

## OWNING YOUR MASTERS (TAYLOR'S VERSION)

### Postfeminist tactical copyright and the erasure of Black intellectual labor

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Taylor Swift is having a good run. Her re-releases of *Fearless* and *Red* generated impressive sales and critical praise, as did her new releases of *folklore* and *evermore*. From red velvet wedding cakes to viral Jake Gyllenhaal memes, it is hard to imagine how Swift's presence in the American popular cultural lexicon could be stronger. Though some critics have heralded the arrival of a remade and more "mature" Taylor Swift, others claim "Taylor Swift Knew Everything When She Was Young."<sup>2</sup> The mere fact of this debate highlights a notable turn: Taylor Swift has more fans than ever,<sup>3</sup> on account of her music and now her politics. Though scholars and activists have long critiqued the talented Swift for engaging in neoliberal post-feminist politics that reinforce racial divides,<sup>4</sup> her new battle has earned her respect even among skeptics.<sup>5</sup> This is not terribly surprising. As Sarah J. Jackson observes, audiences and critics have become increasingly obsessed with the political platforms of celebrities,<sup>6</sup> including the inimitable Swift. This chapter turns a critical eye to one aspect of Swift's newfound popularity: her decision to draw on (white) feminism to take a stand against record company economic exploitation and gender discrimination by rerecording and rereleasing the first six albums in her catalog. I complicate the story that came out about Swift's struggle to "own her masters," by examining its racial implications against the larger backdrop of the "sonic color line"<sup>7</sup> and the structural inequalities that flow from it. In the following pages, I demonstrate how attending to race and gender can help illuminate the historical trajectories of the racial politics of ownership in the music industry and how Black feminist ethics have aided in reimagining copyright practices, even as they benefit white women.

In defining intersectionality and subsequently examining the benefits and costs that accrue from Swift's white femininity, I draw on Devon Carbado's elaboration of Kimberlé Crenshaw's work, Cheryl Harris' classic piece on "whiteness as property,"<sup>8</sup> and the developing area of critical race intellectual property (CRTIP),<sup>9</sup> an interdisciplinary body of scholarship and activism that examines and contests the racial inequalities in intellectual property law using critical race theory (CRT) as a starting point. Intersectionality is an important tool for CRTIP scholars because it highlights multiple forms of inequality in intellectual property law.<sup>10</sup> While it is an analytic that is often deployed to center the experiences of Black women, Carbado emphasizes that it is

useful in examining the intersections of *all* categories of identity with respect to oppression, not only Blackness and femininity. He observes that “[c]olorblind intersectionality refers to instances in which *whiteness* helps to produce and is part of a cognizable social category but is invisible or unarticulated as an intersectional subject position.”<sup>11</sup>

I interpret this as a call to understand how white femininity intersectionally *enables* certain types of (intellectual) property-based storytelling that effectually minimize, even erase, preceding histories of Black social protest. While Swift’s music industry moves are frequently treated in the popular press as novel and groundbreaking, I argue that they were made possible by three intersecting phenomena: 1) the persistent ownership protests of Black artists and activists, propelled by radical Black feminists, whose liberatory intellectual labor paved the way for famous musicians including Bessie Smith, Dionne Warwick, Ray Charles, Stevie Wonder, Prince, and Tina Turner to succeed in their daunting struggles to gain control over their masters; 2) the composition/recording distinction enshrined in the Sound Recording Act of 1971, that operates primarily to the benefit of white people; and 3) Swift’s postfeminist self-styling as an innocent and wholesome but flawed all-American singer-songwriter who is also a skilled entrepreneur. I coin the term *postfeminist tactical copyright* as a theoretical lens for understanding how and why some copyright interventions implicitly entrench the privileges associated with whiteness at the expense of people of color, frequently Black people, through invocations of (white) postfeminist and neoliberal capitalist rationales, e.g., narratives of individual fairness and carceral empowerment, as a means of pushing for material gains. These gains are not only frequently divorced from larger racial justice struggles because of their meritocratic emphasis on the individual as the site of struggle, they intentionally and unintentionally instrumentalize those moments of historical protest as stepping stones for success. In making this argument, I consider the narrative of feminist liberation that Swift has advanced in performances and interviews and on social media as well as media coverage of her and her master record controversy over the years.

*Ma Rainey’s Black Bottom* (2020) and *Cadillac Records* (2008), two films that call attention to the struggles Black artists faced in the music industry in the early to mid-1900s, particularly with respect to ownership rights, showcase that Black oppression and white success are often inversely related, with empathy for the dispossession of Black musicians rarely taking center stage in crafting copyright law or industry practice.<sup>12</sup> Swift’s white womanhood aids in marking her as an aggrieved party in a system of intellectual property protection that scholars such as Rebecca Tushnet, Sonia Katyal, and Ann Bartow have demonstrated is deeply sexist in its presumptions about the natures of creativity, culture, and property.<sup>13</sup> But it also marks her as a figure privileged by her race, gender, and class who builds her resistance on past labor invested in combatting exclusion, using methods that are steeped in liberal individualism and exploitative capitalism. Understanding the interconnectedness of her struggle with the struggles of those who came before, using the theoretical lens of intersectionality, is a necessary step in building more egalitarian copyright regimes. While scholars including Kevin J. Greene, Olufunmilayo Arewa, Madhavi Sunder, and Keith Aoki have discussed the racial politics of copyright law at length, they have largely focused on the dispossession that *people of color* have faced due to intersectional oppression and structural exclusion.<sup>14</sup> This chapter centers the *benefits* that accrue from white femininity, even in a copyright system that is biased against women of all identities, reading it in relation to the earlier and later struggles of Black artists to own their masters. It thus highlights the need for multifaceted contextual and relational approaches to intersectionality that sometimes focus on the privileges of whiteness, especially when considering celebrity, music, and property across matrices of domination.<sup>15</sup>

### 48.1 Taylor takes on industry

On April 9, 2021, Taylor Swift released the first of six rerecordings of albums that made her a star, beginning with her second, originally titled *Fearless* and now titled *Fearless (Taylor's Version)*. As with everything in the Swiftian universe, her choice is meaningful: she picked an album that speaks to her lack of fear as the lead release in a series through which she will advocate for her (intellectual) property rights. These new versions will all bear the phrase "Taylor's Version" in their titles, establishing a new subbrand of Swift's own music. The possessive in the title highlights the fact that Swift will own the copyrights for the sound recording masters ("masters") of these new releases unlike with the versions she released on Scott Borchetta's Big Machine Label Group. This is because Swift signed away the copyright to her masters in order to get a record deal, as is common in the music industry, while maintaining co-authorship rights in her musical compositions. Instead of trying to recover these sound recording masters from the two men that Swift has accused of industry bullying and sexual harassment, she has chosen to create and market a new product, i.e., rerecorded versions of her own musical compositions, branded as the same but different and (post) feminist "Taylor's Version."

In the United States, the separation of rights in sound recordings and musical compositions is deeply intertwined with the structural racism through which white people have advanced sonic racial capitalism and Black people were/are deprived of (intellectual) property rights. Copyright law in the United States originates with Article III of the Constitution, which affords Congress the power "[t]o promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries."<sup>16</sup> The federal legislative implementation of that language has been punctuated by intense cultural and political battles, including about the definition of the "sound recording" and its racial exclusions of those who did not own sheet music. Swift has only recently found herself in the middle of those battles, though she has previously received a great deal of attention in the media for her enactment of (white) feminist politics.<sup>17</sup> Her rerecordings represent a notable embrace of her younger self, the musician who wrote the music she now seeks to control. The *Atlantic's* Spencer Kornhaber lays out the stakes of the conflict:

[f]ans, radio DJs, TV producers, and anyone else who wants to use old Swift songs now have a choice of which versions to pick. By declining to substantively tweak her music, Swift minimizes the role of aesthetic preference in that decision. The question becomes: Do you support the person who sings and writes the songs you enjoy, or do you support her enemies?<sup>18</sup>

While I personally hear Taylor's Version of *Fearless* as musically quite distinct from the Big Machine version, Kornhaber's point is well taken: Swift's public commentaries on (intellectual) property ownership allowed her to enact a strategy of postfeminist tactical copyright.

