law—namely, the free flow of ideas and the incentivization of artistic creation.[94] The FTC and the state of California have both broadly recognized that anti-competitive contract terms stifle job mobility, suppress wages and advancement, and inhibit the

[89] *See generally* Garber, *supra* note 65; Graves, *supra* note 61.
[90] Garber, *supra* note 65, at 69 (stating that "[t]he employee non-competition covenant is a category of intellectual property regulation, but it is rarely recognized as such" and that "when we examine such covenants as a category of intellectual property regulation, they do not meet the criteria that commonly justify intellectual property laws.").
[91] *Id.* at 69, 70.
[92] Garber, *supra* note 65, at 1081.
[93] Graves, *supra* note 61, at 70.
[94] U.S. Const. art. I, § 8, cl. 8; 17 U.S.C. § 101 (2024).

freedom of workers to change jobs.[95] Because these same concerns are prevalent in re-recording clauses, this same logic should be extended in finding that re-recording clauses that prohibit an artist from re-recording beyond the duration of their record label contract are void as a matter of public policy.

C. *Scrutinizing the Time, Territory, and Scope of Re-Recording Clauses*

Even if courts determine that re-recording clauses are not void ab initio, they should still be scrutinized in time, territory, and scope. Because non-compete agreements are mostly regulated by state law, states that do permit non-compete agreements take different approaches to assessing enforceability.[96] Despite various nuances across jurisdictions, most states assess non-compete clauses for reasonableness "by balancing the legitimate interests of the employer that deserve protection" with "the legitimate interest of the employee to earn a living" and "the legitimate interest of the public in having such a former employee's service available in a different employment context."[97] A court will typically "find post-employment restrictions excessive and thus unreasonable and unenforceable if the restriction is broader in either scope of activity or space or time than is necessary to protect a legitimate business interest of the employer."[98] Furthermore, if the restraint has as its purpose nothing more than the prevention of competition, a court will not enforce it.[99] Courts have recognized protectable employer interests such as protection of confidential information, preventing solicitation of an employer's active customers, and protecting the goodwill of the business.[100]

---

[95] Federal Trade Commission, *supra* note 75; S.B. 699, 2023–2024 Leg., Reg. Sess. (Cal. 2023), https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202320240SB699.
[96] *State Noncompete Law Tracker*, *supra* note 73.
[97] 1 *Corbin on Contracts* § 80.08 (Desk ed. 2025).
[98] *Id.*
[99] *Id.*
[100] *Id.*

As record labels attempt to extend the length of re-recording clauses, courts, if presented with the task of assessing the clause's enforceability, should assess the clause's temporal scope for reasonableness. "The duration of a former employee's covenant not to compete or solicit clients must be narrowly tailored to fit the employer's interest to be protected by the restraint."[101] There is no bright-line rule as to the reasonableness of duration, and the inquiry is context specific in nature.[102] Applying this reasonableness framework to the extended duration of re-recording clauses suggests that a prohibition for a period of ten, fifteen, thirty, or more years, is most likely not narrowly tailored to fit a legitimately recognized employer interest.[103] Mere desire to prevent the competition of another sound-recording is most likely not enough to establish a protectable business interest, particularly because a court would not consider a song to contain "confidential" information.

Even if a court were to recognize a label's master rights in a particular sound recording as a protectable business interest, it is unlikely that an extended re-recording clause is narrowly tailored to protect this interest. While it is certainly understandable that a label would want to prevent an artist from re-recording a song with a competitor for the duration of that artist's contract with the label, a court should closely scrutinize re-recording clauses that prohibit such conduct beyond the duration of the artist's contract. Courts should assess re-recording clauses for temporal reasonableness just as they assess non-compete agreement for reasonableness—by

[101] *Id.*
[102] *Id.*
[103] *See also* 17 U.S.C. § 203, *supra* note 31. Being that Congress has provided authors with a right to reclaim their copyrighted work after a period of thirty-five years, § 203, at minimum, broadly supports the contention that any re-recording clause beyond thirty-five years is unreasonable.

balancing the protectable business interests of the employer against the interests of the employee and general public.[104]

This same reasonableness framework should also apply to the geographic scope of the clause. Most re-recording clauses ban re-recording of a particular work completely, and do not provide limitations as to geographic scope. Courts should similarly scrutinize the breadth of these clauses to determine whether a blanket restriction on re-recording is necessary to protect a record label's interest.

