

Welcome to Civil Discourse. This podcast will use government documents to illuminate the workings of the American Government and offer contexts around the effects of government agencies in your everyday life. Now your hosts, Nia Rodgers, Public Affairs Librarian and Dr. John Aughenbaugh, Political Science Professor.

**N. Rodgers:** I normally say, hey Aughie, but I'm going to say, hey Aughie, hey Hillary.

**H. Miller:** Hey, Nia.

**J. Aughenbaugh:** Good morning, Nia?

**N. Rodgers:** How are you all?

**J. Aughenbaugh:** We're good. Thank you.

**N. Rodgers:** We are back because Hillary, and silly her, agreed to talk to us some more about copyright and artists, and the selling of their catalog. Aughie and I are both fascinated, first of all, by the amount of money involved in the selling of these catalogs. Because if you asked me to sell you my life's work, it'd probably be worth about \$4.80. It's not, you know what I mean? I have never written a Grammy winning song or I've never done anything like that, but a lot of these artists.

**J. Aughenbaugh:** Nia, I agree with you. Every time I put my syllabus there, my lecture notes or my intellectual property, I chuckle when I write it, and I chuckle when I say it in class, because I'm like, nobody in their right mind would spend any money.

**N. Rodgers:** Buying my work.

**J. Aughenbaugh:** Yeah. Trying to use my lecture notes for whatever purpose. The fact that I've had former students try to sell my lecture notes to other future students, it blows my mind.

**N. Rodgers:** I know a copyright librarian that can help you with that. Hillary, I want to ask you about, oh, sorry.

**J. Aughenbaugh:** But to set the stage, listeners, what Nia is talking about, I'm just going to give one example. Bob Dylan, the master songwriter, the voice of a generation, if you will, sold his publishing catalog a couple of years ago to Universal Music for an estimated \$300-\$400 million. Earlier in 2022, he then sold his master recordings to Sony Music for, again, it's estimated another \$200 million. At minimum, Bob Dylan sold his written work and his master recordings for a half billion dollars, roughly speaking. That's what we're talking about in this episode. These popular musician songwriters selling their songs. Hillary is going to talk about in just a moment or rather important distinction, their songs, to not only media corporations, but in some instances, according to our research, hedge funds and investment firms who are buying these catalogs for just obscene amounts of money.

**N. Rodgers:** Hillary, can we start with the first question which is, what is the artist actually selling?

**H. Miller:** Well, it depends when you say artist, it depends on who we're talking about. A lot of the time I think we tend to think, and it is the case that the artist of the song, the person who's going to end up performing it being known for it, is also the person who wrote the song. That's not necessarily the case. Imagine you have a situation where there is a songwriter who is credited, but right there, not the one forming the music. And so there is the actual composition, which you can think of as written down on staff paper, notes written out, lyrics written down. The idea of the song, the nebulous thing that is floating in the air, actually, captured somewhere other than a sound recording, because the sound recording gets its own set of rights. So I think usually it's called the composition and the recording, maybe is how we can think of them. Those are two separate things. So say you're the songwriter but you didn't perform it, you're going to be working in that area of the composition publishing, is usually called either publishing groups by these rights. If you're the performer, it's going to be those recordings. I think it's interesting lots of people can record the song. Especially say it's a songwriter who's shopping the song around. You might get 3, 4, or 5 different people who are recording the same song and the songwriter, those publishing rights or composition rights is going to be making money in all of those cases. Whereas the person who's recording is just going to be, again, getting revenue from the recording.

**N. Rodgers:** A songwriter could separately sell the song to multiple artists? That's why you get multiple copies of a song. Bob Dylan records All Along the Watch Tower, and so does Jimi Hendrix. Jimi Hendrix's version takes off. It's the recording of the song that everybody thinks of when they think of All Along the Watch Tower, they think of the Jimi Hendrix's version. Bob Dylan made money three different ways. He made money by recording the song himself and owning it. He made money by writing the song, then by recording it, and then by selling it to Jimi Hendrix to record.

**H. Miller:** Yep.

**N. Rodgers:** Then when he sold the publishing rights, when he sold the song rights, now the Universal Music Publishing could sell that to anybody to record. We could get a version recorded by, picking unlike the artist, Adele. Adele could record All Along the Watch Tower, which by the way, I would actually pay to listen to. That would be something.

**J. Aughenbaugh:** Or a classic artist, a jazz artist. Get a jazz version of All Along the Watch Tower.

**N. Rodgers:** Oh my gosh, that would be awesome. A sort of R&B.

**J. Aughenbaugh:** Or a rap version.

**H. Miller:** Having it sampled, and there's two layers for you there to sampling an actual recording of it, or starting from scratch.

**N. Rodgers:** The question there is, do you have to buy in order to sample?

**H. Miller:** That's an interesting one. That could be a whole episode in itself. Yes. Not necessarily because fair use, the part of copyright law that says there are some uses that don't require permission or payment. Not because fair use doesn't necessarily apply to sampling, but because people are going to sue you. It's really litigious and it's common to get permission for sampling, because there have been some court cases that just freaked everyone out in the music industry. The best thing to do is sample, and that's a chilling effect I think has happened because of that.

**N. Rodgers:** If I wanted to sample a tiny piece of Jolene, I would need to pay Dolly Parton to do that, or at the very least get Dolly Parton's permission to do that? She may not charge me. They don't have to charge. If Dylan and Hendrix got together and they were just having a beer, and Hendrix said, I really want to record that. Dylan could have just said, okay, go ahead, and they could have had a lawyer write up a document that says you have permission to do this and not paid. It doesn't have to be an exchange of money.