Postfeminism is a term that race and media scholars have taken up in great depth, particularly in the context of celebrity. In its broadest sense, as Sarah Banet-Weiser, Catherine Rottenberg, and Rosalind Gill write, it can be understood as a feminist *sensibility* advanced through neoliberal capitalism and popular culture.<sup>19</sup> The term sensibility highlights that postfeminism operates as an evolving set of "ideas, images, and meanings,"<sup>20</sup> including "affect, public mood, atmosphere, or structure of feeling."<sup>21</sup> Postfeminism is about selling *more*, not less, and treating those sales as the path to attaining power as a woman. Julietta Hua echoes this, noting that "post-feminism lauded the difference of the female sex and advocated female (hetero)sexual difference as a source of women's power over men."<sup>22</sup> Yet she cautions that "the articulation of post-feminism offered by Naomi Wolf, Camille Paglia, Christina Hoff Summers, and others relies on national

and racial politics that remind us that feminisms are not, by virtue of being 'feminist,' supportive of oppositional politics."<sup>23</sup> This is because embrace of the post-feminist frequently also entails the embrace of "colorblindness" and "multiculturalism," in order to consolidate commodity value.<sup>24</sup> Postfeminism centers the (white) "feminine" at the expense of other markers of identity, e.g., race, class, and disability, as a means of creating broadly marketable human products. Erasing one's identity – or at least rendering it innocuous – is one way to achieve, as Ralina Joseph writes, the postfeminist goal to become "every woman who embodies a universal appeal because of her positioning as a liberal, democratic, colorblind subject."<sup>25</sup> In this neoliberal feminist context, Robin James persuasively contends, even resilience can be commodified. The refusal to be broken is a marketable consumptive object in itself.<sup>26</sup>

Swift embodies the postfeminist ideal in countless ways, including her capacity to sell records even when she is the subject of derision for her performative politics, romantic scorn, and racist actions. She is the queen of revenge and reinvention who refuses to be beaten. With these observations as the starting point, I seek to understand postfeminism as the lens through which she articulates her tactical goals in the context of copyright law, where tactical refers to the practice of strategically deploying "subject position as an access point"<sup>27</sup> for achieving larger goals. Tactical, as I use, it here connotes intentionality, though not maliciousness, as well as awareness of self-identity that facilitates both politics and performance in a given space, e.g., copyright negotiations. Swift's copyright struggles began as a teenager, when she entered the Nashville country music scene. The daughter of two financial professionals, she grew up in an idyllic part of Pennsylvania, on a Christmas tree farm that her father bought from a client. There she got involved in theater before learning to play guitar at age 12. Swift benefited from her father's ability to support her budding career as a country musician by transferring to Merrill Lynch's Nashville office when she was 14 years old. Borchetta signed Swift with his local indie label, Big Machine, two years after the move, in 2004, in exchange for assignment of rights to Swift's sound recording masters. This, of course, has been a common practice within the music industry since its beginnings in the early 20th century.<sup>28</sup> Then in 2019, Scooter Braun's Ithaca Holdings acquired Big Machine, including the exclusive rights to the masters of all of the work that Swift had recorded since her teens, or six albums.<sup>29</sup> That *Braun* purchased these rights was particularly galling to Swift, who accused him of engaging in a misogynistic bullying campaign against her.<sup>30</sup> She took to social media to express her disappointment and anger that he was now in a position to economically benefit from her artistic labor, without her permission or approval. Braun fired back, suggesting that Swift was being difficult and intransigent. He maintained that he had given her the opportunity to "buy back" her masters if she remained with Big Machine but that she refused to do so despite a purportedly generous offer.<sup>31</sup>

In late 2020, Braun flipped Swift's masters portfolio, along with other Big Machine holdings, selling them to private equity company, Shamrock Holdings, for \$300 million.<sup>32</sup> This move is part of a long history of buying and selling the rights in sound recordings and musical compositions,<sup>33</sup> the politics of which first became the subject of intense public debate in the US when Michael Jackson bought a 50 percent share of the ATV music catalog in 1985. Unlike Swift, who is seeking return of rights in her sound recordings because she already holds co-authorship rights in the musical compositions, Jackson purchased rights to the musical compositions that had been assigned to ATV. He thus gained control of the lucrative publishing rights attached to the catalog, which allowed him to control when and how the underlying compositions he owned were used, i.e., manufactured, performed, streamed, downloaded, and so on, as well as the royalties that flowed from those uses.<sup>34</sup> At the time, ATV owned the publishing rights to 251 Beatles' songs, which Jackson acquired for a mere \$47.5 million after Paul McCartney encouraged him to invest in other musicians' catalogs during their 1983 "Say Say Say" recording

session.<sup>35</sup> The royalties that Jackson earned from the purchase allowed him to remain solvent during the 1990s and 2000s, when he was spending money at a staggering rate. In 1995, a cash-strapped Jackson entered a deal with Sony to jointly manage the publishing rights. Sony finally purchased Jackson's share in 2016 for a then incredible \$750 million. The publishing rights in the 251 Beatles songs in the ATV catalog are now worth in excess of \$1B,<sup>36</sup> a number that will likely grow rapidly over the next decades.

## 48.2 Copyright law's racial exclusions

Historically speaking, conflicts over copyright ownership began long before Swift or Jackson.<sup>37</sup> "Race records," as 78-rpm phonographs featuring Black artist created blues, jazz, and comedy in the 1920s through the 1950s were called, entrenched a pernicious hierarchy between "Black art" and "white art" that facilitated the theft of Black music at the hands of white-owned record companies. Segregationist genre names, talent cultivation, and marketing practices treated Black art as taboo for mainstream audiences, thereby making it attractive for underground scenes. An intentionally cultivated narrative of disrespectability allowed white people to benefit from astronomical record sales and hipster cultural fetishism, what Eric Lott calls "love and theft,"<sup>38</sup> without fairly compensating or crediting Black creators for their compositions or masters. Kevin J. Greene's groundbreaking work has documented in detail how, as a result of the ongoing distinctions between "race" music and "white" music, Black musicians became the "invisible men and women of copyright jurisprudence,"<sup>39</sup> who were historically denied "compensation and recognition."<sup>40</sup> Their second-class intellectual property citizenship was built into the very structures of copyright law, resulting in systemic dispossession.<sup>41</sup> Greene identifies five ways that copyright law worked against Black musicians: 1) the idea-expression dichotomy; 2) the fixation requirement; 3) the originality standard; 4) copyright registration procedures; and 5) lack of moral rights provisions.<sup>42</sup> The issues that arose from the specific structure of the Copyright Act of 1976 and Euro-American imaginary of authorship were compounded by other aggravating forms of systematic racism such as forced illiteracy and bargaining inequalities, all of which persist today to varying forms and degrees.

The idea-expression dichotomy refers to the legal fact that, per §102(b) of the Copyright Act, *expression* is copyrightable but *ideas* are not. In part due to the collection practices of folklorists, e.g., Alan Lomax, Black musical innovations have consistently been treated as raw material for the taking, i.e., musical ideas outside of the scope of copyright law and not as tangible expressions deserving of copyright protection.<sup>43</sup> For Lomax, the mere act of collecting music by pressing record on a tape machine justified credit ranging from arranger to composer on blues sound recordings.<sup>44</sup> The fixation requirement refers to the legal fact that §101 of the Copyright Act requires creative works to be "fixed in a tangible medium of expression" to be copyrightable. Because Black musicians often built upon familiar aural traditions while being denied access to legal tools and rights, such as literacy and ownership, their artistic works tended *not* to be fixed in any tangible medium of expression. Moreover, because courts have created a high bar for the protection of rhythm, which is central to many Black musical traditions, they have also de facto-privileged European creatorial cultures by centering melody and decentering beats.<sup>45</sup> Even those Black creators who did fix their work in the tangible medium of the sound recording, as required by the Copyright Act, could not claim copyright protection until the 1970s. They were then held to legal standards, including the Copyright Act's originality requirement, that appeared to be racially neutral but produced inequitable outcomes. Copyrighted works are statutorily required to be "original," a standard that the Supreme Court has interpreted to mean showing "a modicum of creativity."<sup>46</sup> Yet Black artists have been consistently held to higher

originality standards than their white counterparts, particularly where music is concerned.<sup>47</sup> American copyright law has, as a result of these three central legal requirements, substantively facilitated the wholesale theft of Black musical performances, partially or completely without affording rights to attribution, compensation, accountability, or integrity.

On top of this, copyright law in the US rewards authors and artists for abiding by a set of precise administrative formalities in order to claim the benefits of their limited monopolies. These formalities, which make copyright registration a difficult process even in the best of circumstances, have historically made it structurally difficult for Black people to benefit fully from copyright protection.<sup>48</sup> Even now, as Greene shows, administrative formalities create obstacles to copyright ownership for Black artists.<sup>49</sup> Compounding these issues, US copyright law offers little in the way of moral rights, especially when compared to European nations. Moral rights protect artistic works through dignity oriented concepts such as attribution, integrity, and paternity. Moral rights can thus serve as complements and alternatives to property-centric copyright protections, particularly in justifying reparative permission and compensation for music used without them. If the United States had a more robust moral rights regime, musicians who could prove the provenance of their appropriated works could theoretically meaningfully protect their music and make damage claims even in cases in which they did not own the copyrights to the work.

In addition to its disparate impact on Black artists, copyright law's historic exclusion of sound recordings had gendered effects. Greene, for instance, traces the history of how jazz and blues greats like Bessie Smith and Ma Rainey were "swindled out of copyrights to compositions and subject to disparate treatment."<sup>50</sup> As Daphne Brooks' awe-inspiring compendium of Black women's contributions to music criticism demonstrates, despite prevailing narratives about the music industry minimizing their contributions, Black women played an instrumental role in building and refining the musical architectures through which jazz, blues, and rock evolved—as well as, of course, the music itself. Michael Jackson and Prince may have been the first to break MTV's televisual color lines but it was Mamie Smith who managed to "break the sound barrier in the antiblack music industry."<sup>51</sup> I use the term "intellectual labor"<sup>52</sup> in the remainder of this chapter as Brooks does, in the anticapitalist spirit of Cedric Robinson,<sup>53</sup> in order to call attention to moments in which Black women shaped copyright ownership practices, thereby proving that "Black work matters in relation to modern life."<sup>54</sup> I am interested in where and why they sought to put pressure on the music industry as well as when and how their ownership strategies impacted contemporary artists' ownership strategies. Though I neither exclusively focus on Black women in the history of sound recording masters, as Brooks does with music critics, nor purport to tell an exhaustive history of their struggles in that area, I want to emphasize that their efforts to build protected creative space prompted seismic shifts in copyright law that require further recognition and examination. A genealogical approach to thinking about master recordings illustrates that Swift is not a singularity but a beneficiary of hundreds of years of Black liberation struggle that preceded her.

