

Striking the Right Chord: Legal Dynamics of Music Copyright Law in Malaysia

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ABSTRACT

Copyright law is the bedrock of the music industry, governing the ownership, distribution and commercialisation of musical works and sound recordings. It serves as a linchpin that sustains the complex ecosystem made up of users, authors, and owners. Supported by various multifaceted justifications for its existence, the landscape of music copyright law in Malaysia is characterised by diversity and cultural richness. Despite being primarily governed by the Copyright Act 1987, which offers protection for both sound recordings and musical works, there remains a notable lack of awareness regarding the applicability of copyright law and possible infringements. Addressing this is imperative, alongside the need to align Malaysian copyright law with international standards. With the rapid advancement of the global music industry, ongoing efforts are essential to foster a thriving music industry that benefits creators, consumers, and owners. Therefore, this paper aims to comprehensively analyse and understand music copyright law in Malaysia and provide insights into the global issues shaping the field.

Keywords: Copyright law; Music recording; Sound recording; Infringement; Malaysia

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1. Introduction

For millennia, music has been an art form that transcends linguistic and cultural barriers. Its significance stretches back through the annals of human history, making it a fundamental component of human civilisation. It is ancient, and the oldest musical instrument appearing



in the archaeological record was from 40,000 years ago.¹ Primitive instruments such as drums, flutes and bows made from ivory, conch shells, and bird bones were widely used to create simple melodies and rhythms.²

As human societies flourished, so too did the complexity of musical expression. From Ancient Egypt to Ancient Mesopotamia, music was presented to gods and used in educational and healing endeavours.³ Music accompanied various aspects of daily life, providing tunes for wool-working, baking, harvesting grapes and other activities of manual labour. Women in ancient Greece made music as a platform to express creativity, and individualism and exchange ideas and cultural values.⁴ Aristotle and Plato, two towering figures of ancient philosophy, recognized the multifaceted benefits of music. Aristotle considered the value of music in youth training, highlighting the benefits of music in building character development, providing leisure, and cultivating the mind.⁵ In the Republic, Plato expressed similar views. He advocated for learning the music as 'rhythm and harmony find their way into the inward places of the soul, on which they mightily fasten, imparting grace, and making the soul of him who is rightly educated graceful'.⁶ By appreciating the elements of music, a sense of grace and refinement can be nurtured within, leading to a more fulfilling and meaningful existence.

Fast forward to the nineteenth century, live music was predominantly heard in public concert halls or domestic parlours and informally in theatres, taverns, and other informal social gatherings.⁷ This era prized music highly, placing composers at the highest tier of status while performers and listeners were positioned in the lower hierarchy. To precisely record musical compositions, composers improved and standardised musical notation, allowing performers to accurately recreate performances in the absence of the composer.⁸ Nonetheless, composers did not directly create sound recording technology but laid the groundwork for Thomas Edison to eventually create the phonograph in 1877.⁹

¹ Anton Killin, 'The Origins of Music: Evidence, Theory, and Prospects' (2018) 1 Music & Science 1–23 <<https://doi.org/10.1177/2059204317751971>>.

² *ibid.*

³ Lise Manniche, *Music and Musicians in Ancient Egypt* (British Museum Press 1991).

⁴ *ibid.*

⁵ Aristotle, *Politics* (Joseph Malaby Dent & Sons 1959).

⁶ Francis Macdonald Cornford, 'The Republic of Plato' (Oxford University Press 1970) <http://faculty.smcm.edu/jwschroeder/Web/ETHR1002/Global_Jutice_Readings_files/3.PlatoRepublic.pdf>.

⁷ Killin (n 1).

⁸ Modern notation was invented by Guido d'Arezzo in Italy in the 11th century. However, the concept of sheet music (a printed musical notation) only emerged in the 15th century through the development of printing in Europe.

⁹ The invention of phonography by Thomas Edison encompassed tinfoil wrapped around a cylindrical drum. The metal stylus moved in response to an operator speaking into a diaphragm on the other end as the drum turned and made contact with it. Air was forced into and out of the mouthpiece by the stylus movement on the tinfoil, which vibrated the diaphragm and replicated the sound that was input. With this tinfoil apparatus, Edison was officially the first to duplicate a recorded voice, even if the 'Mary had a little lamb' tune was hardly

The advent of mass media today marked a new period for greater accessibility to music. The once-holy art form of music gave way to a commodity that could be produced, sold, and consumed just like any other. The introduction of digital recording superseded inventions such as the gramophone, magnetic tape recorder, vinyl, cassettes, and compact discs (CDs). With unprecedented access to music and sound recording technology and the rapid pace of technological advancements, songs are now listened to via streaming services like YouTube Music, Spotify, Apple Music, Amazon Music etc. These platforms allow users to stream and listen to millions of songs on-demand, anytime and anywhere. Additionally, the lines between the roles of sound engineers, listeners, arrangers, composers, and performers are greatly blurred. Technology has given people more control and freedom over their musical experiences, which has encouraged collaboration and participation in the production and consumption of music.

2. Definition of Music Recording

Defining ‘music recording’ requires first grasping the concept of ‘music’ as music recording essentially involves documenting musical sounds. Many scholars and linguistic connoisseurs refuse to confine the meaning of music to a narrower definition. Every definition, by its very nature, is limited to a specific historical and cultural period. Though a lot of ink has been spilt, music can be loosely interpreted as human behaviour consisting of expressive motions with meaning, cultural significance, aesthetic appeal, and symbolic potential.¹⁰ Of course, there are dictionary definitions of music, but these focus on the music perceived in the modern Western context.¹¹ Consequently, they may fall short of encapsulating the various forms, purposes, and understandings of music found across different human cultures.

Having said that, music sounds are not always pleasant to one’s ears. Within Western art, the idea that music is only enjoyable or appealing is inadequate as this portrays the gross disregard for ‘avant-grande, ambient, and experimental’ forms that challenge conventional standards of music.¹² According to Sparshott, music has more value in human life beyond artistic expression, further alluding to the rejection of ideas as art.¹³ To him, ‘there are aspects of music’s relations to human life that the notion of an art misses entirely’.¹⁴ Beyond its categorisation as art, music has always been intertwined with rituals, customs, and

audible.

¹⁰ Adrian C North, David J Hargreaves and Jon J Hargreaves, ‘Uses of Music in Everyday Life’ (2004) 22(1) *Music Perception* 41–77 <<https://doi.org/10.1525/mp.2004.22.1.41>>.

¹¹ Collins Dictionary defines music as the pattern of sounds produced by people singing or playing instruments and recording as a record, CD, tape, or video of something.