**J. Aughenbaugh:** Well, and it's funny, Nia, you mentioned Dolly Parton. Dolly Parton wrote a song, I Will Always Love You. She sold the rights of that song. Now, she recorded it. It was a country music hit, but she sold the written rights. She didn't know that Whitney Houston recorded a version of it for the movie, The Bodyguard. Then here's it on the radio, and becomes a huge hit. Not only did she make money on her recorded version, she made a busload of money because it became, if not the biggest hit in Whitney Houston's career, one of. That's the thing. This is where it gets really complicated, because if you're a songwriter, you want people to record your music. You may not like the recorded version, but because they did record it, you're going to make money every time that recorded version gets bought.

**N. Rodgers:** Just as an aside, listeners, she loved that version. She loved Whitney Houston's version. She said Whitney Houston was amazing. Because Whitney Houston was amazing, had an amazing voice. Lost to soon.

**N. Rodgers:** You can sell, let's just say, for instance, so Aughie rights a song, and he sells it to a company, and then he has sellers regret. Years later he's like, "Man, they have led some real chuckle heads record my song, and I am not enjoying this at all." He can try to buy that back. He can try to get his ownership back if he wants for other people to stop recording his song. Is that even a thing? Or is it that once it's gone you have to have so much money.

**J. Aughenbaugh:** It's a huge thing, isn't it Hillary?

**H. Miller:** It's a huge thing. Probably the most well-known, well-documented cases with the Beatles and decades of Paul McCartney trying and succeeding in getting rights back to the music, and there's two things there. First, trying opportunities to purchase, so say it's a company that bought it and maybe the company is being sold or selling off rights. You have an opportunity there. If you're the highest bidder which is not necessarily always the case. Paul McCartney at one point was massively outbid by Michael Jackson, I believe, after he had been casually talking to Michael Jackson about wanting to buy his rights back, so that was not a great situation.

**N. Rodgers:** That is not a friend.

**H. Miller:** But he also took advantage of it. Specific to US copyright law there is this clause or something in copyright law that says specifically for the situation you're talking about, someone gets a bad deal early in their career. There are ways you can sue the publisher or under law get the publisher to return those rights to you after a certain amount of time, and I want to say it's 56 years or something. It's a real weird system of like 28 years plus 28 years. I don't really understand. It's one of those weird areas that when I first heard about it, I was like really there's like a I don't even know what you would call like a little evacuation route, around back of copyright law that gives you this rights back. I thought it was really cool when I heard about it, but that was the first case.

**J. Aughenbaugh:** It's a claw back provision in the copyright law.

**N. Rodgers:** But I'm assuming that part of that is because young artists often get taken advantage of, in terms of you're young, you're starving. Because you haven't made it yet, so you're not getting into a whole lot of money, and somebody says, hey man, I'll buy your songs for what is at the point a pittance because they're not buy it for millions of dollars the way they are with Bob Dylan. Bob Dylan established himself and then he sold his stuff for \$200, \$300, \$500 million. Because he was a well-established artist. But if you're just a young artist in the music industry, isn't there a fair bit of exploitation of, sure, I'll buy your song for 50 bucks because you need the money.

**J. Aughenbaugh:** It happens two ways. First, your songs get bought by publishing company, and Hillary can probably speak to this in more depth. There are songwriters who are on the paid staff of publishing companies and their job is just to write music for other people. You may not get a huge royalty rate if you're on the paid staff of a publishing company. But if you're a new artist, where music companies in particular take advantage is that they gave you the money upfront to go into the studio to record your music. But then you owe them all that money that was basically "loaned to you that cover the costs." You may end up owing them 3, 4, 5, 6 albums just to go ahead.

**H. Miller:** Get your first one out there.

**J. Aughenbaugh:** If you don't make any money right away. You're in debt to them, and that's why you see a lot of new artists who unless they get a big hit or unless they can make a whole bunch of money touring, they can't buy their way out of that contract that they signed with the music company. The classic example is Tom Petty and the Heartbreakers had a couple really well-known albums. The first two albums, but I think it was with their third album, the record label was just like, you still owe us a bunch more albums and oh yeah, by the way, we're raising the price on your albums, and Tom Petty was this like, I want to renegotiate my deal and oh, yeah, by the way, I don't want you to raise the price of the album you charge to consumers. Tom Petty basically had already recorded a new album, but he wouldn't turn over the master recordings to the record label. He was at one point driving around LA with the master recordings in the trunk of his car. He didn't want the record label to get their hands on the master recordings. Some of the stories are just bizarre, but they do get exploited, and the exploitation has been made worse. Because now, you can say this in most developed countries, but particularly in the United States, most Americans no longer buy albums. They don't buy physical vinyl.

**H. Miller:** Although vinyl is making a return among hip stars.

**J. Aughenbaugh:** That's right. But most Americans now download music.

**H. Miller:** They stream it or they download it.

**N. Rodgers:** They stream.

**J. Aughenbaugh:** But the streaming services, because of their ability to control the marketplace have basically said to record labels and their artists we're only going to get you so many cents for every download. The source of income has begun to dry up for a lot of these artists. Listeners, if you're trying to understand why artists, no matter what point they are in their career, they want to sell both their written or publishing rights, but also there are recording rights. The music landscape has changed, the marketplace has changed. The Nia I know you're pretty fascinated by younger artists who have already sold the rights to both their written music but also their recorded music.

**N. Rodgers:** I'm fascinated in both instances, when they do it and when they don't and when they have sellers regret because I know that Taylor Swift had a huge fracas with the person who bought her music master recordings, and so she's re-recording. Now, Hillary, she can re-record her songs and then they're back to being hers again, the new versions, what happens?