### 48.3 Rewriting the struggle over master recordings

By the 1920s, race records had become quite popular but Black artists were struggling to benefit from their popularity. As a result, the music industry quickly became a site for Black entrepreneurial interventions, such as opening record companies and contesting monetization structures, that aimed at addressing this dispossession.<sup>55</sup> I examine these moves through the stories of Harry Herbert Pace, Juanita Stinnette Chappelle, Sherman Johnson, Dionne Warwick, Sam Cooke, and others, with emphasis on their lasting contributions. Pace, founder of the first Black owned

record company in the US, explained in 1939: “[c]ompanies would not entertain any thought of recording a colored musician or colored voice, I therefore decided to form my own company and make such recordings as I believed would sell.”<sup>56</sup> His Black Swan Records represented an important early move to secure Black ownership, one that is often lost in the larger-than-life histories of Motown and Stax. Pace chose the path he did partly because his previous business with W. C. Handy, Pace and Handy Sheet Music, inadvertently facilitated discrimination in the music industry by making it easier for white-owned record companies to purchase Black authored musical compositions only to go on to hire white artists to record them.<sup>57</sup> His efforts were grounded in a mission of racial uplift, a commitment he had learned from his mentor W. E. B. DuBois.<sup>58</sup> The young company struggled to find a pressing plant to produce the records and, ultimately, Pace was forced to trade his master recordings for printing services.<sup>59</sup> Yet despite Pace’s heroic efforts to create a space for Black entrepreneurial independence within an oppressively white burgeoning music industry market economy, Black Swan Records went bankrupt, largely because white run record companies had more power and money with which to attract and retain artists.<sup>60</sup> Unequal bargaining power was and remains a formidable obstacle to musical equity, partly because it stifles fair competition and diverse ownership.<sup>61</sup>

In 1921, the same year that Black Swan Records was founded and Bessie Smith broke the sound barrier, Juanita Stinnette Chappelle, an already successful vaudeville performer, became the first Black woman to own a record company, Chappelle and Stinnette Records. She exemplified the category of individuals that Brooks refers to as the “culture makers who often labor right before our very eyes and ears without recognition of the magnitude of their import.”<sup>62</sup> Having performed on five of the six records that the company produced, Stinnette claimed ownership of her master recordings through the co-ownership of her business. Her revolutionary move highlights the role of Black women in advancing the (intellectual) property rights of musicians as well as the conceptual significance of master recordings, especially in bridging the gaps between the commodification of performance and the reaping of profits. A litany of white women followed Stinnette in owning record companies, including Ursula Greville, Lillian McMurry, Ruth White, and Florence Greenberg.<sup>63</sup> The business dealings of two of these women, Chappelle and McMurry, demonstrate the complexity of the negotiations over masters among Black musicians and the manner in which they have shaped contemporary conversations about racialized ownership in the music industry.

McMurry’s record company, Trumpet Records, signed a number of Black blues artists—a choice that flew in the face of Mississippi’s segregationist politics.<sup>64</sup> Beginning in 1950, her attorneys adopted a standard recording contract for all acts that the company signed. For the purposes of this article, the important part of the standard contract that Trumpet Records used is its expansive intellectual property clause. Copyright historian Antonia Eliason describes how the Trumpet Records contract attempted to claim ownership over musical compositions written *before* the contract went into effect as well as those written after. The sweeping contract read:

As to any original compositions and/or arrangements by Second Party during the term of this contract or any extensions thereof, it is agreed: All musical works written and composed and/or arranged by Second Party shall be and become the property of First Party, its assigns or successors forever, and First Party shall have the right to dispose of same in whatever manner it deem[s] appropriate, including but not limited to securing copyrights thereto.

Though Eliason reads McMurry’s contract as “fair and non-exploitative,”<sup>65</sup> I view the situation differently. When McMurry tried to claim ownership of the musical compositions that

blues artist Sherman Johnson created before he signed with McMurry, he sued. In a rare win for a Black musician at the time, the Mississippi Supreme Court held in *Globe Music Corp. v. Johnson* (Miss. 1956) that the vague contract provision should be construed in Johnson's favor because he was the non-contracting party.<sup>66</sup> This episode is illustrative of the individual battles that musicians, particularly those of means, have had to fight in order to make sometimes only incremental improvements in ownership and royalties. It also highlights how purportedly race neutral contract language can result in expansive takings of property that reinforce inequality across race, gender, and class. Moreover, it is one example of how a well-intentioned, even progressive, white woman contributed to contract norms that hindered Black equity as a long term project. McMurry's communications with contracted Black musicians often reflected what I interpret as her contextually racialized desire to manage their perceived unruliness and unreliability.<sup>67</sup> While respectability and reliability were certainly necessary to McMurry's gig-based business, the "tough love" politics that she seemingly adopted would justifiably raise eyebrows today, especially when contextualized within a labor structure that ensured that she would control such valuable musical assets.

Fighting individual battles, though sometimes successful, did not fundamentally change the structural causes of dispossession; rather it reinforced counterproductive incentive structures that persist today. The inimitable Dionne Warwick's battle to own her masters highlights how structural critiques of the music industry emerged from individual ownership struggles, here through the production of language to speak about slavery and exploitation. Warwick, whose work was once part of Florence Greenberg's catalog at Scepter Records, finally gained control of her masters when the record company was acquired by Springboard International and then Gusto Records in the mid-1970s. Her story began in 1962, however, when she released her first solo single with Scepter Records. Burt Bacharach and Hal David, who would later become instrumental in recovering the masters, produced the hit.<sup>68</sup> Then, in 1970, after a hugely successful run, she became president of her own record label, Sondag Records, with Scepter Records serving as the distributor.<sup>69</sup> Soon after, Warwick signed a \$5 million contract, one of the biggest for a female artist up to that time, with Warner Brothers.<sup>70</sup> By 1975, Bacharach and David, frustrated with Scepter Records' questionable financial practices, sued for an accurate accounting of royalties on the many hits they collaborated on with Warwick. The lawsuit ended in Bacharach and David being awarded over \$400,000 and Warwick's entire catalog going to their record company, Blue Jac, with Scepter serving as distributor.<sup>71</sup> When Bacharach and David subsequently had their own falling out, Warwick sued. The trio settled out of court, with Warwick receiving the rights to all of her masters produced by Bacharach and David.<sup>72</sup> Though relatively poorly documented, this victory against, in Warwick's words, "the slave contracts"<sup>73</sup> offered by a woman for whom she nonetheless felt familial attachment,<sup>74</sup> created an early structural model and ideological justification for Black artists to regain control over their master recordings.

Notably, Warwick's critique of slavery extended beyond the music industry, into films. Through her character, Cassy, in the film *Slaves* (1969), Warwick advanced a substantive critique of real and metaphorical master/slave relations. The film received negative reviews in the US but it fared well at the Cannes Film Festival; Warwick herself considered it important social commentary.<sup>75</sup> One scholar goes so far as to contend that, despite being situated at the fraught intersections of Blaxploitation, sexploitation, and Black Power, the film made a groundbreaking critique of slavery from a then rarely acknowledged vantage point:

*Slaves* became one of the first in a cycle of revisionist movies about slavery grandly claiming to offer a more critical and realistic portrait of the "peculiar institution than that long perpetuated in plantation romances like *Gone With the Wind*."<sup>76</sup>



Warwick's willingness to draw on the language and history of slavery aided in shifting the "rhetorical culture"<sup>77</sup> around histories and presents of the exploitation of Black labor, in a form Brooks might understand as "game-changing art that stands as an affirmation of our past as well as the unrecorded future of sound."<sup>78</sup> In essence, Warwick aided in producing a vocabulary for speaking about musical racial capitalism. Years later, Prince repurposed this refusal to cede the landscape of slavery and Blaxploitation meets Black Power narrative, transforming it into a public critique of Warner Brothers' intellectual property policies.<sup>79</sup>

The Kingsmen, who performed the stratospherically popular 1964 version of "Louie, Louie," also sued Gusto Records to recover their masters—and 30 years of back royalties that were never paid to them in violation of their original contract. While they accomplished a difficult feat in securing ownership and royalties, Richard Berry, the Black R&B artist who wrote the underlying musical composition, was not so lucky, as had sold the rights to Flip Records in 1957 for a mere \$750 to finance his wedding. Eventually Berry, who was not able to benefit from the Kingsmen's impressive success, was able to recover partial ownership of his musical composition with the help of the Artists Rights Enforcement Corporation in 1986,<sup>80</sup> no doubt because of the triumphs of those who came before him. Chuck Rubin then helped him sell rights to the song to Windswept Pacific in 1992, for an amount that he claims is only exceeded by "Happy Birthday," which sold for \$25 million. Berry received his first long overdue royalty check for \$2 million in 1992,<sup>81</sup> five years before he passed away from heart failure.