¹² May Kokkidou, *Music Definition and Music Education: Many Perspectives, Many Voices, Many Questions* (Greek Society for Music Education 2021).

¹³ Francis Sparshott, *Aesthetics of Music: Limits and Grounds in Phillip Alperson’s What is Music?* (Haven Press 1986).

¹⁴ *ibid*

communal practices. For instance, Qur'anic recitation and prayer chants have a spiritual value that is different from secular music or poetry in Islam.

Numerous mechanisms lead to the manifestation of music. In fact, it may be a result of intricate interactions between activities, concepts, and ideas, arranged into sounds that have cultural significance distinct from day-to-day communication. Merriam advocated for a three-level analysis of music: 'a) music as a concept (system and values within a specific culture), b) music as behaviour (physical, social, and verbal), and c) music as sound (the acoustical product of musical behaviours and its structure)'.¹⁵ Based on the 4E music cognition theory (Embodied, Embedded, Enacted and Extended), music is conceived as a dynamic process formed between people, instruments, and their surroundings.¹⁶ The idea of music as a static object is contested, and the contextual and performative nature of music is emphasised.¹⁷ Characterising music as structural, historical, operational and functional, also reflects one of the ways to characterise the music.¹⁸ However, none of these methods could produce a comprehensive definition of 'music' on its own. Rather than relying solely on strict and narrow definitions, a nuanced and balanced approach based on multiple parameters needs to be taken.

Considering the essence of 'recording', which involves capturing and preserving 'music', it is apparent that music defies the restrictive classifications generally known and embraces a complex nature. All sounds that are arranged by humans are included in music, offering experiences that interact with the body, mind, emotions, social interactions, cultural identities, aesthetic perceptions, and ethical considerations.¹⁹ It is more than only a product or set of practices. It acts as a medium for creativity, presenting the means of expression as well as the tools necessary to bring it to life. Through recording, music not only preserves sonic manifestations but also captures the essence of its diverse dimensions.

¹⁵ Allan Merriam, *The Anthropology of Music* (Northwestern University Press 1964).

¹⁶ The 4E Cognitive theory (4ECS) is a term that provides various perspectives contributing to the development of a new science of the mind. The four core principles, namely Embodied, Embedded, Extended and Enactive conceptualise this theory. Firstly, cognition is recognized as embodied, emphasizing that it encompasses the entire organism, including both the brain and body, rather than relying solely on abstract mental processes. Secondly, cognition is understood as embedded, acknowledging its inseparable connection with the agent's environment, which encompasses physical, social, and cultural elements. Thirdly, cognition is seen as extended, extending beyond biological boundaries to incorporate non-biological tools and devices, thereby enhancing cognitive abilities beyond individual mental processes. Finally, cognition is enactive, characterized by meaningful interactions between living organisms and their environments, where both entities mutually influence and shape each other in an adaptive exchange.

¹⁷ Kevin Ryan and Andrea Schiavio, 'Extended Musicking, Extended Mind, Extended Agency: Notes on the Third Wave' (2019) 55 *New Ideas in Psychology* 8-17 <<https://doi.org/10.1016/j.newideapsych.2019.03.001>>.

¹⁸ Kokkidou (n 12).

¹⁹ Kokkidou (n 12).

3. Music Recording and Copyright Law

Copyright stands as the cornerstone of the music industry for all parties involved in the sector. It forms the currency that fuels the music business, establishing rules for the ownership, distribution, and commercialisation of musical works. From the recordings themselves to the complex compositions woven within, copyright law defines the limits of use and profit. It determines who reaps what they sow in terms of performances or tunes in television commercials or films. Every facet of the music industry is dependent on the safeguarding presence of copyright.

3.1 Justifications for Music Copyright Law

Ultimately, copyright will always be a finely balanced system between users' and content owners' rights. Throughout history, this equilibrium has been achieved by absolute ownership moderated by a variety of 'safety valves' in the form of exceptions. Although essential protections are provided for creators while balancing the interests of users, copyright law is underpinned by several justifications for its existence.

Firstly, the appropriation theory centres on the author's creative contributions as the foundation for claiming ownership rights over their work.²⁰ The father of modern copyright law, John Locke, formulated the labour theory that both men and women possess ownership rights over the results of their own efforts.²¹ This perspective is summarised by Lior Zemer as follows:

By mixing his labour with a commonly owned object, the labourer becomes the owner of the object. He has annexed something to it 'more than Nature, the common Mother of all, had done.' Labour justifies the integration of a physical object into the labourer's realm, the *suum*, and the result is ownership.²²

Essentially, a musician or composer can effectively transform a common idea, such as melody or rhythm into a tangible expression by devoting their time, energy, and creativity to the creation of a piece of music. The musician is granted ownership rights to the final product. In maintaining the balance between individual property rights and the common good, Locke advocated for the principle of 'no harm'.²³ The philosophy holds that once a property right is created, it is unlawful for a third party to utilise or appropriate it without

²⁰ According to philosopher Lysander Spooner, 'he who does discover or first takes possession of, an idea, thereby becomes its lawful and rightful proprietor; on the same principle that he, who first takes possession of any material production of nature, thereby makes himself its rightful owner.'

²¹ John Locke, 'Two Treatises of Government' (1823) <<https://www.yorku.ca/commnel/courses/3025pdf/Locke.pdf>>.

²² Lior Zemer, 'The Making of a New Copyright Lockean' (2006) 29(3) *Harvard Journal of Law & Public Policy* 891–947 <https://www.researchgate.net/publication/292221067_The_making_of_a_new_copyright_Lockean>.

²³ *ibid*

permission as it harms the labourer.²⁴ The rights of property owners are safeguarded by this 'no harm' clause based on their impact on the collective. It has three clauses, namely, the labourer may only appropriate what they can use (no-spoilation proviso), the appropriation from the common is allowed if there are sufficient resources available for others, and the commoners can access the private resources under dire circumstances (charity proviso). However, these clauses pose challenges to intellectual property as ideas can be utilised simultaneously by all unlike physical property which can be used by one person or a group at a time.²⁵ In fact, prohibiting the use of an idea in public might not possibly stop its use privately. For example, due to the complex nature of musical composition, it might be difficult to ban its public use without impeding private enjoyment. This in return, complicates the enforcement of copyright law and raises questions on the boundaries of usage that respect both the rights of creators and the public's access to musical works. Thus, a music creator possesses the right to the products of their creative efforts, which is subject to the rights of the commoners. Users must have the ability to contribute their labour to existing creative works, as these works serve as raw materials for further creativity. The theory does not endorse direct copying but rather advocates limiting the authority of copyright law to prevent unauthorised derivative works.