**H. Miller:** A new set of recordings can be. Yes, it can be or else it would be owned by maybe a different recording company. Let's say she switched who she's working with, and to some extent it would depend, does she own the written rights, the publishing rights? Maybe she's still got a great relationship with the people who own the publishing rights and she's going to I assume either she owns him or she is working with someone she trusts to re-record. Yeah, she can own these new recordings or whatever company she's working with. It's basically you can start to get lots of parties that you're involved with overtime, that you work with one publishing group and then they sell it off to another company, and maybe that's a publishing group, maybe that's a hedge fund, who knows? Then you're stuck working with them because it contracts like a lot of contracts will have, I don't know, this is not the right language, but traveling provisions. You know what I mean? That says like, when you're with this company, they're going to give you 15 percent royalties on this, and if we sell off, this contracts which is to someone else, either it's going to be renegotiated or you're going to keep getting your 15 percent. So you can be bouncing around with all these companies. You can work with multiple record companies over time and you can imagine how complex it gets. I think that's one of the reasons why these artists may want to sell off is because if they're at the end of their career, they're looking ahead. They've got kids, hopefully they already have wills in place and they're like, do I want to try to split 17 different publishing and hedge fund and record company contracts with all these parties between my six kids or something like that. They're like, no, I'm just going to try to sell everything, get one lump-sum, split the money out. That might be simpler.

**J. Aughenbaugh:** In Taylor Swift's case, Nia, the master recordings were owned by her previous record label. I think it was Big Machine. But in the contract was a time limit, so when her master recordings

became available for basically auction, the previous head of Big Machine went ahead and bought it which really upset her.

**N. Rodgers:** Because she can't stand that guy.

**J. Aughenbaugh:** Yeah, and she was just like and I want ownership of my original master recordings, and he was just like, are you kidding me? They're worth whatever I paid. But when he bought them there was not an exclusivity clause in the contract which is now allowing her to re-record all of her previous songs.

**N. Rodgers:** Sorry. Does she have to change them at all?

**J. Aughenbaugh:** Yes.

**N. Rodgers:** Do she have to make slight adjustments to be arrangements in order?

**J. Aughenbaugh:** She has to make changes because otherwise you would have to pay.

**J. Aughenbaugh:** Him to record her songs. She's co-written most of the music on her albums.

**N. Rodgers:** That brings up an interesting question for me for you all. A lot of songs are co-written. They are written by two people because that's a lot of times how songs just work.

**J. Aughenbaugh:** That's a collaborative experience.

**N. Rodgers:** You have somebody who's playing the music, and somebody else is writing the words. Gilbert and Sullivan, Rodgers and Hammerstein. It's a known thing that a lot of times you have pairs that work together in these things.

**J. Aughenbaugh:** Lenin and McCarthy, Simon and Garfunkel. Yes.

**N. Rodgers:** If for instance, Simon and Garfunkel, let's just use your last example, if Paul Simon, who actually wrote a lot of their music by himself, but if he had not if he had written something with Art Garfunkel, and he sold his rights to a song that doesn't automatically sell Garfunkel's rights to the song. Garfunkel could still own his half of whatever the song is. Doesn't that complicate who can sell a music, who can release it? Because if you're talking about a band, let's just say you're talking about Fleetwood Mac.

**J. Aughenbaugh:** Yes, for example.

**N. Rodgers:** Everybody in Fleetwood Mac wrote songs. On some songs, three or four people wrote on the song. You have Lindsey Buckingham, you have Stevie Nicks. You have.

**J. Aughenbaugh:** Christine McVey.

**N. Rodgers:** Thank you, Christine McVey, all writing on a same song. If only one of them sells the rights, does that mean that the other two can prevent something from being recorded? How does that even work?

**H. Miller:** I think it all comes down to the contract, so the way it breaks down. Under copyright law, the standard for co-authorship is, if you don't specify in writing, I'm pretty sure otherwise, it breaks down 50, 50. It doesn't matter if you came in and said, how about this? How about we change two words in the chorus to something else and that's all you contributed to the song? It's going to be 50, 50 unless you break it down, otherwise. These companies are going to make you break it down otherwise when they're cutting a deal with, let's say it's a pair of collaborators. They're going to say, who's getting what? It can be the case. I'm sure that on one Fleetwood Mac album, maybe they had lots of different. Every song had a different arrangement of who wrote what. But you see it, you mentioned Lennon McCartney, where they agree upfront. They said, even if one of us goes off, and writes, and maybe the other one comes in a little, we're just going to credit it to the two of us. We're just going to do that which in my mind, I actually think, helped keep a lot of those rights bundled together because if you can imagine that the songwriting credits were only credited to one, or the other of them. They would have broken out in different directions possibly.

**J. Aughenbaugh:** Imagine how messy things would get in a band.

**H. Miller:** Yeah.

**N. Rodgers:** Well, Kiss has four members. If you broke it down 25% for each for recording not for writing, but for recording because the whole band plays on the recording.

**J. Aughenbaugh:** That's a really important distinction because recording a song is different than writing the song.

**N. Rodgers:** Yeah. They each get 25% of the royalties. For Detroit Rock City they each get 25%, and if somebody sells their recording rights.

**H. Miller:** Then the other three are working with whoever that party is.

**N. Rodgers:** They're still getting their 25% each.

**J. Aughenbaugh:** Yes.

**N. Rodgers:** It's in the music recording studio. It's in their best interests to get all four of those people to sell their rights at one time so that they only have to deal with that once.

**J. Aughenbaugh:** If they can. But what my research indicates, is that you use the example of Fleetwood Mac. Four of the five members have sold their rights to different companies.

**H. Miller:** Fleetwood Mac is a legal entity is just several dozen lawyers sitting in a giant conference room trying to bring Spotify to heel, or something.

**N. Rodgers:** Can we just side note, I'm just going to go off here in a small tiny tangent for Fleetwood Mac, which is, that is what happens when you have people who are married to other people, but who sleep with other people in the band, and there turns out to be a lot of drama, and everybody ends up breaking up, getting together. You are going to end up with a contentious. If people wonder sometimes why bands break up, I think in part it's this thing. It's the money. It's somebody being treated differently than everybody else. That thing. Well, you're the star of the band, and everybody else in the band is like dude, I'm over here playing the guitar till my fingers fall off. I'm important to this.