By the 1950s and 1960s, Motown was walking a well-trodden path with respect to Black entrepreneurialism in the music industry and its mere existence enticed Black musicians to sign. Packaging soul, a distinctly Black musical genre built upon the foundations of rhythm and blues and gospel, as central to the civil rights struggle allowed Motown, as well as Black-centric Stax, to sell "Black" music to wider audiences, while also creating the perception that Black musicians were being treated fairly. Yet while Black-centric record companies flourished from the 1960s on, they did not always embrace racial uplift in the way that Pace did. For instance, Barry Gordy's Motown was famously ungenerous where sound recordings masters were concerned. Nonetheless, the popularization of soul aided artists like Ray Charles, Sam Cooke, and Stevie Wonder in negotiating the return of their masters. Charles, for instance, purportedly the earliest highly successful Black musician to own his sound recording masters, left Atlantic Records in the early 1960s to join ABC-Paramount on the condition that they would be returned to him. In doing so, he became one of the first contemporary Black artists to gain rights to his masters. He both followed in Stinnette's footsteps and forged a path for Warwick by gaining copyright ownership and founding two of his own record companies, Tangerine and CrossOver.<sup>82</sup>

Cooke, another Black musician who skillfully managed the business side of his career, started his own independent record company, SAR Records in 1959, and later his own publishing company, Kags Music, while also successfully renegotiating his recording contract with RCA, the major label he was signed to as a solo artist. With the help of his "money guy," Allen Klein, he was able to engineer an unprecedented contract for the return of his masters. In an attempt to recoup the over \$200,000 in royalties that RCA owed Cooke, Klein had pushed for ownership rights in five years. When RCA agreed, but after 30 years instead of five years, Klein and Cooke were stunned and pleased. Cooke's masters were ultimately returned, though posthumously. Because Klein had become Cooke's manager and Cooke died intestate, the sound recordings and musical compositions reverted to him. While Cooke was not able to benefit from this deal personally and his story is somewhat of a musical tragedy, his victories appear to have made it easier for those who came after him to negotiate for their masters. Wonder, for instance, was able to regain his sound recording masters from Motown early in his career, in 1971.<sup>83</sup> Also following Cooke's lead, Curtis Mayfield founded Curtom Records in 1968.<sup>84</sup> Though the now defunct

record label was a subsidiary of Warner Brothers, it remains historically important in the struggles for Black liberation and Black ownership. Similarly, after recording with Cincinnati-based King Records for many years, James Brown founded his own record companies, beginning with Try Me Records in 1963, which allowed him to own at least some of his masters.<sup>85</sup> George Clinton's Uncle Jam Records was born in 1980, though Clinton joined Capitol Records in 1982 and Prince's Paisley Park record company in 1986. These examples are emblematic of the tremendous energy it took to even begin to reshape a music industry that Arewa demonstrates was built on a foundation of racialized norms of "unfair use."<sup>86</sup>

Prince's intellectual property battles in the 1990s, which I alluded to early, also made meaningful contributions to the history of Black ownership, by articulating new imaginaries of Black capitalism and inspiring artists such as Larry Graham, Chaka Khan, Nas, and Janelle Monae to attempt to negotiate for ownership of their masters. Prince's superstardom provided him with visibility and leverage that many other musicians lacked, which he mobilized by writing "SLAVE" on his face and changing his name to the Love Symbol during years of public conflict with Warner Brothers.<sup>87</sup> In a parallel move, Larry Graham, bassist for Sly and the Family Stone and close collaborator of Prince, chose to rerecord a number of his hit songs because he could not recover his rights to the masters.<sup>88</sup> Taking Prince's protest a step further, in the style of Warwick, Pharrell Williams recently revived the description of himself as a musical "slave" by associating it with the term "master,"<sup>89</sup> as in sound recording masters. Unlike in eras past, Sony was quick to agree to revise its contracts in response to the association of its business with the word "slave," by eliminating the word "master" from them. Pharrell also negotiated a contract with Columbia Records, a subsidiary of Sony, in which he retained ownership of his intellectual property and founded a non-profit organization, Black Ambition, that supports Black creators in retaining their rights.<sup>90</sup> Kanye West, now a deeply disquieting figure at best, has made similar critiques, drawing on the language of "modern day slave ships."<sup>91</sup> These critiques are notable given the rapper's public conflicts with Swift.

One industry insider recently noted: "Publishing assets are currently running at multiples well over 12, with master rights slightly lower but increasing in value ... In five to 10 years, it might be 20x—the value continues to rise."<sup>92</sup> The popular realization that controlling intellectual property rights in music is lucrative has created more space for musicians to talk about such topics in public, as well as demand for the value of the assets to rise. Though Prince's intellectual property management tactics, including changing his name to the Love Symbol, were treated as strange, even unhinged, at the time he was engaged in them, posthumously they have become part of an arsenal of known strategies for established and emerging creators to protect their artistic works. Interestingly, some musicians appear to be taking the opposite approach to the ones discussed here, with Bob Dylan, Stevie Nicks, and even Tina Turner selling their masters for millions of dollars. In a deal completed in December 2020, Dylan sold 100 percent of the rights to 600 of his songs for an estimated \$300 million.<sup>93</sup> Turner secured \$50 million for her catalog, which included over ten albums. The latter suggests that masters can both help musicians to earn royalties and cash in on valuable assets. In an analysis of the rush to sell off masters, *Rolling Stone* identified COVID restrictions, tax benefits, personal benefits, and securing legacies as the top reasons that artists are now selling.<sup>94</sup> Nonetheless, for the many deceased Black musicians who cannot now benefit from such sales, this epitomizes the phrase "too little too late."

These historical examples showcase the *longue durée* of musical rights evolution, illuminating how narratives of owning sound recording masters have evolved through the cumulative effects of individual struggles and micro interventions. Matthew Morrison argues in his groundbreaking work on "Blacksound," which describes the genealogical histories through which white people seamlessly appropriated Black sonic cultures,<sup>95</sup> that intellectual property law in

the music industry emerged around a set of racial needs articulated by industrial capitalists. His “race based epistemology” calls attention to how “popular entertainment, culture, and identity have been shaped by the sonic and embodied legacy of blackface minstrelsy in and beyond the United States.”<sup>96</sup> Morrison contends that “(intellectual) property, performance, structural inequities, and the racialization of identity ... are interconnected in the making and economy of popular music.”<sup>97</sup> I want to emphasize that, insofar as Black musicians have been able to shift the structures that have led to their copyright dispossession, they have been able to do so over time in incremental but persistent moves. In this sense, even Taylor Swift is part of the larger history of racial exploitation bound up in the ownership histories of sound recording masters not of her own making. In the final section, I turn to the specifics of this historical embeddedness.

#### 48.4 Master ownership as tactical (white) postfeminism

The narrative that Taylor Swift is a larger-than-life talent who prevailed over her sexually harassing, music-stealing bully of an employer is undoubtedly compelling. Yet, it is also frequently communicated in a way that is deeply white, postfeminist, and ahistoric. I consider three ways that Swift’s invisible intersectional subject position, i.e., her whiteness, middle classness, and femininity, contribute to her image as a singularity, is divorced from the racial struggles that preceded her. First, Swift’s white femininity gives her easier access to narratives of victimhood than her Black counterparts, thus allowing her to center her experiences of sexual harassment in ways that Black women are culturally prohibited from doing. Second, Swift’s race, class, and gender makes her claims to (intellectual) property ownership appear natural and expected in a nation built on the (intellectual) propertization of people of color, as opposed to exceptional and extraordinary. Finally, Swift’s white femininity allows her to produce the historical fiction that she is a one-of-a-kind trailblazer with an extraordinary capacity for resilience, pushing those radical Black musicians who came before her further to the margins. In this context, my historicization of Black artists and entrepreneurs who opened record companies and owned sound recording masters, albeit limited, is a methodological corrective to this historical amnesia that places Swift outside the long line of Black “bodies-in-dissent”<sup>98</sup> whose interventions preceded her. More such correctives are needed.

First, from her subject position as a white woman who started her career young, with the privileges of wealth, Swift can easily mobilize narratives of victimhood as well as calls for retribution in her allegations of record industry wrongdoing. Unlike many of her Black peers who are objects of victim-blaming and punitive remedies, she has access to ingrained national myths about the need to protect white women from predatory behavior.<sup>99</sup> Swift’s self-styling has made these claims appear more natural, even expected. For instance, in anticipation of her pop music debut at the 2009 Video Music Awards, Swift transformed herself into a “virtuous fairy princess,”<sup>100</sup> complete with a Cinderella-style carriage. In a now infamous moment, after a then 19-year-old Swift was awarded Best Video for a Female Awarded, West rushed the stage and shouted: “Yo, Taylor, I’m really happy for you, I’mma let you finish, but Beyoncé had one of the best videos of all time! One of the best videos of all time!”<sup>101</sup> This incident laid the groundwork for an ongoing cultural conversation about Swift as the quintessential innocent white woman victim—and demonstrated that Twitter would be an important site for the adjudication of such topics, especially where racial justice and social movements are concerned.<sup>102</sup> The incident ended with Swift backstage in tears, alongside a distraught Beyoncé. When Beyoncé later won Video of the Year at the end of the ceremony, she ceded her speech time to Swift, ostensibly at the urging of one of the show’s producers.<sup>103</sup> One interpretation of this turn is that Beyoncé paid the price for West’s outburst at a white woman while Swift coopted her limelight.