Similarly, under the appropriation theory, the Hegelian perspective is grounded in the belief that 'property provides a unique and especially suitable mechanism for self-actualization, for personal expression, and dignity and recognition as an individual person'.²⁶ The fate of the creation becomes closely connected to the creator's identity and well-being after ideas are appropriated. This personality theory serves as the rationale for granting individual protection to such creations. Hegelian philosophy appears to be a staunch supporter of creator's rights, and favours when secondary uses of a creator's works do not jeopardise their integrity or reputation.²⁷ The intrinsic bond between the creator's identity and their creations justifies moral rights including the right to claim authorship and receive recognition as the creator of a work (right to paternity) and to object against any distortion, alteration or insulting treatment of one's work that could harm the creator's reputation (right to integrity).²⁸ Additionally, the Hegelian philosophy supports the secondary use of intellectual property in exchange for remuneration as it acknowledges the creator's artistic personality. Receiving payment for the use of work is a way to validate the identity of the person and acknowledge them as the owner of the intellectual property. The idea of recognition is crucial and cannot be limited to mere lip service. Recognition is

²⁴ *ibid.*

²⁵ Justin Hughes, 'The Philosophy of Intellectual Property' (1988) 77 *Georgetown Law Journal* 287–330 <<https://justinhughes.net/docs/a-ip01.pdf>>.

²⁶ *ibid.*

²⁷ Mitchell Longan, 'A System Out of Balance: A Critical Analysis of Philosophical Justifications for Copyright Law Through the *Lenz* of Users' Rights' (2023) 56 *University of Michigan Journal of Law Reform* 779–826 <<https://repository.law.umich.edu/mjlr/vol56/iss3/4/>>.

²⁸ Lawrence C Becker, 'Deserving to Own Intellectual Property' (1993) 68(2) *Chicago-Kent Law Review* 609–629 <<https://scholarship.kentlaw.iit.edu/cgi/viewcontent.cgi?article=2887&context=cklawreview>>.

demonstrated through actions, particularly in how one treats another's property, rather than mere verbal acknowledgement.

Secondly, originating from Jeremy Bentham, the utilitarian theory offers a methodical approach to moral dilemmas by evaluating the effects of actions in terms of the happiness or pleasure they provide, as opposed to the suffering they induce.²⁹ According to Bentham, utility is the criterion that guides approval or disapproval of any action depending on its perceived effect of happiness on the parties involved. Utility is defined as such:

... that principle which approves or disapproves of every action whatsoever, according to the tendency it appears to have to augment or diminish the happiness of the party whose interest is in question: or, what is the same thing in other words, to promote or to oppose that happiness.³⁰

The concept of utilitarianism measures happiness and pain quantitatively, not qualitatively. The most preferred solution is the most ethical one, that maximises happiness and minimises suffering. However, the crux of Bentham's argument lies in the idea that society benefits from copyrighted works and that more should be done to encourage its creation.³¹ Contrary to Locke's labour theory or Hegel's personality theory, the utilitarian approach prioritises social utility over individual author's interests. Any restrictions on an individual's personal liberty, such as those imposed by copyright protection, may be acceptable if they serve a greater social purpose. Essentially, rather than merely compensating musicians, the main goal of copyright protection is to encourage the production and distribution of musical works. Copyright protection is seen as a means to an end, by giving creators ownership over their creations, which incentivises them to produce more, ultimately serving the public interest.

Thirdly, the economic theory views copyright as a tool to correct market defects that are part and parcel of the creative industries.³² These defects in the market are caused by two essential features of public goods, which set it apart from tangible property. Public goods are enjoyed by an infinite number of individuals, making them non-rivalrous and can be difficult to restrict access once made available to customers or non-excludable.³³ A song uploaded to streaming services fits this description. Due to such features, many engage in free-riding behaviours, where individuals benefit from work without compensating the creators. Since it deters investment and profitability of creative works, this is seen as a failure of the market.³⁴ As such, copyright provides creators with exclusive rights to their creations.

²⁹ Jeremy Bentham, 'An Introduction to the Principles of Morals and Legislation' (1789).

³⁰ *ibid.*

³¹ Longan (n 27).

³² Richard Watt, 'An Empirical Analysis of the Economics of Copyright: How Valid are the Results of Studies in Developed Countries for Developing Countries?' in *The Economics of Intellectual Property* (World Intellectual Property Organization 2009) 65–108 <https://www.wipo.int/edocs/pubdocs/en/wipo_pub_1012-chapter3.pdf>.

³³ *ibid.*

³⁴ Longan (n 27).

Music composers and songwriters now can decide who has access to their work, which gives them the opportunity to monetise their creations. Closely related to the economic theory is its encouragement aspect, aimed at stimulating the production of creation works through economic incentives. The idea that a wide range of creative works is necessary for societal wealth and prosperity supplements this justification. Also, in the absence of any legal protection, creative works would depreciate in value to the extent that their cost of reproduction would be marginally higher. This, however, is not applicable to digital works as it often approaches zero in value.³⁵ Consequently, without the ability to generate profits, creators may put an end, to or drastically reduce their output, resulting in a decrease in creative works and societal wealth.

As a whole, copyright law is an essential tool for preserving balance in the ever-evolving field of creative expression in line with the digital age. With rapid technological advancements that challenge the traditional copyright frameworks, necessary adaptive solutions must be adopted to harmoniously balance the creators' rights and foster public access to such works while incentivising creativity.

3.2 International Safeguards to Music Copyright Law

The expanding digital consumption of different media formats is a clear indication of the continuous nature of copyright protection. Previously, consumers accessed copyrighted materials through tangible means, such as DVDs and CDs, but with the advent of the Internet era, copyrighted works may be distributed to all parts of the world. Music can now be streamed on digital platforms such as TikTok, Instagram, Apple Music, Spotify, etc, showcasing the effortless and revolutionary way to engage users with copyrighted content. This shift towards digital consumption has prompted the need for international safeguards in music copyright law.

3.2.1 The Berne Convention

Major industrialised nations establish bilateral agreements in the nineteenth century to safeguard the intellectual property rights of their citizens abroad. Recognising the limitations of these agreements, the Berne Convention for the Protection of Literary and Artistic Works ('Berne Convention') was signed in 1886 by countries seeking comprehensive solutions.³⁶ By harmonising copyright laws globally, protection is now extended to tangible works, regardless of their publication status or nationality. The non-discriminatory protection principle is the cornerstone of the convention. While the convention's rules are less detailed than domestic legislation, signing and ratifying it mandates contracting states

³⁵ Longan (n 27).