**H. Miller:** Yes. But sorry, we've got to break it down in numbers and we just got to put a number on everyone's percentage.

**N. Rodgers:** The one who stands up front is the one who sells the most. Stevie Nicks probably had a higher percentage, in some ways, than anybody else in the band, because she was one of the upfront people. I imagine that that causes a lot of consternation in bands of already interesting artistic personalities, and then you mix money into it I'm sure it turns into a giant mess. I want to ask about, if I could, this idea of the music industry changing. Way back in the day, the music industry, I think, worked a lot like the film industry, which is, they would just sign lots of artists, and then they would take a piece of music, and say, here, go record this. If the person didn't like it, then too bad. Tough. You got to record because we own the rights to your recording, and so we want to do that. Is that model still a model, or is that not how it works these days with artists? Are they still being, hey, we've got this group of songwriters, and we want you to record this song, and you're like, I don't like the song, it sucks, then you record it anyway?

**H. Miller:** I don't know. Maybe this is just my misperception that maybe it's like a, I'm thinking of the past. There was this in-between time. The time you are talking about where it's like, we just have a bevy of songs, and we just bring in some people and mix and match, and see what gets a hit. You know what I mean? Then there's this time we think of as the golden age of the songwriter. Bob Dylan, for example, recording their own music, occasionally covering other things, occasionally letting other people cover but right there is this super alignment between, I wrote it, I perform it, it's my music through and through. But then what's interesting in some of the research, and digging I've been doing to these lists of people who were selling these rights is I'm starting to see probably, for me, it's behind the scenes, but I'm sure for people who are more attuned to the music industry, it's not. These names that I don't recognize of people who are really successful songwriters, who are still making their entire career on writing songs for half of the top 40 artists. That is what they do. I imagine it's probably someone would argue was mentioning to you, maybe they're on the staff of these music companies, which does sound like a trade-off to me because you're tied to that company. You've probably got an employment contract that states how much you get because if you're an employee, this is great for music companies they can choose the songwriting as a work for hire.

**N. Rodgers:** They would own the work.



**H. Miller:** It's your employment contract that's going to state how much of a percentage you get as a staff songwriter which has trade-offs. It's things like, you know you have a job, and the built-in health insurance. That's nice stability. You don't have to go freelancing and bopping around. But again, it's a job you don't even start owning the rights possibly to this stuff it's always under the company. Lots of names I didn't recognize of people who are still doing exactly what you were talking about early days. They are professional songwriters who are pitching, or their music is being pitched. I always say I was talking about the golden age. I don't think it's not the case that there aren't plenty of artists who were writing, and recording their own music these days. But it seems like we've shifted a lot more back to that. What you think of is the early model of, it's not necessarily the case.

**N. Rodgers:** Go ahead.

**J. Aughenbaugh:** To Hillary's point. To me, it's fascinating because pretty much no matter what genre of music you are talking about. But particularly with popular music. There are people who write songs who don't record them, whether they be staff writers. I was coming across in the research, some individuals who I was like who. For instance, Andrew Watt, who's written Grammy winning songs for Sean Mendez and others. He sold 105 songs to basically this company, that's a hedge fund. Hypnosis for an eight figure deal. I'm like, first of all, who is Andrew Watt and nothing against Mr. Watt.

**N. Rodgers:** I'm sure he does feel that he's talented.

**J. Aughenbaugh:** Clearly he's talented. He's got a finger on the pulse of what Americans want to listen to and download. But at the same time, I tend to go back to Hillary's point. Are you really an artist? What was the original purpose of copyrights. Was to go ahead and provide, if you will, a space for artists to go ahead and perhaps make some money on their work but at one point do you crossover from being an artist to I'm on an assembly line. I'm being brought in to go ahead and write a song for x artists for their next hit.

**N. Rodgers:** If they don't hit, then I assume that eventually you get dropped. If you're a staff writer and you're consistently turning out songs they'd are not hits, they're going to blame the artists sometimes, but after a while, they're going to blame the writer. They're going to say, you're not performing at the level that we need you to perform. But I'm also fascinated by the idea that one song can be sold hundreds of times to hundreds of artists to record. I'm thinking about Leonard Cohen's Hallelujah. Like there are 9,467 versions of Hallelujah which I think probably three or 400 or probably legal and everybody else probably just recorded it. But if you put in Hallelujah on YouTube, it's just Hillary I'm going to come back to YouTube in a minute because I want to ask you about people who sings songs without getting permission. But everybody in the world is covered this up, just like I know they're all in the public domain. It's not quite the same thing with Christmas music, but you're not an artist. You've put out a Christmas album, I don't care what me is there a hip hop Christmas albums like you morally required apparently in the United States to put out a Christmas album like where's your Christmas album?

**J. Aughenbaugh:** Once you achieve a certain status.

**N. Rodgers:** People are expecting that.

**J. Aughenbaugh:** In fact, you have to achieve a certain status. Then the expectation kicks in. When do you put cranking out a Christmas album?

**N. Rodgers:** Snoop Dogg, Silent Night going to show up. It's very American to me. It's very funny, but it is interesting. The artist who wrote Hallelujah, makes a little bit of money every time that song is sold to an artist to record.