Thus, even if courts do not find re-recording clauses to be void ab initio, courts should assess the reasonableness of these clauses in time, territory, and scope due to the restrictions that these clauses place on artists and their ability to pursue their profession. Re-recording clauses that are longer in time restraints are more likely to be unreasonable because they are more likely to not be narrowly tailored to protect a record label's business interests. Applying the reasonableness framework of non-compete agreements to re-recording clauses can mitigate the overprotective and anticompetitive effects of the clause by requiring record labels to narrowly tailor re-recording clauses to protect legitimate business interests.

IV. UNCONSCIONABILITY DOCTRINE & RE-RECORDING CLAUSES

In addition to public policy grounds, unconscionability doctrine can also potentially serve as a tool for musicians to challenge the enforceability of re-recording clauses. Unconscionability refers to a contract term "so unfair or unjust that it shocks the conscience."[105] Under the Restatement (Second) of Contracts, "[i]f a contract term thereof is unconscionable at the time the

[104] *Id.*
[105] *Unconscionable*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/unconscionable (last visited Apr. 2, 2025).

contract is made a court may refuse to enforce the contract, or may enforce the remainder of the contract without the unconscionable term, or may so limit the application of any unconscionable term as to avoid any unconscionable result."[106]

While states differ in what constitutes an unconscionable contract provision or contract, most jurisdictions look to both procedural and substantive unconscionability.[107] Procedural unconscionability refers to the fairness of the "contract formation process."[108] Substantive unconscionability considers the content of the contract term itself.[109] Courts differ in how they balance procedural and substantive unconscionability—"some require a fixed degree of both kinds of unconscionability" while others "assess unconscionability on a 'sliding scale,' allowing a significant degree of one kind of unconscionability to compensate for a lesser degree of the other."[110]

This section begins by focusing on unconscionability doctrine in the state of California due to the state's prominence in the entertainment industry. The Article then goes on to argue potential reasons as to why re-recording clauses in individual record label contracts may be procedurally and substantively unconscionable.

A. *Unconscionability Doctrine in California*

California is among the increasing number of jurisdictions that take a sliding scale approach to unconscionability.[111] California decides more unconscionability claims than any

[106] *Restatement (Second) of Contracts* § 208.
[107] David Beglin, *Sliding Scales of Justice? An Analysis of California's Approach to Unconscionability*, 112 CALIF. L. REV. 1781, 1784 (2024).
[108] *Id.*
[109] *Id.*
[110] *Id.*
[111] *Id.* at 1784-85.

other state.[112] A large majority of California's unconscionability cases involve arbitration clauses, however the doctrine has also been used to challenge "price terms, interest rates, penalty clauses,…forum selection clauses, limitations on remedies, and provisions that allow parties to unilaterally terminate a contract."[113] Under California Civil Code section 1668:

> (a) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.
>
> (b) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose, and effect to aid the court in making the determination.[114]

In the recent case *OTO, L.L.C. v. Kho*, the California Supreme Court struck down an arbitration agreement on the basis of almost solely procedural unconscionability.[115] The case marked "the first time" that the California Supreme Court invalidated a contract for primarily procedural reasons.[116] The court's focus on procedural unconscionability, namely, "the adhesive nature of the agreement, the vulnerability of the worker to his employer, the way the employer burdened the worker in how it presented the agreement, and the contract's complex language and prolix text[,]" suggests that California has shifted toward the sliding scale model of assessing unconscionability: the more procedural unconscionability there is, the less substantive unconscionability is needed to render a contract term unconscionable.[117]

---

[112] *Id.* at 1784.
[113] *Id.* at 1783.
[114] *Cal. Civ. Code* § 1668.
[115] Beglin, *supra* note 107, at 1795.
[116] *Id.*
[117] *Id.* at 1795-96 (citing *OTO, L.L.C. v. Kho*, 8 Cal. 5th 111, 251 Cal. Rptr. 3d 714, 447 P.3d 680 (2019)).

A recent 2020 study regarding unconscionability claims in federal and state courts has identified common procedural characteristics in successful unconscionability claims.[118] Namely, the study noted the following common characteristics: [119]

(1) That the party alleging unconscionability was described as a natural person
(2) The party claiming unconscionability not being represented by counsel in negotiations
(3) Inequities in bargaining power between the parties
(4) That the party alleging unconscionability was described as vulnerable in some way (weakened mental capacities, being in an emotionally vulnerable state, being particularly susceptible to undue influence, or economic status)
(5) The presence of standardized, preprinted form contracts

The study also pointed to common substantive characteristics in successful unconscionability claims.[120] The article noted that most successful unconscionability cases concerned the agreement to arbitrate, price or value terms, and forum selection clauses.[121]

Unconscionability cases challenging music-industry contracts are rare.[122] However, these common characteristics of procedural and substantive unconscionability are prevalent in record label contracts and extended re-recording clauses.