³⁶ Since then, the convention has undergone several revisions, including the Act of Paris in 1896, a revised Berne Convention in Berlin in 1908, and further revisions in Rome in 1928, Brussels in 1948, Stockholm in 1967, and Paris in 1971.

to adhere to these guidelines, which serve as a baseline for copyright protection while allowing flexibility for domestic laws to provide additional safeguards.³⁷

Both Articles 1 and 2 of the Berne Convention safeguard the copyright of authors of literary and artistic works, including musical works across all member countries. Regardless of their forms of expression, the works must be fixed in a material form to enjoy copyright protection. Formal registration is not necessary for copyright protection under the convention. The term of copyright is the life of the author plus 50 years after death, and contracting states have the discretion to grant a longer duration of protection.³⁸ Additionally, the author retains the right to claim authorship and object to any derogatory treatment of the work, irrespective of economic rights.³⁹ Additionally, authors have the exclusive right to authorize reproduction of their works throughout the protection term.⁴⁰ This includes musical works, as they are equally afforded exclusive rights. However, reservations to such rights may be allowed as long as the author's right to be compensated and the use of any sound recording including a protected work is not violated.⁴¹

3.2.2 The Rome Convention

Established in 1961, the Rome Convention aims to navigate the ever-changing landscape of copyright law, particularly with regard to broadcasts, phonograms, and artistic performance.⁴² The convention came into force due to the need to harmonise differing methods of protecting performers, producers of sound recordings and broadcasters in common law and civil law.⁴³ With the aim of preventing discrimination against nationals of other contracting states, national treatment of performances originating from other contracting states was accorded, subject to few restrictions. Performers are granted the right to control the broadcast, communication to the public, fixation, and reproduction of their performances.⁴⁴ The protection term lasts for 20 years from the date of the performance or fixation in a phonogram.⁴⁵ In a similar vein, phonograms created or first fixed in another contracting state are subject to the same regulations in each contracting state as those created

³⁷ Article 9(2) of the Convention stipulates that domestic legislation may determine reproduction rights as long as it does not impede the normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author.

³⁸ Berne Convention, art 7.

³⁹ *ibid*, art 6bis.

⁴⁰ *ibid*, arts 8–9.

⁴¹ Berne Convention, art 13(1).

⁴² According to Article 3 of the Berne Convention, phonogram is defined as any exclusively aural fixation of sounds of a performance or of other sounds.

⁴³ Edward Humphreys (ed), *International Copyright and Intellectual Property Law: Challenges for Media Content Producers* (Ark Tryckaren AB 2008) <<https://www.diva-portal.org/smash/get/diva2:133632/FULLTEXT01.pdf>>.

⁴⁴ Rome Convention, art 7.

⁴⁵ *ibid* art 14(a), 14(b).

by their own nationals.⁴⁶ The exclusive authority to permit the replication of their phonograms belongs to the phonogram producers.⁴⁷ Phonogram copies need to have a particular indication 'O' showing ownership and protection claim in order to be protected under the Rome Convention.⁴⁸ Phonograms are protected for 20 years after the date of fixation.⁴⁹

3.2.3 The WIPO Treaties

The World Intellectual Property Association (WIPO) is an international organisation under the United Nations that holds the torch for advancing global intellectual property protection. Two international treaties were signed in December 1996 as a result of a diplomatic conference to address issues of copyright and challenges posed by digital technology. Building upon existing treaties like the Berne Convention and the Rome Convention the WIPO treaties address remaining gaps in the legal protection of authors, performers, and producers in the digital sphere.

Firstly, the WIPO Copyright Treaty (WCT) focuses on safeguarding literary and artistic works in digital environments, protecting expressions rather than ideas.⁵⁰ Although previous international agreements did not give authors the general right of distribution, the WCT introduced such an exclusive right, with contracting states having the flexibility to decide when to exhaust this right following initial sales or publication.⁵¹ The treaty also created an all-encompassing right of communication for authors, which includes any method of making their works publicly available other than through the distribution of copies. These include web viewing and file downloading.⁵² Although the reproduction right was not redefined by the treaty, it did interpret the reproduction rules of the Berne Convention to apply to digital works. Also, the efforts to safeguard authors' rights and prevent infringements were placed in the hands of the contracting states, in which, efficient legal recourse and protection such as watermark and encryption must be employed by such states.⁵³

Secondly, the WIPO Performances and Phonograms Treaty (WPPT) safeguards the rights of performers of literary or artistic works and producers of phonograms.⁵⁴ Similar to

⁴⁶ *ibid* art 2, 5.

⁴⁷ *ibid* art 10.

⁴⁸ *ibid* art 11.

⁴⁹ *ibid* art 14(a).

⁵⁰ WIPO Copyright Treaty, art 2.

⁵¹ WIPO Copyright Treaty, art 6.

⁵² Asa Enstrom, 'A Legal Analysis of Copyright Protection of Music on the Internet' (Master thesis, University of Lund 1999) <<https://lup.lub.lu.se/luur/download?func=downloadFile&recordId=1557244&fileId=1564257>>.

⁵³ *ibid* art 11.

⁵⁴ According to Article 2 of the WPPT, performers are described as actors, singers, musicians, dancers and other persons who act, sing deliver, declaim, play in, interpret, or otherwise perform literary or artistic works. A producer of phonograms is defined as the person, or legal entity, that takes the initiative to and has the responsibility for the first fixation of the sounds of a performance or other sounds.

the WCT, performers are guaranteed a number of exclusive rights, namely the right to be identified and to object to any changes made to their performances that would harm their reputation.⁵⁵ They also have economic rights related to music protection on the Internet, such as the exclusive right to authorize broadcasting, communication to the public, and reproduction of their performances.⁵⁶ The treaty ensures performers and producers receive equitable remuneration for commercial use and legal protection for 50 years from the end of the year in which the performance was fixed or the phonogram published.⁵⁷

3.2.4 The TRIPS Agreement

Aiming to complement and enhance pre-existing treaties like the Berne Convention and other Internet Treaties, the Trade-Related Aspects of Intellectual Property Rights, Including Trade in Counterfeit Goods (TRIPS) concluded in 1993 and established a higher standard of protection. By incorporating most substantive provisions of the Berne Convention, TRIPS extends its minimum standards to World Trade Organisation (WTO) countries.⁵⁸ For example, Article 14(2) grants phonogram producers the right to authorise or prohibit the reproduction of their phonograms, similar to other conventions and treaties. However, the TRIPS agreement is not self-executing and does not mandate any specific procedures as each contracting state must determine how to implement its provisions within their own legal framework.