Even then President Barack Obama called West a “jackass,” seemingly siding with Swift—or at least against West. Given West’s recent behavior, this epithet now reads as measured. Twitter was harsher, calling for punishments that reeked of carceral feminism and racial discipline.<sup>104</sup>

Swift’s victimhood narrative has persisted, despite a number of racially divisive incidents or perhaps *because* of them. She consistently embodies the flawed yet resilient postfeminist (white) woman, a figure that “recycles damage into more resources.”<sup>105</sup> For instance, Swift clashed with Nicki Minaj on Twitter after Minaj was snubbed for a Video of the Year nomination for “Anaconda” at the VMAs. Over the course of a day, Minaj tweeted about racism in the music industry, eventually noting that “‘other’ girls” with “very slim bodies” were more frequently celebrated for their musical contributions.<sup>106</sup> Swift, who received a nomination for “Bad Blood,” responded defensively to Minaj’s video while Minaj denied that she had subtweeted Swift. In this way, Swift “effectively [positioned] herself as the innocent victim who [deserved] to be pitied and Minaj as the ‘angry black woman.’”<sup>107</sup> The Twitter War escalated for 48 hours, with Minaj critiquing “White media and their tactics” and Bruno Mars jumping in, before Swift apologized and Minaj accepted, but not before Black Twitter had its say.<sup>108</sup>

Swift has also been memed as the white nationalist character “Taydolf Swiftler,” an “Aryan Goddess.” While Swift is not responsible for these memes, she has notably taken years to denounce them, thus amplifying perceptions that she seeks to benefit from her whiteness in a decidedly white nationalist moment.<sup>109</sup> That she continues to be able to position herself as the bullied musician whose intentions were misread and apology was sincere is partly a function of the body she inhabits. *Teen Vogue*, a favorite of the progressive left, observed that: “[m]isunderstandings happen, especially when communication doesn’t play out face to face. How many times have you wrongly interpreted a text, or read the grin emoji as a straight up grimace?” Even as the essay critiqued Swift’s white femininity, it concluded

[t]oday, Taylor issued an apology to Nicki, proving...that nobody is perfect, not even Taylor Swift. By admitting that she’s wrong, Taylor has gracefully shown that while the media has turned this back-and-forth into a catfight, this isn’t a girl feud. She’s learning from this, and we can too.<sup>110</sup>

I highlight these quotes not to argue against apologies or grace but rather to point out that the embrace of Swift’s apologia happened quickly and decisively, in a way that people of color struggle to accomplish with similar ease. Black women, Black queer people, and Black trans people, in particular, are all too often treated as though they are objects of danger and derision, not subjects of victimhood. Minaj, like Beyoncé, was decentered managed in the service of white femininity, with Swift’s apology taking center stage.

Second, Swift’s claims to (intellectual) property ownership, which are intertwined with her neoliberal white feminism, are treated as natural and normal, contra the history of Black (intellectual) property ownership. Harris observes in the canonical “Whiteness as Property” that whiteness itself is a valuable commodity, a “status property”<sup>111</sup> through which claims to real property are made and upheld. Deidré Keller and I have extended that argument to *intellectual* property, writing:

whiteness brings with it a set of privileges and presumptions in the context of intellectual property law: whites have historically constructed information regimes in ways [that] devalue the knowledge and practices of non-whites; whites have historically held the power and authority to determine the legal structures which govern intellectual property rights; whites have historically crafted legal doctrines which avoid

the protection of Western understandings of creativity; and whites largely continue to manage domestic and international intellectual property rights regimes.<sup>112</sup>

Against this cultural backdrop, Swift's claims are easily amplified in public cultural contexts and afforded an implied veracity that those of her Black peers are not. Swift wrote on Twitter in 2019: "Now Scooter has stripped me of my life's work, that I wasn't given an opportunity to buy. Essentially, my musical legacy is about to lie in the hands of someone who tried to dismantle it."<sup>113</sup> *Bloomberg Businessweek* ran a cover and article amplifying Swift's claims by proclaiming that "Taylor Swift Is the Music Industry." *Inc.* seized on all too often racialized themes of justice, property, and labor that "Swift's situation doesn't seem fair. They're her songs. Her performances. Her blood, her sweat, her tears."<sup>114</sup> Paul Théberge writes that "Swift is regarded as ... an emblematic figure whose very success validates the potential of old-industry structures to both challenge and adapt to the demands of a new economic environment."<sup>115</sup> The repeated associations of Swift with narratives of injustice and exceptionalism belie those that frequently surrounded Black musicians creating blues, jazz, and rock. As Josh Kun puts it:

The history of enslavement has always haunted the music industry and always structured it ... If you go back to the first Black artists to ever make a commercial musical recording in the [1890s]—George W. Johnson, was a former slave who began his life not owning his own body, being owned by a master, then [went on] to record a master that he did not own. This also gets at the long-standing belief and conviction of so many Black artists ... that they have been treated like slaves by the masters who they signed contracts with. That has been true since the early 1900s, and it is certainly true now.<sup>116</sup>

This is partially due to tropes that place Black people outside of the categories of humanness, creativity, and ownership in a manner that makes it per se difficult to access copyright law.<sup>117</sup>

West's ongoing engagements with Swift echo these critiques of Black exclusion/white inclusion. Her tense relationship with West became a topic for tabloid and Twitter fodder again in 2016 when Kim Kardashian leaked tapes of him having a conversation with Swift in which she seemingly approved of the lyrics to the song "Famous," including the line "I made that bitch famous," purportedly about the 2009 VMAs. Swift had previously claimed that West had not sought her approval for the casually misogynistic line—but the recordings that Kardashian released suggested otherwise.<sup>118</sup> I engage West here while also acknowledging that he has become a widely hated public figure, for good reason given his defense of Donald Trump, troubling statements about the Thirteenth Amendment, post-divorce possessiveness toward Kim Kardashian, and, most recently, anti-Semitic baiting across platforms. I want to examine his track "Famous" and its accompanying music video because they remain incisive commentaries on the race, gender, and class dynamics at play in the celebrity industrial complex, especially where Black brilliance is concerned, despite the often destructive behavior of their creator. West's line "I made that bitch famous" highlights how disparate experiences of race, class, and gender can affect a celebrity's rise to stardom and ability to take up public space with the kind of resilience that Swift has benefited from by contrasting his own experiences with those who are only "hood famous." The music video, in its portrayal of West as at the center of an homage to Vincent Desiderio's *Sleep*—which is in turn an homage to Jackson Pollack's *Mural*—conspicuously centers a brilliant Black man and his perspective of fame in a long line of white artists, via a critiques reminiscent of the ones Jean-Michel Basquiat frequently advanced.<sup>119</sup> Through ethically ambiguous use of deepfake images of naked people, including Donald Trump, Bill

Cosby, and Taylor Swift, the music video invokes a disturbing (im)politics of consent while also interrogating culturally accepted definitions of power, celebrity, and creatorship.<sup>120</sup> West, a figure who would be erased from most representations in “high” culture because of his Blackness—perhaps even crowded out by Teflon celebrities such as Swift—tells a visual and lyrical story about fame that centers Black men as authors and geniuses. This is, in effect, both a critique of the naturalization of whiteness as intellectual property and a demonstration of West’s own authorial prowess. West emphasizes that he, as a Black man, will never benefit from the same presumptions about creatorial genius that white people, including Swift, are repeatedly offered. Neither will those that look like him.

Finally, Swift’s white femininity, grounded in barely teen-turned-adult celebrity, allows her to position herself as an ahistoric figure, a purported Great Woman of History who authored the resistive history of masters.<sup>121</sup> Though Swift may not have intentionally sought to take sole credit for her victories against those who own her sound recordings, her frequent framing of her situation without reference to those who came before her and the journalistic tendency to center her narrative over the experiences of Black artists demonstrate how her white femininity enables access to a racialized form of authorial credit that is structurally denied to similarly situated Black musicians. LeiLani Nishime and I have previously written about how affording white figures the ability to transcend time and history, operating as larger-than-life creators, while containing people of color within specific moments of time, is a postfeminist representational tactic of containment. We observe of Karl Lagerfeld’s mining of Chinese fashion past and present for inspiration in the present that it “enacts unequal relations of exchange and consumption by remaking Chinese ‘costumes’ into marketable ‘fashions.’”<sup>122</sup> His extraction of raw materials without collaboration or consent “affirms the power and superiority of white womanhood and operates as a sign of feminist empowerment.”<sup>123</sup> In Swift’s case, the masters controversy becomes a signifier of her “maturity” as a woman who pushes back against “unfair” treatment by her oppressors, without reference to the countless Black artists who were ignored or derided in similarly weighty struggles. The world, she seems to forget, is not fair.

Swift’s political awakening, which began roughly in late 2019, has received mixed reviews, with some critiquing her performative embrace of neoliberal equality and her slowness in distancing herself from white supremacy.<sup>124</sup> In a September 2019 *Rolling Stone* interview, Swift declared that there’s “literally nothing worse than white supremacy”<sup>125</sup> and finally condemned the “Taydolf Swiftler” meme. Brian Hiatt, who interviewed her, later noted: “[y]ou’ve been masterminding your business since you were a teenager,”<sup>126</sup> thereby reinforcing the familiar narrative of her as all-knowing. Swift continued to condemn white supremacy, calling for racial justice after George Floyd and Ahmaud Arbery were killed by police and denouncing Donald Trump’s openly racist screeds. She also advocated for removing Confederate monuments in the South and making Juneteenth a national holiday. Her support for racial justice was certainly appropriate, even necessary—but it collapsed into largely uncritical journalistic praise for (white) postfemininity. The archive that I considered overwhelmingly conveyed the message that Swift is now an antiracist shero, destined for greatness. Kornhaber ends his essay by asking “Was Swift prescient about the ties she’d eventually have to cut?” He continues: “The *folklore* song ‘Cardigan’ already answered that question with this refrain: I knew everything when I was young. She really did.”<sup>127</sup> In one fell swoop, Kornhaber dismisses Swift’s racial missteps by romanticizing the art of her teen years while also failing to name the longstanding struggles in which she is implicated in her adult years. He places her out of time by flattening her age and existence, situating her as an always already all-knowing being. Swift is not, I would argue, prescient. She is a savvy businesswoman—and perhaps also an excellent student of history—with the ability to deploy the ownership strategies that worked for those came before, while centering

her own empowered victimhood. She deserves credit for her success. But she is not a one and only, now or historically, who deserves to be set apart from those who came before.

