Prospecting, Sharecropping, and the Recording Industry

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ABSTRACT

Digital-era disruption has had a significant impact on the recording industry and the business of music more generally. Digital-era music disruption draws attention to patterns of continuity within the recording industry. Notably, despite widespread use of digital technologies for the creation, dissemination, and consumption of music, core recording industry business models largely still draw from the predigital era. Recording industry business models have long been compared to other exploitative business models based on debt, including the sharecropping business. Business models in the recording industry have been a source of dispute by a broad range of recording artists, including highly successful ones such as Taylor Swift. These models have also reflected racialized patterns of extraction that have particularly disadvantaged generations of African American artists. This Article considers the impact of racialized extraction patterns in the recording industry for the racial wealth gap. It also discusses the need for alternative business and compensation models for all artists in the recording industry.

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I. DIGITAL-ERA MUSIC DISRUPTION

The recording industry has experienced a difficult transition to the digital era. Changing technologies, particularly the introduction of compressed digital music files and the internet, have enabled widespread dissemination of digital music and many uncompensated and unauthorized uses of music.[1] In addition to disseminating digital music, the recording industry has engaged with the digital era by prosecuting music downloaders and continuing to lobby for ever-greater copyright protections.[2] Despite widespread use of digital technologies for the creation, dissemination, and consumption of music, recording industry business models largely still draw from the predigital era.[3]

Over the last century or longer contracts with recording artists continue to be central to recording industry business models. Through recording contracts, record producers and companies secure rights in the labor of artists and the products of such labor.[4] Digital-era innovations—including the "360 deal," which grants producers and companies rights in most or all of an artist's streams of revenue, digital and otherwise—build on twentieth-century predigital contracting norms.[5] One such norm is evident in standard industry contracts that entitle only one party, the recording company, to interpret contractual terms, particularly terms relating to artists' compensation.[6] A contemporary music consumer faces an array of options, from vinyl and cassettes to digital downloads and streaming.[7] Similarly, contemporary entrepreneurs in the music arena have extensive opportunities for

1. Olufunmilayo B. Arewa, *YouTube, UGC, and Digital Music: Competing Business and Cultural Models in the Internet Age*, 104 NW. U. L. REV. 431, 440 (2010).

2. *Id.*

3. *Id* at 440–41.

4. *Id.* at 459.

5. *See generally* Matt Stahl & Leslie Meier, *The Firm Foundation of Organizational Flexibility: The 360 Contract in the Digitalizing Music Industry*, 37 CANADIAN J. COMMC'N 441 (2012).

6. *See generally id.*; DONALD S. PASSMAN, ALL YOU NEED TO KNOW ABOUT THE MUSIC BUSINESS 98 (6th ed. 2006).

7. Orlando Mendiola, *How to Start a Cassette Collection in the 21st Century*, WIRED (Dec. 4, 2022, 9:00 AM), https://www.wired.com/story/how-to-start-cassette-collection [https://perma.cc/VED8-MGBN].

brand partnerships and licenses.[8] In contrast, however, a contemporary artist contemplating a recording contract typically faces business, economic, and contractual terms that have not significantly changed since the 1950s.[9] First, artists sign away many of their rights for an extended period of time.[10] Then, the recording company decides what compensation and other benefits artists are due.[11]

Over the last two decades, recording artists, record companies, record producers, record distributors, and other twentieth-century intermediaries have been confronted with new intermediaries, particularly music streaming services such as Spotify.[12] In 2021, streaming constituted 83 percent of recorded music revenues in the United States[13] and 65 percent of global music revenues.[14] Streaming has been a key driver of and has contributed to sustained recording industry revenue growth and profits in recent years.[15] Global streaming revenues grew 24.5 percent in 2021 while recording industry revenues reached a new record high of close to $26 billion in 2021, increasing 21 percent over revenues in 2020.[16]

Not surprisingly, artists have taken note of these industry gains in recent years and have protested about not receiving their fair share.[17] The dominance of streaming has changed configurations of industry intermediaries, with Spotify playing a significant role in creating the business of streaming in its current form.[18] In recent years, artists have directed their commentaries toward the share of revenues they receive

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8. LESLIE M. MEIER, POPULAR MUSIC AS PROMOTION: MUSIC AND BRANDING IN THE DIGITAL AGE 1 (2017).