4. Malaysian Copyright Law

The current legislation governing copyright in Malaysia is the Copyright Act 1987 ('the Act'), which came into force on 1 December 1987 after receiving the Royal Assent on 30 April 1987 and publication in the Gazette on 21 May 1987. The Act comprehensively regulates all aspects of copyright, including the eligibility of works for protection, ownership and transfer of copyright, duration of protection, remedies for infringement, and available defences against such infringement actions.⁵⁹ The Act creates a framework consisting of both civil and criminal penalties for copyright infringement. Unlike trademarks, patents, and industrial designs, copyright protection is automatically conferred upon fulfilment of the conditions specified in the Act and does not need registration.

⁵⁵ WIPO Performances and Phonograms Treaty, art 5.

⁵⁶ *ibid* art 6.

⁵⁷ *ibid* arts 15 and 17.

⁵⁸ Contrary to other conventions, the TRIPS-agreement has a dispute settlement mechanism with sanctions. In such conventions, a country could be a member yet fail to fulfil its obligations without facing consequences. In contrast, TRIPS allows for action to be taken against a country found to be in breach of its obligations through the dispute settlement process.

⁵⁹ Section 17(1) of the Act stipulates that the duration of copyright protection for literary, musical, or artistic works extends for the duration of the author's life and an additional 50 years following their demise. Under Section 19 of the Act, copyright remains in force until the expiration of 50 years calculated from the start of the calendar year following the subsequent year after the initial publication of the sound recording. In cases where the sound recording hasn't been published, copyright duration ends after 50 years from the start of the calendar year following the year of fixation, when it took material form.

Malaysia, as a signatory of the Berne Convention, provides copyright protection to works originating from member countries. By virtue of Copyright (Application to Other Countries) Regulation 1990, the publication rule of copyright in Malaysia is extended to other countries. Musical works from Berne-member countries are treated as first published in Malaysia if they are first published in their country of origin.⁶⁰ In contrast, the publication of sound recordings only extends to member countries of the World Trade Organisation.⁶¹

4.1 Music Copyright Protection

In *Honda Giken Kogyo Kabushiki Kaisha v Allied Pacific Motor (M) Sdn Bhd*, Suriyadi J laid out the following requirements for a work to be eligible for copyright protection:

- (a) it is original in that sufficient skill and effort had been expended in the creation;
- (b) it belongs to one of the categories of protected works;
- (c) it complies with the requirements of to form; and
- (d) it complies with the qualifications for copyright, qualifications either by reference to its making or publication.⁶²

When a song is produced, two distinct works are copyrighted, namely a musical work and a sound recording. Section 7(1)(b) and (e) of the Act afford copyright protection to both these works. However, understanding how these works operate requires referencing the interpretation section of the Act which is stated below:

Musical work means any musical work and includes works composed for musical accompaniment.

Sound recording means any fixation of a sequence of sounds or of a representation of sounds capable of being perceived aurally and of being reproduced by any means but does not include a soundtrack associated with a film.⁶³

Essentially, a musical work refers to the foundational structure of a song, including any accompanying lyrics. It could be a standalone composition or created specifically to accompany films or advertisements. Typically, these works are authored by a songwriter or composer. A sound recording, on the other hand, is a tangible capture of sounds, such as vocals, instruments, or other audio elements, stored in a medium like a CD, digital file, or vinyl record. This allows the sounds to be heard and reproduced through various playback

⁶⁰ Copyright (Application to Other Countries) Regulation 1990, reg 3(a).

⁶¹ *ibid* reg 4(1)(a).

⁶² [2005] 3 Malayan Law Journal 30 (HC).

⁶³ Copyright Act 1978, s 3.

devices. However, it is important to note that sound recordings exclude the audio tracks associated with movies or films.

Additionally, copyright protection is not granted to a musical work unless it demonstrates originality and is reduced to material form.⁶⁴ The Act does not demand that a work must embody original inventive ideas. Instead, it focuses on the original expression of ideas.⁶⁵ This was expressed by Peterson J in *University of London Press Ltd v University Tutorial Press Ltd* which are as follows:

The word “original” does not in this connection mean that the work must be the expression of original or inventive thought. Copyright Acts are not concerned with the originality of ideas but with the expression of thought... The originality which is required relates to the expression of the thought. But the Act does not require that the expression must be in an original or novel form, but that the work must not be copied from another work - that it should originate from the author.⁶⁶

This position was adopted by the Federal Court in *Lau Foo Sun v Government of Malaysia*.⁶⁷ With that said, copyright protection is not granted to a work if the specific form of expression lacks skill or effort, even if the work is original. Merely copying, regardless of the amount of skill and effort involved, typically does not result in an original work.⁶⁸ Thus, originality in music pertains to the unique expressions of ideas, arrangements, melodies, harmonies, rhythms, and other components. It entails creating original music that isn't explicitly copied or plagiarised from another work. Similarly, a musical work must be expressed in a material form to eliminate issues in proving the expression of the work.⁶⁹ A material form would allow musical works to be disseminated to the public and this may greatly help in determining any potential infringements.

As for qualifications for copyright, both musical work and sound recording extend to the work of an author.⁷⁰ Section 3 of the Act defines the composers of musical work and the person making arrangements for the recording as authors.⁷¹ A composer holds copyright to musical compositions as they create music, usually by writing musical notes. In cases where musical accompaniment is authored by a different person, there are effectively two

⁶⁴ *ibid* s 7(3)(a) and 7(3)(b).

⁶⁵ Section 7(2A) of the Act provides that copyright protection shall not extend to any idea.

⁶⁶ [1916] 2 Chancery Division 601 (Ch).

⁶⁷ [1974] 1 Malayan Law Journal 28 (FC).

⁶⁸ *Macmillan & Co Ltd v Cooper* (1923) 40 Times Law Report 186 (HC India); *Interlego AG v Tyco Industries Inc* [1989] Appeal Cases Law Report 217 (HC Hong Kong); *Kiwi Brands (M) Sdn Bhd v Multiview Enterprises Sdn Bhd* [1998] 6 Malayan Law Journal 38 (HC).

⁶⁹ Copyright Act 1978, s 7(3)(b).

⁷⁰ *ibid* s 10(1), 26(1).

⁷¹ Copyright equally extends to works of joint authorship. Section 3 of the Act defines it as a work produced by the collaboration of two or more authors in which the contribution of each author is not separable from the contribution of the other author or authors.

copyrights associated with the musical work: one for the melody composed by the primary composer, and another for the accompanying parts created by the additional composer, resulting in two distinct copyrighted elements within the same musical composition. As for sound recordings, the emphasis lies on the preparations for creating works rather than the act of recording them. In *Rock Records (M) Sdn Bhd v Audio One Entertainment Sdn Bhd*, Abdul Malik Ishak J determined that the author of the sound recording was the record company responsible for arranging the production of the recordings.⁷² Singers and performers involved in the recordings are not considered authors, as the record company typically oversees equipment, sound engineers, technical support, and other aspects of the recording process.