Despite Swift's claims about her commitment to racial justice, with four notable exceptions, almost none of the set of approximately 400 articles and interviews I read about her masters battles mentioned the musicians who came before her. Those that did only offered a sentence or two about racial injustice.<sup>128</sup> An essay in Rolling Stone's special issue on the Future of Music covered racial exploitation in music contracts, offering examples of Chicano musicians who used their knowledge of the industry to secure a fair(er) deal alongside a precis of Swift's negotiations.<sup>129</sup> An article in *The New York Times* offered an extensive historical look at racial injustice in the music industry, naming Prince, Janet Jackson, and Jay-Z as Black artists who fought for their masters.<sup>130</sup> A thinkpiece in *bitchmedia*, that cited Greene, highlighted the need for race and gender analyses of copyright law.<sup>131</sup> Finally, an editorial in the *Daily Free Press*, the student newspaper at Boston University, pointed to the need to discuss the histories of Black musical dispossession alongside Swift's moves.<sup>132</sup> These pieces are outliers, written by journalists invested in race, with disproportionate coverage of white artists' contractual negotiations remaining the norm. In a conversation on Twitter in which a naysayer called out Nicki Minaj for speaking about the impacts of her music, she called attention to the silencing of Black women in conversations about ownership and circulation. She exclaimed, referring to Swift's masters struggle: "Taylor Swift can speak but I can't?!"<sup>133</sup> Megan Thee Stallion faced similar pushback, unlike Swift.<sup>134</sup> I liken the outcomes of Swift's engagements with race to the forms of marginalization and erasure that Eric Smialiak argues emerge through her advocacy for LGBTQ+ communities. He contends that she embraces a "rainbow capitalism" through which she tentatively and performatively engages in political activism. Using examples drawn from media headlines and cultural satire, Smialiak notes that "[t]he idea that Swift has hijacked the struggle for LGBTQ rights recurs repeatedly through claims that 'You Need to Calm Down' equates her own struggles with those of systemically marginalised demographics."<sup>135</sup>

Swift "invites criticism for arriving late."<sup>136</sup> And she indeed "arrives late," to the conversation about master recordings. For instance, on the one hand, her move to congratulate Anita Baker for regaining her masters brings much-needed attention to the issue and its intersections with race.<sup>137</sup> On the other hand, it is a small gesture, lacking in the gravitas that Swift could potentially bring to the conversation. Red Chidgey writes of "celebrity feminism" as a specific brand of feminist intervention that emphasizes neoliberal success over political investment. Depoliticizing feminism in this way creates "an entrepreneurial subject, making free, strategic choices based on self-interest."<sup>138</sup> This postfeminist framing may end in individual victories but it frequently does so at the expense of collective struggle. Swift's ability to choose to deliberately embrace the political is a privilege of her whiteness.<sup>139</sup> This intentionality, much like ahistoricity, is rooted in a legally enshrined, racialized belief that *white women* possess a developed interiority deserving of privacy, while people of color, particularly Black women, do not. Eden Osucha writes of the circulation of racist trademarks contra the emergence of privacy law, showing how the former cruelly objectified Black women:

whites' representative interiority and privacy constituted a countersign to the eminently public bodies installed in the image archives of scientific and state surveillance and reproduced in mass culture via popular entertainment and the racially denigrating visual consumption of African Americans in the commodity marketplace.<sup>140</sup>

Though none of the three issues that I have raised in this section refute Swift's talent, popularity, or success, they highlight important questions about the ethical obligations that come with

occupying a white and feminine body with extraordinary power and visibility, especially vis-à-vis racial struggle. I maintain that Swift could and should do more.

### 48.5 Seeing *Red* (Taylor's Version)

When she announced that she would be rerecording her early musical catalog in order to fight music industry misogyny and own her masters, Taylor Swift's fans rallied around her.<sup>141</sup> I have argued here that the ongoing success of Swift's strategy is attributable in large part to the sound/writing binary built into copyright law, the path for musician ownership of master recordings and musical compositions that Black artists—particularly Black women—have trailblazed, and her own positionality as a white woman capable of transforming her racial missteps. Swift is a world-class popular music star with an unshakeable fan base. She is also a white woman with a particular ability to access the nuance and complexity of narratives of white innocence and white femininity in America. An intersectional analysis of Swift's white femininity coupled with a historical genealogy of the ownership victories of the Black musicians that came before her offers a complex look of how she moves in an ecosystem created by those who were undoubtedly more marginalized than her with comparative ease.

Swift tweeted on November 12, 2021:

It never would've been possible to go back & remake my previous work, uncovering lost art & forgotten gems along the way if you [the fans] hadn't emboldened me. *Red* is about to be mine again, but it has always been ours. Now we begin again.

Couched in the language of postfeminist ownership, i.e., “[r]ed is about to be mine again,” and the tactical imagining of copyright to court fans, i.e., “it has always been ours,” Swift at times sidesteps the “lost art” of Black capitalism and the “forgotten gems” of Black intellectual labor. She is a paragon of resilient rebirth, who emerges stronger after misogynist attacks. Not to be outdone as reigning Queen of Twitter, Ms. Dionne Warwick herself tweeted about Jake Gyllenhaal, “[i]f that young man has Taylor's scarf, he should return it.” Her rationale: “It does not belong to you.” This one-liner is perhaps the most profound statement that Warwick could have made in this situation.

### Notes

- 1 My appreciation to Samantha Pinto, Jennifer Nash, Kembrew McLeod, Margaret Chon, Phillip Samuels, Lisa Corrigan, and David Hesmondhalgh for their collaboration, feedback, and interlocution. They have made this essay sharper. And a special thank you to Kevin J. Greene, who I have had the great honor of learning from and with on these topics.
- 2 Spencer Kornhaber, “Taylor Swift Knew Everything When She Was Young,” *The Atlantic*, April 13, 2021, [www.theatlantic.com/culture/archive/2021/04/taylor-swift-fearless-rerecording/618584/](http://www.theatlantic.com/culture/archive/2021/04/taylor-swift-fearless-rerecording/618584/).
- 3 Hugh McIntyre, “Taylor Swift's Fans Have Always Loved Her, But Their Support of Her New No. 1 Album Feels Special,” *Forbes*, April 29, 2021, [www.forbes.com/sites/hughmcintyre/2021/04/29/taylor-swifts-fans-have-always-loved-her-but-their-support-of-her-new-no-1-album-feels-special/](http://www.forbes.com/sites/hughmcintyre/2021/04/29/taylor-swifts-fans-have-always-loved-her-but-their-support-of-her-new-no-1-album-feels-special/).
- 4 See e.g., Gina Arnold, “I Don't Give a Damn About Your Bad Reputation: Taylor Swift, Beyonce Knowles, and Performance,” *Contemporary Music Review* 40.1 (2021): 27–40.
- 5 Katie Goh, “‘I Made My Peace’: Fans Divided Over Taylor Swift's Rerecording Project,” *The Guardian*, April 15, 2021, [www.theguardian.com/music/2021/apr/15/i-made-my-peace-fans-divided-over-taylor-swifts-re-recording-project](http://www.theguardian.com/music/2021/apr/15/i-made-my-peace-fans-divided-over-taylor-swifts-re-recording-project).
- 6 Sarah J. Jackson, “Introduction: Celebrity and Popular Feminist Visibility,” *Women's Studies in Communication* 43.4 (2020): 329–32.