9. *See* PASSMAN, *supra* note 6, at 76.

10. *See id.* at 102.

11. *See id.* at 98.

12. Elise VanDyke, *The Rise of Music Streaming Services*, MICH. ST. U. GLOB. EDGE (Oct. 27, 2021, 10:05 AM), https://globaledge.msu.edu/blog/post/57046/the-rise-of-music-streaming-services [https://perma.cc/XY84-SK4A].

13. JOSHUA P. FRIEDLANDER & MATTHEW BASS, YEAR-END RIAA 2021 REVENUE STATISTICS (2021), https://www.riaa.com/wp-content/uploads/2022/03/2021-Year-End-Music-Industry-Revenue-Report.pdf [https://perma.cc/K46C-Q6AB].

14. INT'L FED'N OF THE PHONOGRAPHIC INDUS., GLOBAL MUSIC REPORT 4 (2022) [hereinafter GLOBAL MUSIC REPORT], https://www.ifpi.org/wp-content/uploads/2022/04/IFPI_Global_Music_Report_2022-State_of_the_Industry.pdf [https://perma.cc/7VJW-QWAG].

15. Douglas Broom, *Global Music Sales Hit a New Record in 2021 Thanks to the Rapid Growth of Streaming*, WORLD ECON. F. (Apr. 20, 2022), https://www.weforum.org/agenda/2022/04/music-sales-record-streaming-surge/ [https://perma.cc/X8PF-V5D6].

16. *Id.*

17. Ben Sisario, *Musicians Say Streaming Doesn't Pay. Can the Industry Change?*, N.Y. TIMES, https://www.nytimes.com/2021/05/07/arts/music/streaming-music-payments.html [https://perma.cc/2K59-K7VL] (May 10, 2021).

18. GLOBAL MUSIC REPORT, *supra* note 14, at 6.

from streaming services, called on government officials to intervene, and formed grassroots coalitions to demand greater shares.[19] Yet, despite this technological and financial turbulence, artists' arguments about compensation in the digital era hinge on features that have been central to the recording-contract relation since the dawn of the industry: intermediaries' capacity to set terms and to conceal their contractual accounting from the public and from artists to whom they owe royalties.[20] Companies' secretive approach to contractual accounting makes it virtually impossible for artists to know whether and to what degree a company is accounting for and paying royalties in compliance with the terms of the recording contract.[21] Standard recording contracts enable artists to audit their contracts to determine whether they are receiving the amounts contractually due to them.[22] However, high costs typically prevent all but the wealthiest and most successful artists from auditing their recording companies' books.[23] In addition to the potentially prohibitive costs of pursuing an audit, artists who challenge industry contractual accounting may also experience negative career consequences, including being blackballed.[24] Irene Cara sued her recording company in the 1980s for withholding her royalties and won a jury verdict.[25] In addition to not collecting her royalties until she won her jury verdict, during the eight years of legal proceedings Cara "battled for royalties in a legal fight that sidetracked her career at its peak"[26] because "other labels did not want to sign Cara because she had sued RSO [Records]."[27]

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19. Sisario, *supra* note 17.

20. Any of the standard music business guides substantiates this point comprehensively. *See, e.g.*, Matt Stahl & Olufunmilayo B. Arewa, *Accounting for Injustice: AFTRA, Work and Singers' Royalties*, *in* THE OXFORD HANDBOOK OF MUSIC L. & P. 4 (Sean M. O'Connor ed., 2021).

21. *Id.*

22. Lon Sorenson, *California's Recording Industry Accounting Practices Act, SB 1034: New Auditing Rights for Artists*, 20 U.C. BERKELEY TECH. L.J. 933, 934 (2005).

23. *Id.*

24. Dale Kawashima, *Special Interview with Pop Legend Irene Cara, Co-Writer & Singer of the #1 Hit "Flashdance…What a Feeling" and Star of the Movie,* Fame, SONGWRITERUNIVERSE (May 24, 2018), https://www.songwriteruniverse.com/irene-cara-interview-2018.htm [https://perma.cc/VSE5-88HV].