4.2 Infringement of Copyright Protection

Infringement is commonly categorized into direct and indirect forms.⁷³ Despite this distinction, the predominant concern in the context of music recording often revolves around direct infringement.⁷⁴ Section 36(1) of the Act provides that ‘copyright is infringed by any person who does, or causes any other person to do, without the licence of the owner of the copyright, an act the doing of which is controlled by copyright under this Act.’ The provision outlines two criteria: firstly, the act must fall within the exclusive right of the copyright owner, and secondly, such an act must be done without the owner’s consent.

The exclusive rights of a copyright owner are stipulated in Section 13(1) of the Act. The provision is stated below:

Copyright in a literary, musical or artistic work, a film, a sound recording or a derivative work shall be the exclusive right to control in Malaysia—

- (a) the reproduction in any material form; (*Emphasis added*)
- (aa) the communication to the public;
- (b) the performance, showing or playing to the public;
- (e) the distribution of copies to the public by sale or other transfer of ownership; and

⁷² [2005] 3 Malayan Law Journal 552 (HC).

⁷³ Section 41 of the Act highlights the criminal nature if one is found guilty of infringing a copyrighted work which includes a fine not less than RM2000 and not more than RM20,000 for each infringing copy, or imprisonment for a term not exceeding five years, or both. If there is a subsequent offence, he is liable to pay a fine of not less than RM4,000 and not more than RM40,000 for each infringing copy or imprisonment for a term not more than 10 years, or both.

⁷⁴ According to Section 36(2) of the Act, indirect infringement occurs when an individual imports an article into Malaysia with the intention of commercial gain, knowing or reasonably knowing that the article infringes upon copyright. This includes selling, distributing, or publicly displaying the infringing article for profit without obtaining the necessary license or consent from the copyright owner.

(f) the commercial rental to the public,
of the whole work or a substantial part thereof, either in its original or
derivative form ...⁷⁵

Fundamentally, copyright infringement can occur in musical works, sound recordings, or derivative works if the entirety or a significant portion of the work is reproduced in its original or derivative form.⁷⁶ For an act to qualify as reproduction, there must be a *sufficient objective similarity* between the original and reproduced works and a *causal connection* between them.⁷⁷ Both of these aspects are a question of fact, with the former being objective and the latter subjective. Ramly Ali FCJ in *Mohd Syamsul bin Md Yusof & Ors v Elias bin Idris* places the burden on the plaintiff to prove ‘sufficient similarities and a causal connection which gives rise to an inference that the Defendants have copied the Plaintiff’s work’.⁷⁸

Regarding the matter of sufficient objective similarity, the guidance stems from the precedent set by the Federal Court in *Mohd Syamsul*, referring to the House of Lords’ decision in *Designers Guild Ltd*.⁷⁹ Lord Millet elucidated that the court’s task is to pinpoint the features purportedly copied and determine if the similarities relied upon are closely significant to constitute copying. The focus is not merely on assessing visual or apparent similarities but rather on evaluating whether the similarities are substantial enough to qualify as copying. Similarities may be disregarded if ‘they are commonplace, unoriginal or consist of general ideas’.⁸⁰ Similarly, Lord Reid in *Ladbroke (Football) Ltd v William Hill (Football) Ltd* expressed that the production of an independent work that is substantially similar is not considered copying. To determine if the copied work is of a substantial part depends ‘much more on the quality than on the quantity of what he has taken’.⁸¹ However, several factors can be considered in assessing if a work is substantial.⁸² Firstly, on the originality of the copied work, if the portion taken necessitates a significant level of skill and effort by the author, it is considered substantial. Secondly, on the intention behind the

⁷⁵ Copyright Act 1978, s 13(1).

⁷⁶ Section 3 and Section 8(1)(a) of the Act defines derivative works as translations, adaptations, arrangements, and other transformations of works eligible for copyright protection are themselves protected as original works. Arrangements here entail the reinterpretation or modification of an original musical piece to generate a fresh rendition. This may involve adjusting instrumentation, harmonies, rhythms, or introducing new elements while preserving the core essence of the original composition. Sampling and interpolation of music fall within this ambit.

⁷⁷ *Francis Day & Hunter Ltd and another v Bron and another* [1963] Chancery Division 587 (CA); *Hexagon Tower Sdn Bhd v Polydamic Holdings Sdn Bhd & Ors* [2005] 1 Legal Network Series 77 (HC); *Elster Metering Limited & Anor v Damini Corporation Sdn Bhd & Anor* [2012] 1 Legal Network Series 959 (CA).

⁷⁸ [2019] 4 Malayan Law Journal 788 (FC).

⁷⁹ [2001] 1 All England Law Report 700 (HL).

⁸⁰ *ibid.*

⁸¹ [1964] 1 All England Law Report 465 (HL).

⁸² *Longman Malaysia Sdn Bhd v Pustaka Delta Pelajaran Sdn Bhd* [1987] 2 Malayan Law Journal 359 (Original Civil Jurisdiction); *YKL Engineering Sdn Bhd v Sungei Kahang Palm Oil Sdn Bhd & Anor* [2022] 6 Malayan Law Journal 1 (FC).

utilisation of the original work, if the purpose aligns with that of the original author, it is deemed substantial. This is especially true if the copyist avoids using their own skill and effort and instead benefits from the original author's work. Courts may readily infer substantial appropriation if it is done with the intention of avoiding effort or labour. Lastly, if the copied portion disrupts the sale of the original work, it is considered substantial.

As for the causal connection, it must be demonstrated that the allegedly infringed work was accessed independently or derived from a common source. To establish a causal connection, direct evidence of the defendant's use of the copyrighted material is required. In *Francis Day & Hunter Ltd and another v Bron and another*, Lord Diplock crystallised the need for a copyrighted work to be shown as 'causa sine qua non of the infringing work'.⁸³ Nonetheless, in line with the intention of the legislature in enacting the Act, copyright infringement can be established through both direct and indirect copying, rather than the former alone.⁸⁴ Even if copying occurs indirectly, it remains essential to establish an unbroken chain linking the claimant's work to the defendant's work.⁸⁵ Thus, it is necessary to demonstrate that the intermediate copy is either a direct or indirect reproduction of the copyrighted work.