**H. Miller:** As long as they've still got some piece of the rights and got them from the publishing company.

**N. Rodgers:** Do they get to say, no, he's not recording my song.

**H. Miller:** This is, I'm glad you brought up YouTube and the concept of covers from people who aren't even necessarily like career musicians. Compulsory licensing. That's what all of these layers of companies are set up for to do this at scale. Note you go to the company, you get permission to do it. Like the example with Dolly Parton, who didn't even know that Whitney Houston was doing it. You imagine if up-and-coming artists wanted to cover the song. The person may never even know who, who's covering. YouTube is interesting because platforms have to set up the same things. They have to set up the same licensing streams. Like what will probably happen on YouTube is the algorithm or whatever is going to hear the chords, the notes, the words, whatever of Hallelujah. The algorithm has probably become self-aware at this point and is like, it's another Hallelujah. Here we go and I expect it's probably going to ask the person uploading that cover. We've picked up some copyrighted content here. Either you let us put advertisements on it to monetize it. You're not going to get money from it. Or you can put it up and that money is going to go to the copyright holders. That's the case. I've seen this happen with not-for-profit, you know, educational videos, but say you're critiquing or commenting on a copyrighted work in that algorithm, picks it up. It's going to say, if this is going to go on our platform, we've got to bring in some revenue because we have to pay the copyright holders for use of this work. It would be the same right with video clips, movie clips, that thing.

**J. Aughenbaugh:** But it's funny Miller you mentioned Hallelujah because there was a period in the late 1990s and roughly the first five or six years with this millennium, where you would be hard-pressed to go a month without watching the credits of a TV show or a movie. It did not have some version of Hallelujah, there were chat rooms with pitched battles over who had the best version of Hallelujah. Because you had Leonard Cohen fans who Leonard Cohen wrote the song.

**H. Miller:** You recorded it.

**J. Aughenbaugh:** He recorded it. But you had Leonard Cohen fans are alike Jeff Buckley's version which is probably the most played cover, that's crap and then you know you got it. In every time it played, Leonard Cohen was caching a royalty check.

**N. Rodgers:** I assume that with some people they don't care who records their music. They're like, dude, it's money. I don't care if Motley crew does a terrible version of Hallelujah, I don't know if they've done one or not. But if they did and they did a terrible version of it, he's like, "Where's my check". There may be some of that and then there may be some people. I know that Dolly Parton held tight to her later, and she doesn't know. She does not sell her music at all, her publishing rights at all. Because she wants to control who records things and where they're used and stuff like that. She's been very pleased with some of the people that she has let record. I want to say little limb loss recorded Jolene and she was very happy with that recording and supported him and it was very positive about it. But I'd be willing to bet that Taylor Swift won't sell another thing.

**J. Aughenbaugh:** She will have to because she's made so much money. If she ever goes to one of these companies and wants to go ahead and sell her songwriting rights.

**N. Rodgers:** She can name any price. Same with Beyonce, who could name any price she wanted, but I guess she won't do it either for a variety of reasons.

**H. Miller:** But actually coming through I'll say, I'm keeping everything. I'll let you have a piece rate. You can get some of that piece of this from me. Because once you achieve a certain level, I'm sure you probably can go into reverse trend.

**N. Rodgers:** You can say you get 30% instead of me getting 30%. But I have a question about, Hillary, this is just me asking your opinion. Feel free to save. This is just my opinion, although we have a disclaimer on this entire podcast by the way, that is just our opinions and don't sue VCU or us do you think that artists are more empowered these days or less empowered these days than in previous iterations of the music industry? Are they able to reach their fans directly in a different way that empowers them.

**H. Miller:** I think on balance of a few things I'm going to mention. I think they're more empowered.

**H. Miller:** I think in some ways they're less empowered because these companies, they have so much money, they have incredible lobbying power, they have dominance in the industry, but at the same time, I think it's just the Internet, you can Google and look up what a contract should look like. You've got a forum online where you can hear from people who said that these are red flags, you shouldn't be signing a deal like this. There are artists who buck the whole system and say, I'm not doing this, I'm releasing my music directly through streaming or online and who don't go with large companies or who form independent companies.

**J. Aughenbaugh:** Yeah, they create their own labels. For instance, one of my favorite artists is Jason Isbell, and after a while, he just went in and created his own record label. He was just like I'm done trying to negotiate, this is my label, I will pick what I want to release, and now he's actually releasing other people's music.

**N. Rodgers:** But they're just like, hey man, can you release my music? He's like sure.

**J. Aughenbaugh:** Yeah. They're friends of his or he likes their music or he thinks that they haven't been given a large enough platform so Hillary, to your point, on one hand, you're seeing more ways for artists to get their music out. But let's face it, the streaming services, okay.

**H. Miller:** I can't imagine being an independent artist or a small company trying to deal with that.

**N. Rodgers:** Or trying to compete. There's no way. But by the same token, I can't remember which artists it was recently that said to Spotify, you are not going to play my music until you stop doing it in order. There was something about the order of the album. Like they wanted the album played in order of creation because there's, his albums are.

**H. Miller:** The way they'd originally released.

**N. Rodgers:** Exactly. Some artists put together their album, the song is like an arc through the album. It tells a story or it blends in a way that they've carefully thought about. It's not that it should be done alphabetically or it should be done whatever, but the streaming services allow you to change the order of the songs than an album will play. I can't remember if it was Taylor Swift or it was somebody who said no, that my album is going to be played in the order that I want it to be played in and the streaming company said, yes, ma'am because the power differential.

**J. Aughenbaugh:** Well, you have to have enough clout.

**N. Rodgers:** I'm assuming that I couldn't do that if I had an album on Spotify, they'd be like no

**H. Miller:** Because what I understand, if I understand this right, Spotify, I don't know if this is the case now, but at one point because they've got to go through and find the rights for these songs, their recording rights and the composer rights, and they've got to do research in some cases to figure out who this money should be going to and how to get it to them. But they, at one point, I believe, basically set up a fund and a legal department to say, well, we just know we're going to miss some things, we might get sued, we're just going to put some money over here. Go ahead and put the music up because they really wanted to get as much music up as possible even if they maybe had not yet identified the right people, they weren't confident that they'd gotten everything right because, this stuff is obviously it's very complex, if you're trying to pull up. They have some really cool music that they have added there that you, in some cases, it's really hard to find in physical forums or in other places anymore but they set aside money knowing, hey, we're we're probably going to get sued, so they went for let's just get it up, and then later, we'll see what happens.