B. *Procedural Unconscionability in Record Label Contracts*

Record label contracts often include elements of procedural unconscionability: namely, inequities in bargaining power, vulnerability of a contracting party, sometimes a natural person, and presence of standardized adhesion contracts.[123] With regard to unequal bargaining power, it

[118] Brian M. McCall, *Demystifying Unconscionability: A Historical and Empirical Analysis*, 65 VILL. L. REV. 773, 801-05 (2020).
[119] *Id.*
[120] *Id.*
[121] *Id.* at 806.
[122] Phillip W. Hall Jr., *Smells Like Slavery: Unconscionability in Recording Industry Contracts*, 25 HASTINGS COMM. & ENT. L. J. 189, 191 (2002).
[123] McCall, *supra* note 118, at 801-05.

is well known in the music industry that "labels have used their overwhelming bargaining strength to force artists into standard industry contracts that are clearly oppressive and unjust."[124] Even where both parties are represented by counsel, as is typically the case in major record label contracts, oftentimes, "a band has no option but to sign with a major label if the band wants to achieve any commercial success."[125]

This lack of "reasonable alternatives" and the significant leverage of big-name record labels contributes to why re-recording clauses and other inequitable contract terms so frequently appear in standardized record label contracts in the first place.[126] Because of the importance of the clause, "labels might only be willing to reduce the length by a year, or at most two. And often for the artist, there are bigger issues to contend with during negotiations."[127] With only so much leverage, musicians can only negotiate the terms of standard industry contracts so much.[128]

In her recent Grammy acceptance speech, Chappell Roan highlighted some of the inequities in power between record labels and artists that can drive procedural inequity in contract negotiations.[129] Chappell Roan spoke of her own personal experience of signing with a label as a minor, during the pandemic, struggling to find a job, and unable to afford health insurance.[130] In her speech, Roan particularly demanded that labels "profiting millions of dollars off of artists" offer livable wages and health care coverage for developing artists.[131] Her

[124] Hall Jr., *supra* note 122, at 190.
[125] *Id.* at 202.
[126] *Id.*; Tilghman, *supra* note 5, at 414.
[127] Tavern, *supra* note 21.
[128] *Id.* (noting that "often for the artist, there are bigger issues to contend with during negotiations. Once a contract is on the table, they and their team might decide they aren't willing to expend any leverage trying to change language that they might not every have to deal with.).
[129] Kathleen Walsh, *Chappell Roan Grammys Speech: Read Her Inspiring Best New Artist Acceptance Speech*, GLAMOUR (Feb. 2, 2025), https://www.glamour.com/story/chappell-roan-grammys-2025-acceptance-speech.
[130] *Id.*
[131] *Id.*

acceptance speech is but one example of young, struggling artists who negotiated the future of their careers with multi-million dollar, well-staffed, and fully equipped record labels.

This dependency on record labels is further evidenced in artists' struggles to profit from their record deals—according to a 2014 article published by Berklee College of Music, "as much as 96 percent of the artists on a major-label roster never recoup. The major-label business model is set-up such that less than 4 percent of the artists on their roster recoup and bring in enough money to carry the rest of the label's artists."[132] Standardized industry contracts are set up so "that a label can make a profit off an album, while the artist is left indebted to the label on the very same album."[133]

Thus record-label contracts inherently have qualities of procedural unconscionability—namely, inequities in bargaining power, vulnerability of a contracting party, and standardized forms and practices of adhesion. The inherent structure of record label contract negotiations, which allows labels to profit at the expense of artists, weighs in favor of a finding of unconscionability. Furthermore, as unconscionability is a fact intensive inquiry, individual artists can also potentially point to fact specific circumstances that render negotiations of the contract unfair.