- 7 Jennifer Lynn Stoeber, *The Sonic Color Line: Race and the Cultural Politics of Listening* (New York: New York University Press, 2016).
- 8 Cheryl Harris, "Whiteness as Property," *Harvard Law Review* 106.8 (1993): 1707–91.
- 9 Anjali Vats and Deidré Keller, "Critical Race IP," *Cardozo Arts and Entertainment Law Journal* 36.3 (2018).
- 10 See e.g., Sonia K. Katyal, "Trademark Intersectionality," *UCLA L. Rev.* 57 (2009): 1601–699.
- 11 Devon W. Carbado, "Colorblind Intersectionality," *Signs: Journal of Women in Culture and Society* 38.4 (2013), 817.
- 12 These films illustrate that except in moments of white saviorism that result in Black prosperity, structural racism made it difficult for Black musicians to flourish. Greene writes about the long history of Black dispossession by centering the need for copyright reparations. K. J. Greene, "'Copynorms,' Black Cultural Production, and the Debate Over African-American Reparations," *Cardozo Arts and Entertainment Law Journal* 25.3 (2008): 1179–227.
- 13 See e.g., Rebecca Tushnet, "My Fair Ladies: Sex, Gender, and Fair Use in Copyright Symposium: The Third Annual IP/Gender: The Unmapped Connections Symposium," *American University Journal of Gender, Social Policy & the Law* 15 (2007–2006): 273–304; Ann Bartow, "Fair Use and the Fairer Sex: Gender, Feminism, and Copyright Law," *American University Journal of Gender, Social Policy & the Law* 14 (2006): 551–84.
- 14 Keith Aoki, "Space Invaders: Critical Geography, the Third World in International Law and Critical Race Theory," *Vill. L. Rev.* 45 (2000): 913–58; Kevin J. Greene, "Intellectual Property at the Intersection of Race and Gender: Lady Sings the Blues," *American University Journal of Gender, Social Policy & the Law* 16.3 (2008): 365–85; Olufunmilayo B. Arewa, "Blues Lives: Promise and Perils of Musical Copyright," *Cardozo Arts & Ent. LJ* 27 (2009): 573–619.
- 15 This idea of relationality draws on Natalia Molina's work to consider how white feminism can result in the erasure of Black creatorship. Natalia Molina, "Understanding Race as a Relational Concept," *Modern American History* 1.1 (March 2018): 101–5. Though Molina seeks to think about relationality between groups of people of color, I return to an intersectional focus on relationality as between white women and people of color. The term "matrices of domination" draws on the scholarship of Patricia Hill Collins.
- 16 U.S. Const. Art I, Sec. 8, Cl. 8
- 17 See e.g., Vrinda Jagota, "On Loving Taylor Swift While Being Brown," *Pitchfork*, November 21, 2017, <https://pitchfork.com/thepitch/on-loving-taylor-swift-while-being-brown/>.
- 18 Kornhaber, *supra* note 2.
- 19 Sarah Banet-Weiser, Rosalind Gill, and Catherine Rottenberg, "Postfeminism, Popular Feminism and Neoliberal Feminism? Sarah Banet-Weiser, Rosalind Gill, and Catherine Rottenberg in Conversation," *Feminist Theory* 21.1 (January 2020): 3.
- 20 *Ibid.*
- 21 *Ibid.*
- 22 Julieta Hua, "'Gucci Geishas' and Post-Feminism," *Women's Studies in Communication* 32.1 (2009): 63.
- 23 *Ibid.*
- 24 *Ibid.*
- 25 Ralina L. Joseph, "'Tyra Banks Is Fat': Reading (Post-)Racism and (Post-)Feminism in the New Millennium," *Critical Studies in Media Communication* 26.3 (August 2009): 237–54.
- 26 Robin James, *Resilience & Melancholy: Pop Music, Feminism, Neoliberalism* (Winchester: Zero Books, 2015).
- 27 Anne Schwan, "Postfeminism Meets the Women in Prison Genre: Privilege and Spectatorship in Orange Is the New Black," *Television & New Media* 17.6 (September 1, 2016): 475.
- 28 Assignment refers to the temporary transfer of rights in a copyrighted work to a person other than the author, with a possible reversion to the original author at the end of the copyright term.
- 29 "Taylor Swift's Master Tapes Sold by Scooter Braun to Investment Fund," *BBC News*, November 17, 2020, [www.bbc.com/news/entertainment-arts-54969396](http://www.bbc.com/news/entertainment-arts-54969396).
- 30 Elizabeth Blair, "Sony Buys Michael Jackson's Stake in Lucrative Music Catalog," March 15, 2016, [www.npr.org/sections/thetwo-way/2016/03/15/470537451/sony-buys-michael-jacksons-stake-in-lucrative-music-catalog](http://www.npr.org/sections/thetwo-way/2016/03/15/470537451/sony-buys-michael-jacksons-stake-in-lucrative-music-catalog).
- 31 Big Machine Label Group, "As Taylor Swift's Partner for Over a Decade, We Were Shocked to See Her Tumblr Statements Yesterday Based on False Information," November 15, 2019, [www.bigmach](http://www.bigmach)

inlabelgroup.com/news/taylor-swifts-partner-over-decade-we-were-shocked-see-her-tumblr-statements-yesterday-based.

- 32 *BBC News*, *supra* note 29.
- 33 We address both here, though acknowledge their often complex and divergent histories as well.
- 34 Owners of masters control royalties associated with the use of a particular sound recording.
- 35 McCartney later called Jackson's decision "dodgy." It reportedly ruined their friendship and collaboration. Colin Bertram, "How Michael Jackson Bought the Publishing Rights to the Beatles' Song Catalog at the Advice of Paul McCartney," *Biography*, September 8, 2020, [www.biography.com/news/michael-jackson-paul-mccartney-beatles-music-catalog](http://www.biography.com/news/michael-jackson-paul-mccartney-beatles-music-catalog).
- 36 *Ibid.*
- 37 For a labor perspective on this conversation, see Matt Stahl, *Unfree Masters: Popular Music and the Politics of Work* (Durham: Duke University Press, 2012).
- 38 Eric Lott, *Love and Theft: Blackface Minstrelsy and the American Working Class* (New York: Oxford University Press, 1993).
- 39 Kevin J. Greene, "Copyright, Culture & Black Music: A Legacy of Unequal Protection," *Hastings Communications and Entertainment Law Journal* 21.2 (1999): 339–92.
- 40 *Ibid.*
- 41 For a discussion of the long history of race and intellectual property citizenship, see Anjali Vats, *The Color of Creatorship: Race, Intellectual Property and the Making of Americans* (Stanford: Stanford University Press: 2020).
- 42 Greene, *supra* note 14.
- 43 Arewa, *supra* note 14. Arewa observes that "the tendency to see blues music as a primitive form of collective folk production reflected widespread stereotypes about African Americans and was part of a conceptual framework of later borrowers that facilitated the free borrowing of such music, often without attribution, let alone compensation. Later borrowers were, however, not the only ones to profit from early blues artists. Both folklorists and record industry participants claimed copyrights in the music they "discovered." *Ibid.* at 582.
- 44 For a comprehensive list of credits, see AllMusic, "Alan Lomax: Credits," AllMusic.com, [www.allmusic.com/artist/alan-lomax-mn0000607804/biography](http://www.allmusic.com/artist/alan-lomax-mn0000607804/biography). While many scholars stop short of criticizing Lomax, Gia Velasquez points out some of the moral and authorship issues associated with his recordings. Gia Velasquez, "No Credit Where Credit Is Due: Exploitation in Copyright," *Journal of the Patent and Trademark Office Society* 99, no. 4 (2018 2017): 693–707. Though Lomax's archival work is notable, a CRTIP suggests the need to trouble his composer credits, especially in light of lack of named Black authorship on many of the tracks he recorded. David Hesmondhalgh raises similar questions in the context of Moby's *Play*. He writes:  
  
"it is worth asking how Lomax came to be regarded as entitled to any payment at all in respect of the compositions. As has been shown, his role in relation to the sampled material was that he recorded it: he had no role in composing it. If the performers composed the material they performed, then they owned the copyright in it outright, not jointly with Lomax." David Hesmondhalgh, "Digital Sampling and Cultural Inequality," *Social & Legal Studies* 15.1 (March 1, 2006): 68.
- 45 Kembrew McLeod and Peter DiCola, *Creative License: The Law and Culture of Digital Sampling* (Durham, NC: Duke University Press, 2011). For a detailed look at the case law around rhythm, see Carl Eppler, "These Are the Breaks: Applying the *Newton* Test in a Context to Provide Protection for Rhythmic Material in Musical Works," *University of Memphis Law Review* 42 (Winter 2011). For more examples of the racial harms of fixation, see Alpana Roy, "Copyright: A Colonial Doctrine in a Postcolonial Age," *Copyright Reporter* 26.4 (December 2008): 115–16.
- 46 *Feist Publications, Inc., v. Rural Telephone Service Co.*, 499 U.S. 340, 346 (1991).
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- 48 See e.g., Greene, Kevin J., "Copyright Formalities as the Bane of African-American Artists from Blues to Hip-Hop," High Tech Law Institute, Santa Clara University (2020), [https://digitalcommons.law.scu.edu/hlli\\_general/1](https://digitalcommons.law.scu.edu/hlli_general/1).
- 49 *Ibid.*
- 50 Greene, *supra* note 12 at 381.