When assessing copyright infringement in the context of musical works and sound recordings, it is crucial to analyse beyond surface-level resemblances. Musical works can include numerous elements including melody, harmony, rhythm, arrangement, and lyrics. In the event that a recently composed song bears notable resemblances to an existing composition, the courts will analyse if the elements are substantially significant to suggest copying.⁸⁶ They scrutinise factors such as the originality and intricacy of musical phrases, the presence of distinctive chord progressions, and the arrangement of musical motifs. In addition, courts equally look for proof of substantial appropriation, where elements requiring a high degree of skill and creativity are duplicated without consent. In sound recordings, similarities may encompass the arrangement of instrumental components, the use of specific audio effects or the overall sonic attributes. The courts would examine the intent behind including the original work, determining if the reproduction was done with the intention of creating a derivative work, for-profits or merely inspiration. These approaches guarantee a thorough assessment of copyright infringement in both musical works and sound recordings.

⁸³ [1963] Chancery Division 587 (CA).

⁸⁴ *Peko Wallsend Operations Ltd & Ors v Linatex Process Rubber Bhd and another action* [1993] 1 Malayan Law Journal 225 (HC); *Global Yellow Pages Ltd v Promedia Directories Pte Ltd* [2016] 2 Singapore Law Report 165 (HC).

⁸⁵ *Honda Giken Kogyo Kabushiki Kaisha (also known as 'Honda Motor Co Ltd') v MForce Bike Holdings Sdn Bhd & Anor* [2021] 6 Malayan Law Journal 594 (CA).

⁸⁶ Iyar Stav, 'Musical Plagiarism: A True Challenge for the Copyright Law' (2014) 25(1) DePaul Journal of Art, Technology & Intellectual Property Law, art 2 <<https://via.library.depaul.edu/jatip/vol25/iss1/2/>>.

5. Exploring Music Copyright Law: The Study on Global Music Industry

In Malaysia, the lack of awareness regarding music copyright laws is staggering.⁸⁷ Many individuals are truly unaware of copyright laws in Malaysia, and this ignorance has made it possible for unintentional copyright infringement to occur. Historically, Malaysia's music industry has seen fewer music copyright issues compared to other countries.⁸⁸ Thus, it is essential to reference the international music market in understanding the complexity of copyright law.

5.1 Master Re-recording

In business terms, a master recording refers to the official and original recording of a song or performance.⁸⁹ It represents the most authentic version of the song, distinguishing them from copies or subsequent reproductions. The legal right to license recordings to other parties and collect royalties from the licensing agreements is conferred on the owner of the master recordings. The practice in the music industry is to purchase master rights from artists in exchange for an advance payment deductible against future royalties. Most contracts signed by the artists with the record company entail granting the record company indefinite ownership over recording rights, which exploits the principles of exclusive rights under copyright law.

The dispute over ownership of music catalogues isn't new to artists in the United States of America. The music icon, Prince protested against Warner Records to secure ownership over his music for nearly 40 years.⁹⁰ With that said the chatters over master recordings were solidified by Taylor Swift in 2019 when she engaged in a dispute with record executive Scooter Braun over the ownership of her master recordings from her first six albums, which were under Big Machine Records.⁹¹ When negotiations to renew her contract with Big Machine fell through, she left the label. However, Scooter acquired Big Machine Records,

⁸⁷ Lid yana Aziz and Alia Farahin Abd Wahab, 'Copyright and Royalty Among the Composers in Malaysia' (2022) 16(1) International Journal of Innovation, Creativity and Change 738–752 <https://www.ijcc.net/images/Vol_16/Iss1/161C_Farahin_2022_E_R.pdf>.

⁸⁸ For instance, in the 1960s, Malaysia's appreciation of Indonesian music, specifically '*Lagu Seriosa*' caused tensions between both countries. This is partly due to Malaysia's initiative to create its own song, which received plagiarism accusations. Similarly, in 2007, another dispute arose between both countries over the ownership of the folk song '*Rasa Sayang*', with Malaysia claiming its origin from the Malay archipelago and Indonesia asserting the influence from the islands of Maluku.

⁸⁹ Kylee Neranjan, 'You Belong With Me: The Battle for Taylor Swift's Masters and Artist Autonomy in the Age of Streaming Services' (2021) 18(2) Northwestern Journal of Technology and Intellectual Property 239–263 <<https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1344&context=njtip>>.

⁹⁰ Eamonn Forde, 'Record breaker: a brief history of Prince's contractual controversies' (The Guardian, 10 August 2015) <<https://www.theguardian.com/music/2015/aug/10/history-prince-contractual-controversy-warner-paisleypark>>.

⁹¹ 'Taylor Swift: 1989 (Taylor's Version); Why is Taylor Swift re-recording old albums?' (The Economic Times, 27 October 2023) <<https://economictimes.indiatimes.com/news/international/us/taylor-swift-1989-taylors-version-why-is-taylor-swift-re-recording-old-albums/articleshow/104761223.cms?from=mdr>>.

thereby gaining control of her master recordings. Despite Taylor's attempts to buy back her master recording rights, Scooter sold them to an investment firm, Shamrock Holdings in 2020. Frustrated by her inability to regain ownership of her music, Taylor announced her intention to re-record her earlier albums under her new label, Universal Music Group. This move allowed her to own the master recording rights to the re-recorded versions, shifting control away from the recording label.

Legally, it is worth noting that Taylor's original contract included a re-recording clause, which prevented her from re-recording her first five albums until 2020 and her sixth album in 2022.⁹² Thus, upon the expiry of her contract with Big Machine, Section 106 of the US Copyright Act 1976 afforded Taylor the exclusive rights to reproduce musical works and sound recordings. Additionally, with songwriting rights, she was able to legally perform her songs and re-record them despite not regaining complete ownership of her original recordings.

5.2 Sampling

Music sampling involves integrating a segment from a pre-existing song into a new composition. This process encompasses various possibilities, from extracting portions of drums or guitar riffs to incorporating entire choruses or verses from a song.⁹³ Sampling may involve repeating a selected segment to create a loop, or it may entail innovative alterations such as modifying the speed or pitch of the original sample. To avoid copyright infringement, both copyrights to sound recording and musical composition must be obtained (sample clearance process), and a subsequent licensing agreement must be entered into with each owner to legitimately use the sample.⁹⁴ This was highlighted by the United States District Court in the 1991 case of *Grand Upright Music Ltd v Warner Bros. Records Inc.*⁹⁵ Here, rapper Biz Markie was found guilty of copyright infringement for using an unlicensed sample from Gilbert O'Sullivan's song *Alone Again (Naturally)* in his album *I Need A Haircut*. The court determined that Markie had disregarded copyright law and the rights of others by not obtaining clearance for the sample before releasing the album.⁹⁶ Markie's attorney argued that attempts were made in good faith to obtain clearance for the sample, but negotiations were ongoing at the time of the lawsuit. Nonetheless, the court halted further sales of the record and considered potential criminal prosecution.