**J. Aughenbaugh:** There were a whole bunch of lawyers who did a whole bunch of risk analysis, and [inaudible] accounts who were just like, so if we lose a certain number of lawsuits, but we make this amount of money, we're going to still come out ahead.

**N. Rodgers:** It's the Ford Pinto argument. Internal documents where they said, we'll just pay off families that blow up?

**J. Aughenbaugh:** Yes.

**N. Rodgers:** Because it's cheaper than changing the assembly line.

**J. Aughenbaugh:** Yes.

**N. Rodgers:** To change the physical makeup of the car. Once that came out, then, of course, all hell broke loose.

**H. Miller:** I'm assuming they could say, some of these, there were probably considerations like early songwriters, some of them are probably dead, maybe their heirs don't even know they have rights. Maybe the early publishing companies folded and we don't know who owns the rights, and probably no one's going to come forward to call us on it, so we pocket that money actually.

**J. Aughenbaugh:** Hillary, your last statement raised a really interesting point in regards to errors.

**N. Rodgers:** Oh, my great giggling [inaudible] . Musicians just seem to be significantly worse at arranging their wills than every other person on the planet.

**H. Miller:** But you can see why now if they said, oh, this.

**N. Rodgers:** Well, I do, I do see why now because this really more complicated.

**H. Miller:** They've got 17 different contracts.

**N. Rodgers:** But you look at Prince's death.

**J. Aughenbaugh:** I was just going to mention Prince.

**N. Rodgers:** What happened to his catalog.

**J. Aughenbaugh:** To his estate.

**N. Rodgers:** Oh, my goodness. Michael Jackson, same thing.

**J. Aughenbaugh:** What was it three-and-a-half, four years after Prince's death? Because he had not left a clear will. You couldn't download his music in many platforms because the heirs could not come to an agreement on who was going to get what, so until that got worked out, they were like no release of his music, no streams. You couldn't even find some of his more popular songs on YouTube. They've now all finally worked that out, but nevertheless. He was prolific, he wrote songs some of which he never recorded, but other artists did and had hits with.

**N. Rodgers:** Well, I agree with you, Hillary, I'm now starting to understand if 17,000 companies own bits and pieces of your catalog, which may be the case as you move through different recording studios with different.

**J. Aughenbaugh:** Different stages of your career.

**N. Rodgers:** Different bands. Eric Clapton has been in like what, 30 bands. He's done individually work.

**J. Aughenbaugh:** Well, how about the very considerations of Crosby, Stills, Nash?

**N. Rodgers:** Crosby, Stills, Nash, and Young.

**J. Aughenbaugh:** Or think about the band The Band where they're still arguing about who wrote what songs.

**N. Rodgers:** How many drummers have died and how many rock bands are being replaced? It's bad to be a drummer in a rock band. I'm just saying they kick it a lot.

**J. Aughenbaugh:** Can we touch upon one last point because I get asked this question a lot from my students? Why would these artists sell out? Part of me is so hard to hear young people say, why are they selling out? I'm like, God bless you. I just go ahead and I point out and Hillary, you mentioned this earlier in the podcast episode. Not only is the contractual arrangements so complicated, but the financial planning aspect of this is extremely complicated. When you combine the copyright code with the tax code, there aren't enough attorneys in the world to go ahead and figure out the mess. But the bottom line is for many of these artists, not only has the music landscape changed, so if you're looking for a guaranteed source of revenue on your life's work don't rely on your royalty tracks from the streaming services. You add COVID-19, where you couldn't tour. That was another source of revenue that was removed.

**N. Rodgers:** Touring is expensive, putting on a decent show.

**J. Aughenbaugh:** The overhead costs are just another.

**N. Rodgers:** That did not mention, I imagine the years at shaves off with your life. I just imagine. It feels like it's physically difficulty. Oh my goodness. I spent a summer following Bruce Springsteen around, don't judge, and several of his concerts. He plays for two-and-a-half hours straight. He visibly loses weight on stage, and that's why he made so much money selling his master recordings as well because he had so many side notes, so many live concerts recorded. He made an incredible amount of money on that.

**H. Miller:** Okay.

**J. Aughenbaugh:** Three hundred songs, 20 studio albums, 23 live albums, and a whole bunch of music that's already been recorded, but it's never been released. There are estimates that he has easily 700

songs that have been recorded in studios that have never been released. He sold all of that to I think it was Sony. Yes.

**N. Rodgers:** Oh my gosh.

**J. Aughenbaugh:** The Sony for half a billion dollar. Half for a billion.

**N. Rodgers:** Then he went and had a Broadway show.

**J. Aughenbaugh:** Yes.

**N. Rodgers:** Then he went and had a Broadway show and made money hand over fist doing that. But can we just side-note something? Aughie is talking about the taxes and the difficulty with financial planning and all that stuff. We're also talking here about mega artists. Your average person in the music industry isn't making this money, just like your average actor in the film industry is not Brad Pitt. Your average actor in the film industry is a character actor that is making significantly less money. Part of me is like dude if you can get the money.

**J. Aughenbaugh:** Sure.

**N. Rodgers:** Go for it, especially from these companies. But although it does make me wonder what happens to the smaller artists because I don't think they're getting that money. But I have a last question that I want to make sure we get in which is, so John Aughenbaugh, brilliant songwriter, writes a fantastic song. He sells it for a cost of billion dollars. Let's go one billion. He sells it for \$1 billion. It's amazing. Adelle records it, Beyonce records it, Drake records it, everybody records it and it's in its prime format.