C. *Substantive Unconscionability in Record Label Contracts and Re-recording Clauses*

Extended re-recording clauses, as well as other standardized clauses in record label contracts, can also contain elements of substantive unconscionability. With specific regard to re-recording clauses, the longer the duration of a re-recording clause, the more closely the term

[132] Nils Gums, *Financials and the Contemporary Artist,* BERKLEE (Oct. 1, 2014), https://www.berklee.edu/berklee-today/fall-2014/financials-and-the-contemporary-artist.
[133] Hall Jr., *supra* note 122, at 190.

crosses the line of unconscionability. A re-recording clause that restricts an artist from re-recording their own music in perpetuity is of a grossly unfair nature that can "shock the conscience." The longer the duration, the more likely the term is "harsh, unfair, oppressive, or unduly favorable to one of the parties."[134]

Other contract provisions, when read in conjunction with an extended re-recording clause, can also support a court's finding of unconscionability, even potentially rendering the contract unenforceable in its entirety.[135] Some examples of other standardized and unduly favorable contract terms can include:

(1) Royalties for foreign sale;
(2) Prohibition of punitive damages, costs, or termination of contract;
(3) Auditing of royalties;
(4) Copyright ownership;
(5) Term of contract;
(6) Denial of a key-man provision; and
(7) Conduct in the event the label undergoes a merger, acquisition, or dissolution.[136]

These terms, when read in relation to one another, can demonstrate the inherent harshness, unfairness, and oppression of the contract in its entirety, supporting a finding of substantive unconscionability. If a record label contract includes an unduly harsh re-recording clause in addition to other unduly favorable contract terms, the record label contract, in its totality, can be found "harsh, unfair, oppressive, or unduly favorable to one of the parties," and thus, substantively unconscionable.[137]

---

[134] *Id.* at 195.
[135] *See Restatement (Second) of Contracts* § 208 ("If a contract or term thereof is unconscionable at the time the contract is made a court may refuse to enforce the contract, or may enforce the remainder of the contract without the unconscionable term, or may so limit the application of any unconscionable term as to avoid any unconscionable result.")
[136] Hall Jr., *supra* note 122, at 206-20.
[137] *Id.* at 195.

Thus, while unconscionability is fact specific and requires a jurisdiction-specific balancing of both procedural and substantive deficiencies, the nature, structure, and power imbalances inherent in music industry contracts are indicative of both procedural and substantive unconscionability. Unconscionability doctrine can be another avenue by which artists can seek to strike, either the entirety of the contract, or particular contract terms that a court deems unconscionable.

CONCLUSION: CONTRACT LAW AS POWER

To conclude, re-recording clauses have caused multiple problems for artists, ranging from restrictions on legal rights to restrictions on musical creativity. The post-employment restrictions that re-recording clauses impose, along with the anti-competitive impact that the clause has, likens re-recording clauses to non-compete agreements. Because re-recording restrictions implicate the same public policy concerns as widely disfavored non-compete agreements, re-recording clauses should be deemed void ab initio as a matter of public policy. Even if courts are hesitant to deem all re-recording clauses as void, at minimum, courts should determine the reasonableness of re-recording clauses by scrutinizing them in time, territory, and scope. The approaches that states have taken to assess the reasonableness of non-compete agreements can guide courts in their assessment of re-recording clauses.

In the alternative, unconscionability doctrine can also serve as a tool for artists to challenge a specific re-recording clause or the structure of their entire record label contract. The disproportionate bargaining power combined with the unduly long duration of extended re-recording clauses indicates elements of both procedural and substantive unconscionability. These re-recording clauses, if read in conjunction with other oppressive and unfair contract terms, can even potentially render an entire record-label contract unconscionable.

This Article's application of contract law doctrine to re-recording clauses and record label contracts inevitably prompts the question of why courts have not assessed the legality of these clauses before. The answer is further indicative of why public policy and unconscionability doctrine can help correct power imbalances in the music industry.

The lack of litigation pertaining to re-recording clauses reflects the reality that many artists lack the resources to sue, and labels typically settle claims when artists do pursue litigation.[138] Artists tend to accept settlements and renegotiated contracts in lieu of challenging their contract's enforceability "because the cost both financially and to their careers make litigation unpalatable."[139] The very power imbalances that perpetuate re-recording clauses are what also simultaneously prevent their legality from being litigated in court.

However, if there is any era for re-recording clauses to have their day in court, it is now. The record-breaking success of Taylor Swift's re-recordings, in tandem with the rising rejection of non-compete agreements nationwide, suggests that courts can potentially set powerful precedent, based on already existing contract law principles, that can shape the future of the music industry. While not every artist can afford to take their record labels to court, Taylor Swift is one example of the power and influence that one single artist can have in shaping artists' rights.

Litigating the legality of re-recording clauses is by no means an end-all solution—but it could be the start of a new era.

[138] *Id.* at 191.
[139] *Id.*