25. Cara v. Coury, No. C-641-467 (L.A. Super. Ct. 1987) (documents from this case can be found at the following: https://play.google.com/books/reader?id=L1OKli0ZAHAC&pg=GBS.PP18&hl=en); Kawashima, *supra* note 24; *Cara Takes Legal Action Against Coury, Network*, BILLBOARD, June 1, 1985, at 76.

26. Brian Murphy & Victoria Bisset, *Irene Cara, Singer Who Hit Stardom with 'Fame' and 'Flashdance,' Dies at 63*, WASH. POST (Nov. 26, 2022, 6:00 PM), https://www.washingtonpost.com/obituaries/2022/11/26/irene-cara-flashdance-fame-dies/ [https://perma.cc/PHH2-36NW].

27. Kawashima, *supra* note 24.

Performers require access to the means of making a musical living. Once upon a time, these means included recording facilities, manufacturing facilities, advertising budgets and expertise, influence in the field of broadcast radio, and so on.[28] New digital technologies now enable many people to record and distribute music without the types of facilities that were necessary in past eras, thus reducing barriers to entry.[29] But in 2023, just as in 1923, the technical means of making a musical living depends on access to markets capable of providing support and protection of rights and interests in the products of musical labor.[30] The modes of music's circulation and the scope of music's commercial uses have exploded in the last twenty years.[31] Intermediaries in commanding market positions (such as powerful record producers, record companies, and now streaming services) largely continue to govern access to markets and control much of the accounting for contractual obligations to artists.[32] These intermediaries play a significant role in determining the forms and amounts of compensation music makers can receive as suppliers of musical labor and products to dominant industry players.[33]

Notably, artist-intermediary relations characteristic of the recording industry are racialized to a significant degree. The US recording industry has thus functioned as a racial project, "simultaneously an interpretation, representation, or explanation of racial identities and meanings, and an effort to organize and distribute resources (economic, political, cultural) along particular racial lines."[34] Specifically, in the recording industry, exploitation has taken a racialized form that this Article designates as "extraction."[35] "To exploit" means "to make full use of," or "to derive a benefit from"[36]—it is a technical, non-evaluative term. In this sense, artists and intermediaries enter into contracts, as subjects, jointly to exploit the artist's work. In contrast, "extraction" highlights exploitative circumstances that resemble sharecropping. Key features of twentieth-

28. Bryan Lesser, *Record Labels Shot the Artists, but They Did Not Share the Equity*, 16 GEO. J.L. & PUB. POL'Y 289, 294 (2018).

29. Jessica Michelle Ciminero, *Technology, the Internet and the Evolution of Webcasters—Friends or Foes of Musicians and Their IP?*, 5 BERKELEY J. ENT. & SPORTS L. 16 (2016).

30. Stahl & Arewa, *supra* note 20.

31. GLOBAL MUSIC REPORT, *supra* note 14, at 6–7.

32. Lesser, *supra* note 28, at 296.

33. *Id.*

34. MICHAEL OMI & HOWARD WINANT, RACIAL FORMATION IN THE UNITED STATES 125 (3d ed. 2014).

35. *Id.*

36. *Exploit*, OXFORD ENGLISH DICTIONARY (3d ed. 2016).

century artist-intermediary contractual relations provide important bases for exploitation and extraction.

When recording artists sign a contract, they typically receive cash advances, "prepayment of prospective royalties," from record labels.[37] This cash advance is a loan—"the record company pays a sum of money to the artist . . . and then keeps the artist's royalties . . . until it gets its money back."[38] The process of keeping the money to recover an advance is called "recoupment," and, colloquially, an advance is "recoupable from royalties."[39] The elementary form of the advance is the company's payment of recording costs, which, since the late 1940s, has covered "payments made to the artist for the [recording] session, payments made to side musicians for the session, and the costs of musical arrangements."[40] Crucially, royalty streams associated with an artist's recordings are "cross-collateralized"[41] such that advances are blended; each artist has a single royalty account, not a different account for each recording. Thus, a "record company will recover its costs for *all* recording[s] made by the artist from *all* artist royalties."[42] In this framework, as Krasilovsky, Shemel, and Gross point out,