**J. Aughenbaugh:** It's in every movie.

**N. Rodgers:** It's in every memory.

**J. Aughenbaugh:** It's in every TV show.

**N. Rodgers:** It's totally fabulous. Because he is careless, he goes out for a jog and he gets run over by a goat and he dies. Now this fabulous song is out there and there are millions of dollars and his heir knows that she's got this money. That's not the question. The question for me is, he has sold that to Hillary Miller publishing. How long can Hillary Miller publishing make money from that before it enters the public domain and it is no longer.

**J. Aughenbaugh:** Revenue-generating.

**N. Rodgers:** A revenue-generating thing. How long before when Leonard Cohen passes how long before Aughenbaugh moves? Can the company just keep it in perpetuity because they bought it?

**H. Miller:** The length of that copyright lasts in a work is typically the life of the author plus 70 years. Due to John's untimely goat-unrelated death the counter starts going from then it's going to be 70 years out.

**N. Rodgers:** His daughter will get royalty checks for 70 years?

**H. Miller:** Yes, because once it falls in the public domain, nobody gets nothing from it anymore. Well now it's all life of the author. But let's say he was a staff writer. He worked for hire for a company. The copyright was always a work for hire was always owned by my publishing company. They call it corporate copier length. It's 95 years I believe after publication. Let's say the song came out, I don't know last year, 94 years then. It's already counted at the time. The really interesting thing though, that you just brought to mind for me, modern-day, like thumbs up we're doing better on figuring all of this stuff out. But I mentioned what we've talked about a lot of examples of music that was recorded before 1972. Watching your faces to see if you understand. Before 1972, sound recordings were not covered under federal copyright law. You get piecemeal state-level law in the US that covers this stuff. As copyright has been revised over time, I think just a couple of years ago, we had the Music Modernization Act, which is trying to deal with streaming and make things more equitable, more fair for artists in dealing with streaming companies. You have all these attempts to fix that basically. I think they reset for example they said, fine, everything recorded pre-72 is all going to fall into the public domain at some point. I think it's 2067 or something like that. Things are going to start coming in the public domain.

**N. Rodgers:** Bidos music and the Rolling Stones music that my older siblings played when I was a kid, is going to come into the public. Satisfaction is going to come into the public domain in 2067.

**H. Miller:** I think that's right. I think they set some date to deal with it at the federal level if I'm remembering right what they did with the Music Modernization Act. They were pulling a bunch of different pieces of law together into one final app. There were a lot of things that were proposed under that. But you can see it's an active area of legislation, much more so than a lot of other areas of copyright because of how quickly it's changing. No one was anticipating streaming. This copyright law still talks about phono records. It's not talking about streaming or any of this.

**N. Rodgers:** I want to just warn listeners that in 2067 I will be recording satisfaction.

**H. Miller:** Why wait? Compulsory licensing, you can do it now.

**N. Rodgers:** I will be very old, but it will be free. Well, I mean, I guess you would have to start the clock at some point, some arbitrary point. Because what would you do otherwise in order to make the law equal to everyone. Otherwise, you'd get the uneven.

**H. Miller:** You'll know how you would deal with all that state law. Where was music published? I guess you would say where the publishing house was, where her company, I don't need to know.

**N. Rodgers:** All the artists from Motown that went down to Alabama to record.

**J. Aughenbaugh:** A muscle shows.



**N. Rodgers:** Muscle shows. Where would the law be. Is it a Michigan law, is it the Alabama?

**J. Aughenbaugh:** Yeah. Because Motown's headquarters were in Detroit.

**H. Miller:** That's a great question because copyrights about when it's fixed. Like was it where it was recorded and fixed in a tangible medium? Was it where it was published? I can't even begin to answer that question because it would be such a mess. That's only in the US. I mean, we didn't even touch on the global rights. Like music copyright looks different for other countries. So if you're European band who made it big in your home country and in the US across the world. I can't imagine Abba. Like how complicated Abba's rights probably are.

**N. Rodgers:** Or the standards.

**J. Aughenbaugh:** I was just going to mention the EU. The European Union.

**N. Rodgers:** With Brexit, whereas Adele now.

**J. Aughenbaugh:** Yeah.

**N. Rodgers:** Brexit, because part of her first two albums would have been under the EU.

**H. Miller:** Oh my gosh.

**N. Rodgers:** No, her first three albums, but her next album that comes out won't be. It'll be under Brexit.

**J. Aughenbaugh:** Then it begs the question, where did she record them?

**N. Rodgers:** Right.

**J. Aughenbaugh:** Did she record them in Great Britain or did she record, for instance, the last album in LA?

**N. Rodgers:** I think she's recorded all of them in Britain.

**J. Aughenbaugh:** Okay.

**N. Rodgers:** Which might be helpful to her.

**J. Aughenbaugh:** Yeah.

**N. Rodgers:** But, yeah. I mean, that's a complication. If your country suddenly leaves the understanding that they've all had, for my goodness, that's a whole separate action.

**J. Aughenbaugh:** Like I said, you combine all the copyright issues, then with all the tax issues.

**N. Rodgers:** It's easier to sell.

**J. Aughenbaugh:** There are not enough attorneys.

**N. Rodgers:** It's easier to sell.

**J. Aughenbaugh:** There is not a large enough conference room.

**N. Rodgers:** Oh my gosh. Can you imagine the convention center gets rendered by Adele and they're like, why is Adele renting and she can hold a private concert, so I know she's going to have all the lawyers from every publishing company that's got a piece of the word, oh, my great. That would be a myth. But you know what, that make sense to me why artists, and why younger artists might be doing it while they can consolidate all of this.