⁹² Emily Tribulski, 'Look What You Made Her Do: How Swift, Streaming, and Social Media Can Increase Artists' Bargaining Power' (2021) 19(21) *Duke Law & Technology Review* 91–121 <<https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1366&context=dltr>>.

⁹³ Rachael Carnachan, 'Sampling and the Music Industry: A Discussion of the Implications of Copyright Law' (1999) 8(4) *Auckland University Law Review* 1033–1058 <<http://www.nzlii.org/nz/journals/AukULRev/1999/4.pdf>>.

⁹⁴ *ibid.*

⁹⁵ 780 *The Federal Supplement* 182 (1991).

⁹⁶ United States Copyright Act 1976, s 114.

Again, music sampling is renowned in the US music industry, specifically with Britney Spears's top hits of all time, *Toxic*. The song samples the soundtrack from the 1981 Bollywood film *Ek Duuje Ke Liye*. The sampled portion comes from the song *Tere Mere Beech Mein*, sung by Indian singers Lata Mangeshkar and SP Balasubrahmanyam.⁹⁷ On the other hand, while music sampling is equally prevalent in Nigeria, there have been no documented instances of a successful sampling-related copyright lawsuit in the country.⁹⁸ Similarly, in the United Kingdom, Section 16 of the Copyright, Designs & Patents Act 1988 (on exclusive rights) does not effectively address the sampling culture. Copyright infringements for sampling are rare because sampling producers typically undergo sample clearance processes and pay licensing fees or settle cases outside of court due to the high legal costs of litigation. By 2011, the cost of clearing a substantial sample had increased from £10,000 to £20,000, about ten times the cost in 1998.⁹⁹ Copyright owners often demand a high percentage of rights in the sampling song as a condition for granting publishing clearance, sometimes requiring 50% or 100% ownership rights.¹⁰⁰ As the UK legal position on sampling remains unclear, artists often prefer to seek clearance to avoid potential legal issues.

5.3 Interpolation

Interpolation involves incorporating part of an existing musical composition into a new work, without using the actual audio sounds from a preexisting recording.¹⁰¹ Unlike sampling, which involves using specific audio recordings, interpolation utilises newly recorded audio. Interpolation allows artists to reference and quote the original without infringing on copyright. This method avoids many of the legal complexities that come with direct sampling while giving credit to the original songwriter and guaranteeing them a share of the royalties.¹⁰²

In recent years, interpolation has become increasingly common, especially in the United States. For example, the melody from Rodgers and Hammerstein's *My Favourite Things* from the musical *The Sound of Music* is interpolated into each verse of Ariana Grande's 2019 hit

⁹⁷ 'Did you know Britney Spears' 'Toxic' hook was taken from Lata Mangeshkar's Tere Mere Beech Mein?' *Times of India* (8 February 2022) <<https://timesofindia.indiatimes.com/entertainment/english/music/news/did-you-know-britney-spears-toxic-hook-was-taken-from-lata-mangeshkars-tere-mere-beechmein/articleshow/89430394.cms>>.

⁹⁸ 'Sampling in the Nigerian Music Industry' (Urban Central, 14 July 2017) <<https://medium.com/urban-central/sampling-in-the-nigerian-music-industry-29153fda6772>>.

⁹⁹ Ching Wang (Michael) Lam, 'Troubles with Samples: Music Sampling as Quotation and Pastiche under UK Copyright Law' (2021) *Warwick Undergraduate Law Journal*, art 10 <https://warwick.ac.uk/fac/soc/law/aboutus/wulj/article_10.pdf>.

¹⁰⁰ *Ludlow Music Inc v Williams (No 2)* [2002] England and Wales High Court 638 (Ch).

¹⁰¹ Grayson Saylor, 'Everything Old Is New Again: The Rise of Interpolation in Popular Music' (PhD thesis, University of South Carolina, 2023) <<https://scholarcommons.sc.edu/cgi/viewcontent.cgi?article=8130&content=etd>>.

¹⁰² *ibid.*

song *7 Rings*.¹⁰³ In the verses, Ariana continuously employs the interpolated melody, but in the pre-choruses and choruses, she shifts away from it and adopts a more hip-hop rap vocal style. The phrase *Buy me all of my favourite things*, which she sings in the song, is reminiscent of a line from *My Favourite Things*. Other similarities between the song and the original include comparable words and allusions. Similarly, Olivia Rodrigo retroactively added credits to Hayley Williams and Josh Farro from Paramore for her song *Good 4 U* due to similarities with Paramore's *Misery Business*.¹⁰⁴ While the melodies of the two songs are not identical, they share a similar tone in the chorus. The song's comparable feel or vibe, despite the difference in melodies, is influenced by common characteristics such as vocal style, harmonic progression, and instrumentation.

6. Conclusion: The Way Forward

All in all, despite the limited presence of music copyright disputes in Malaysia compared to other countries, it is imperative to address the lack of awareness regarding the application of copyright law within the music industry. While Malaysia's legal framework encompasses fundamental rights and provides protection for musical works and sound recordings, a notable challenge persists in effectively standardising the law with international standards. While Malaysia's music industry has historically experienced fewer copyright issues, understanding the nuances of copyright law in the global music industry is imperative. Instances such as Taylor Swift's ownership battle over her master recordings serve as examples of how copyright ownership and licensing agreements may have a big impact on artists. Furthermore, Malaysia's existing Copyright Act 1978 must explicitly cover new, emerging practices in the music industry. Novel concepts like the interpolation of music create challenges for copyright enforcement, especially in determining ownership rights and obtaining proper clearances. As the law evolves, Malaysia needs to adapt accordingly. Besides proper recognition of copyright law, extensive awareness targeting musicians, record labels, songwriters, and performers in the form of education and campaigns must be launched to disseminate knowledge about copyright law, as well as the repercussions of infringement. Ensuring proper enforcement mechanisms to investigate and prosecute cases of copyright infringement cases is crucial to protecting the authors' rights to their creations.

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¹⁰³Rob Garratt, "'I've Heard that Before": Here's why Some Songs Sound Familiar' *The National* (31 July 2019) <<https://www.thenationalnews.com/arts-culture/music/i-ve-heard-that-before-here-s-why-some-songs-sound-familiar-1.893127>>.

¹⁰⁴Jem Aswad, 'Olivia Rodrigo Adds Paramore to Songwriting Credits on Good 4 U' (*Variety*, 25 August 2021) <<https://variety.com/2021/music/news/olivia-rodrigo-paramore-good-4-u-misery-business-1235048791/>>.

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