- 51 Daphne Brooks, *Liner Notes for the Revolution: The Intellectual Life of Black Feminist Sound* (Cambridge, MA: Harvard University Press, 2021), 3.
- 52 Ibid.
- 53 Cedric J. Robinson, *Black Marxism: The Making of the Black Radical Tradition* (Chapel Hill, NC: University of North Carolina Press, 2000); Jodi Melamed, "Racial Capitalism," *Critical Ethnic Studies* 1.1 (2015): 76.
- 54 Brooks, *supra* note 51.
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- 56 Jitu K. Weusi, "The Rise and Fall of Black Swan Records," *The Syncopated Times*, 1996, <https://syncopatedtimes.com/the-rise-and-fall-of-black-swan-records/>.
- 57 Ibid.
- 58 Nellie Gilles and Mycah Hazel, "Radio Diaries: Harry Pace and the Rise and Fall of Black Swan Records," *All Things Considered*, July 1, 2021, <https://www.npr.org/2021/06/30/1011901555/radio-diaries-harry-pace-and-the-rise-and-fall-of-black-swan-records>.
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- 60 Ibid.
- 61 David Suisman, "Black Swan Rising," *Humanities* 31.6 (November/December 2010).
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- 63 April Tucker, "Timeline of Women in Early Sound Recording History (1895-1959)," *April Tucker*, February 15, 2019, <https://apriltucker.com/timeline-women-1930/>.
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- 66 *Globe Music Corp. v. Johnson*, 84 So. 2d 509 (Miss. 1956).
- 67 Eliason, *supra* note 65, 302-3.
- 68 Amy Fleming, "Dionne Warwick: 'I Was the Major Earning Power. It Was Too Much for My Husband.'" *The Irish Times*, March 24, 2020, [www.irishtimes.com/culture/music/dionne-warwick-i-was-the-major-earning-power-it-was-too-much-to-bear-for-my-husband-1.4210834](http://www.irishtimes.com/culture/music/dionne-warwick-i-was-the-major-earning-power-it-was-too-much-to-bear-for-my-husband-1.4210834).
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- 70 Tatum Jenkins, "The Vault of Soul: Dionne Warwick," *WERS 88.9 FM*, June 11, 2021, [www.wers.org/the-vault-of-soul-dionne-warwick/](http://www.wers.org/the-vault-of-soul-dionne-warwick/).
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- 72 Dionne Warwick and David Freedman Wooley, *My Life, As I See It: An Autobiography* (New York: Atria, 2010), 77-8; BacktoBacharach, "Dionne's Catalog Expanded and Remastered," *BacharachOnline*, May 29, 2013. I have cited the latter fan post here because it is the most comprehensive single recounting of Warwick's ownership struggles that I was able to find.
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- 119 The late Greg Tate's work on Jean-Michel Basquiat beautifully illuminates the artist's refusal of the narrative of white intellectual superiority and counter-articulation of one of Black brilliance. Greg Tate, "Jean-Michel Basquiat, Flyboy in the Buttermilk," *The Village Voice*, November 14, 1989, [www.villagevoice.com/2019/07/29/jean-michel-basquiat-lonesome-flyboy-in-the-80s-art-boom-buttermilk/](http://www.villagevoice.com/2019/07/29/jean-michel-basquiat-lonesome-flyboy-in-the-80s-art-boom-buttermilk/).
- 120 Indeed, some have gone so far as to ask whether "Famous" fits the legal definitions of revenge porn or obscenity. Karla Utset, "Drawing the Line: The Jurisprudence of Non-Consensual Pornography and the Implications of Kanye West's Famous Music Video Notes & Comments," *University of Miami Law Review* 72.3 (2018): 920–71. I say arguably not to dismiss the misogyny here but because the law is unsettled. "Famous" intentionally enters into gray area, raising consent issues, as indicated by an interview in which Desderio recounts a conversation with West about the "criminality of art." Nonconsensual representations of people, e.g., Trump, are also with precedent—and the ability to file suit in response has been deeply racialized in the United States. Rachel Martin, "A Chat with the Painter Whose Work Inspired Kanye West's 'Famous,'" *NPR*, July 3, 2016, [www.npr.org/2016/07/03/484402517/a-chat-with-the-painter-whose-work-inspired-kanye-wests-famous](http://www.npr.org/2016/07/03/484402517/a-chat-with-the-painter-whose-work-inspired-kanye-wests-famous).
- 121 While it is still groundbreaking for women to be movers of history, as I noted earlier, achieving that recognition at the expense of people of color is problematic. See e.g., Rachel Dubrofsky, "A Vernacular of Surveillance: Taylor Swift and Miley Cyrus Perform White Authenticity," *Surveillance and Society* 16.2 (2016): 184–96.
- 122 Anjali Vats and LeiLani Nishime, "Containment as Neocolonial Visual Rhetoric: Fashion, Yellowface, and Karl Lagerfeld's 'Idea of China,'" *Quarterly Journal of Speech* 99.4 (2013): 425.
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- 124 I reviewed approximately 200 articles about Taylor Swift and race, written from 2019 to the present. Running a Lexis+ news search for "Taylor Swift" w/25 (race or racism or racial! or "white nationalism" or "white supremacy") yielded approximately 3,500 total articles as of April 2022. For context, a Lexis+

- news search for "Taylor Swift" for the one year period from January 1, 2021–January 1, 2022 returned 10,000+ articles, even when grouped by "moderate similarity." The articles about race thus represent a small fraction of the total media coverage about her, with the majority of them being written after January 1, 2015. I considered pieces that were written from January 1, 2019 on, which is when the rerecording controversy began. I narrowed the search by excluding articles containing the word "racing," leaving me with approximately 200 discrete items, 180 of which were in English. My conclusions reflect a critical race studies and rhetoric informed assessment of the assembled archive, plus a selection of articles drawn from Google.
- 125 Brian Hiatt, "The Rolling Stone Interview: Taylor Swift," *Rolling Stone*, September 18, 2019, [www.rollingstone.com/music/music-features/taylor-swift-rolling-stone-interview-880794/](http://www.rollingstone.com/music/music-features/taylor-swift-rolling-stone-interview-880794/).
- 126 Ibid.
- 127 Kornhaber, *supra* note 2.
- 128 A Lexis+ news search for "Taylor Swift" w/25 (Scooter Braun or masters or catalog or sound recordings) for the period between January 1, 2019 now yielded approximately 3,800 articles as of April 2022. Requiring the terms "Black" or "people of color" in those articles produced approximately 400 hits, in English with the "moderate similarity" filters on. I reviewed these articles along with a handful of pieces that I located through Google searches on racial justice and masters controversies. Swift is frequently a case study for important, though historically complicated trajectories of musical ownership. Even legal scholars have begun taken her up as exemplar of ownership battles. See e.g., Delilah R. Cassidy, "You Belong With Me: Retaining Authorship and Ownership of Sound Recordings," *Arizona State University Law Journal* 18.2 (2021): 240–64. This is understandable but complicated given the racial histories I outline.
- 129 Jon Blistein, "The Sisyphean Quest for a Good Record Deal," *Rolling Stone*, June 15, 2021.
- 130 Ben Sisario and Joe Coscarelli, "Taylor Swift's Feud With Scooter Braun Spotlights Musicians' Struggles to Own Their Work," *New York Times*, July 1, 2019, [www.nytimes.com/2019/07/01/arts/music/taylor-swift-master-recordings.html](http://www.nytimes.com/2019/07/01/arts/music/taylor-swift-master-recordings.html). An article in *Variety* on Blackout Tuesday also names the issue of Black erasure in masters conversations. Jem Aswad and Shirley Halperin, "Blackout Tuesday Was No Day Off for Labels, Managers: Will It Yield Real Results?" *Variety*, June 4, 2020. It is worth contrasting the way that Paula Cole recently spoke about her relationship to Black musicians, particularly Black women, and their investments in working toward racial and gender justice. Patrick Ryan, "Paula Cole 'Patronized' as Female Producer," *Carlsbad Current-Argus*, May 26, 2021.
- 131 Victoria Sands, "Teardrops on My Guitar: Taylor Swift Losing Her Masters Is a Sexist Tale as Old as Time," *bitchmedia.com*, July 8, 2019, [www.bitchmedia.org/article/taylor-swift-scooter-braun-masters-fight](http://www.bitchmedia.org/article/taylor-swift-scooter-braun-masters-fight).
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- 133 Kellie Chudzinski, "Nicki Minaj Compares Her Music Industry Battles to Taylor Swift's... While Celebrating 12 Years Since Debut Mixtape," *Mail Online*, July 6, 2019.
- 134 Chanté Joseph, "Back to Black: How the Record Industry Reckoned with Race This Year," *The Guardian*, December 28, 2020.
- 135 Eric Smialek, "Who Needs to Calm Down? Taylor Swift and Rainbow Capitalism," *Contemporary Music Review* 40.1 (January 2, 2021): 99–119. Swift responds to these very claims in Chris Willman, "Taylor Swift: No Longer 'Polite at All Costs,'" *Variety*, January 21, 2020, <https://variety.com/2020/music/features/taylor-swift-politics-sundance-documentary-miss-americana-1203471910/>.
- 136 Ibid.
- 137 "Taylor Swift Celebrates Anita Baker for Owning Her Masters," *Just Jared*, September 5, 2021, [www.justjared.com/2021/09/05/taylor-swift-celebrates-anita-baker-for-owning-her-masters/](http://www.justjared.com/2021/09/05/taylor-swift-celebrates-anita-baker-for-owning-her-masters/). One article centered on Baker's masters negotiations names Swift in a line of Black musicians seeking the same outcome after years of exploitation and dispossession. Noah Berlatsky, *The Independent*, March 16, 2021.
- 138 Red Chidgey, "Postfeminism™: Celebrity Feminism, Branding and the Performance of Activist Capital," *Feminist Media Studies* 21, no. 7 (October 3, 2021): 1055–71.
- 139 While some might claim that Beyoncé engages in the same political strategy, I disagree. As many scholars and critics have observed, Beyoncé's body is political by virtue of its Blackness. Her politics may have evolved but she never had access to the same privileges of disengagement that Swift did.
- 140 Eden Osucha, "The Whiteness of Privacy: Race, Media, Law," *Camera Obscura: Feminism, Culture, and Media Studies* 24.1 (2009): 78.
- 141 Heran Mamo, "Taylor Swift Fans React to Latest Sale of Her Masters (& Get Hyped Up for Rerecorded Songs)," *Billboard*, November, 16, 2020, [www.billboard.com/articles/columns/pop/9485174/swifties-reactions-taylor-swift-re-recording-albums-after-latest-masters-sale/](http://www.billboard.com/articles/columns/pop/9485174/swifties-reactions-taylor-swift-re-recording-albums-after-latest-masters-sale/).