**J. Aughenbaugh:** Well, for younger artists, this is financial security. If you don't know what the marketplace is going to look like, whether in regards to the tastes of consumers, but also what you might be able to reasonably expect from royalties in the future. But you have some investment fund that wants to go ahead and give you \$25 million and it gets taxed once.

**N. Rodgers:** Right?

**J. Aughenbaugh:** It gets taxed once. If you had any financial planning firm at your disposal, you basically know what you're going to be pulling in every year. You just know that.

**N. Rodgers:** Although \$50 million in these people's lives and the way, the lifestyles that they live. I'm not sure how long that would last. One is living in pretty chill life. It's probably going to last them until they die and same with Springsteen. But if you're one of those young bucks who's living in a huge house and you have a huge entourage and there's all these things that you have to support. I mean, it's why athletes signed multi-million dollar contracts and end up living in a box on the side of the road because they don't. Management is a hard thing to do.

**J. Aughenbaugh:** It's like the winners of lotteries. The bankruptcy rate of winners of lotteries is significantly higher than the general population.

**N. Rodgers:** Can we leave on a positive note? I want to leave on a positive note. I'm going to leave on the three of us sitting in a restaurant in Paris with wealthy people.

**H. Miller:** Having champagne about.

**N. Rodgers:** Having our champagne and saying, yachts on the Mediterranean, that's 2000s. I own part of Bruce Springsteen's music catalog. I think that's such a funny like bragging thing. It's in August notes at the end of his notes and I thought that's a great way to end this podcast, is the three of us sitting around

talking about. Now, between the three of us listeners, we might own a 10th of a quarter of a percent of somebody's catalog because the three of us probably with all of our money together right now, we couldn't buy anywhere close to any. We might be able to buy, like I said, a 10th of a quarter of a song.

**J. Aughenbaugh:** Some throwaway song.

**N. Rodgers:** That nobody cares about.

**J. Aughenbaugh:** From Michael Blue Blaze catalog.

**N. Rodgers:** But that's funny to me that that's become a status symbol for wealthy people instead of a yacht in the south of France, they talk about owning part of someone's music catalog. That's great. If it's somebody that other people go, I'm part of so-and-so's music catalog. When you use it, that's amazing. But you know, you own part of, I don't know, Millie vanilla catalog. That's just going to be people laughing at you behind your back. I would think that you'd have to pick the right artist for that to be. You know what I mean? That's going to have to be so many people around the table respect, not some people around the table go, hey, aren't they known for lip sinking?

**J. Aughenbaugh:** Hillary, do you have such aspirations?

**H. Miller:** To own work? No. You know me, I'm more on the side of free it. Put it in the public domain. I think that's probably what I would want to do at some point. I mean, but then again, on the whole in thinking about this. You said students ask about selling out. It actually makes a lot of sense to me now that you would get no matter where you are in your career, you would say, if I can trade off enough money and financial security and let the lawyers go do what they're going to do and let the companies go do what they're going to do in monetize. I can be over here and I can keep making my music. I imagine that that's a part of it too. But in a sense, you're getting money, but you're actually not selling out. You are buying yourself out, you're getting out of the ship of dealing with all of that legal aspects and you go back to the music.

**J. Aughenbaugh:** Yeah, I mean, think about the sense of freedom they might produce. You're 45 years old. You've just gone ahead and sold the rights to your first seven or eight albums. Now you can go ahead and make whatever music you want to. You don't have to go ahead and listen to some dude in a suit from a record label, say, you just recorded it.

**N. Rodgers:** It needs to be more techno.

**J. Aughenbaugh:** Yes.

**N. Rodgers:** Because that's what's in right now.

**J. Aughenbaugh:** Yeah. You just recorded 15 songs and I don't hear a hit. Well, you can basically go ahead and say, I don't care.

**N. Rodgers:** It's going to be very freeing.

**J. Aughenbaugh:** Yes.

**N. Rodgers:** It's got to be like when professional athletes, they stopped doing their professional athlete thing. They stopped being football players or basketball players or whatever, and they go and take up a sport like golf, where there's no stakes for them. They don't have to be fantastic at it, they don't have to make money at it, nobody telling them what to do with their physical person. They just can be like, yes, I play golf because I get to do a sport and I get not to care. That must feel really good.

**J. Aughenbaugh:** Yeah, so I mean, to your point, Hillary. I mean, if you're truly an artist and be able just to go ahead and say, I don't care if there's a market for this. I don't care if there's a company that wants to go ahead and buy it and market it, I can just sit down with my friends and write what I think are really good songs and maybe played at local coffee shop or bar. Whether or not I make any money on this is irrelevant. I'm just making good music. From an artist's perspective, that's got to be so freeing.

**N. Rodgers:** Yeah, getting back to what you did, why you got into it in the first place.

**J. Aughenbaugh:** First place. Yeah.

**N. Rodgers:** Yeah. Cool.

**J. Aughenbaugh:** Yeah.

**N. Rodgers:** Well, thanks for coming, Hillary. Really appreciate you coming and talk. This is really complex. And I'm assuming that it's a moving target, so as there are more changes over time.

**H. Miller:** Yeah.

**N. Rodgers:** Then maybe you'll come back and talk to us. Maybe someday, if he really wants to make a mark in the world. Elon Musk will buy a huge number of people's catalogs and just instantly put them into the public domain and just tell everybody go wild. Make music videos with these, have a great time? That would be awesome. Do you hear me, Mr. Musk? That would be awesome. I could record satisfaction much earlier than I'm going.

**J. Aughenbaugh:** I don't have to worry about being run over by a goat when I go out for a run.

**N. Rodgers:** Exactly.

**J. Aughenbaugh:** Yeah.

**N. Rodgers:** I'm just saying, watch out for goats. Thanks you all.

**J. Aughenbaugh:** Thanks Hillary.

**H. Miller:** Thanks.

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