> if three of an artist's albums are released and only the last one is successful, no royalties will be payable to the artist until the recording costs for all three albums have been recouped from the royalties earned on the successful record. Obviously, it will take longer to recoup . . . at a lower rate than at a higher one.[43]

By the late twentieth century, standard contracts asserted that "*[a]ll* monies paid by Company to you during the term of this agreement (except royalties…) will constitute Advances;"[44] unless explicitly excluded in the contract, every payment made to the recording artist was recoupable. An artist must be recouped—must have repaid the record company's advances—to receive royalties to which the artist is contractually entitled.[45] The problem is that artists, like sharecroppers, often lack the ability to discover for themselves whether or not they are

37. RICHARD SCHULENBERG, LEGAL ASPECTS OF THE MUSIC INDUSTRY 103 (2005).

38. *Id.*

39. PASSMAN, *supra* note 6, at 78.

40. Matt Stahl, *Tactical Destabilization for Economic Justice: The First Phase of the 1984-2004 Rhythm & Blues Royalty Reform Movement*, 5 QUEEN MARY J. INTELL. PROP. 344, 350 (2015).

41. PASSMAN, *supra* note 6, at 81.

42. M. WILLIAM KRASILOVSKY & SYDNEY SHEMEL, THIS BUSINESS OF MUSIC: THE DEFINITIVE GUIDE TO THE BUSINESS AND LEGAL ISSUES OF THE MUSIC INDUSTRY 23 (10th ed. 2007).

43. *Id.*

44. SCHULENBERG, *supra* note 37, at 110 (emphasis added).

45. *Id.*

recouped.[46] The oligopolistic nature of the recording industry means that artists who want to make a living as recording artists have few alternatives to pursuing a contract with one of the few big firms or their subsidiaries; these conditions have enabled contracting norms to persist that severely limit artists' capacity to audit their recording companies' books.

A second feature of recording industry relations with artists continues to be actively racialized: access to markets and marketing resources remain racially distributed. In the early twentieth century, record companies marketed popular music racially—for example, as "hillbilly" music supposedly by and for whites and "race" music supposedly by and for African Americans.[47] Those categories later became known as "country and western" and "rhythm & blues."[48] In the last several decades, as music genre categories have multiplied, record companies and many other institutions like trade journals and radio have continued to maintain racialized categories.[49] These categories have meant that African American artists have often encountered obstacles to inclusion in "white" genres such as "rock" and "country," which have excluded such artists from financial and symbolic rewards that could come from inclusion in categories based on the music they create rather than, primarily, their race.[50]

Part II of this Article sketches racialized proprietorship and exploitation and introduces the racial wealth gap as a crucial feature of social-historical context for the practices covered in this Article. Part III outlines extraction by recounting a record executive's comparison of contracting with African American artists to oil prospecting, sketching a framework of racial property relations drawing on musicology, political theory, and legal studies. Part IV identifies similarities between the sharecropping system of agricultural production and the recording industry system of musical production and argues that the two institutions' shared features illuminate some of the distinctive ways the recording industry has worked as a racial project. Both systems emerged at a moment when race explicitly determined a person's "political rights [and] location in the labor market,"[51] both depended on the labor of African Americans, and core features of both systems reflected this context of racial subordination. Most

46. *See id.* at 213–15.

47. Stahl, *supra* note 40, at 351.

48. *Id.* at 349.

49. *Id.* at 346.

50. *Id.* at 345 (citing MAUREEN MAHON, RIGHT TO ROCK: THE BLACK ROCK COALITION AND THE CULTURAL POLITICS OF RACE 146 (2004)).

51. OMI & WINANT, *supra* note 34, at 8.

importantly, both systems developed around the inaugural debt relation established between the parties, the hiring parties' ownership of the products, and the hiring parties' control of access to the markets for the products. Although sharecropping systems in the southern United States succumbed to legal challenges and developments in harvesting technology, these latter features still characterize the standard recording relation. Part V discusses the need for alternative approaches to recording industry artist relationships based upon models that include equity in addition to debt.

II. RACE, OWNERSHIP, AND WEALTH

The early twentieth-century spread of African American music occurred during a racial cataclysm in the United States,[52] evident in lynchings and other societally authorized forms of violence against African Americans.[53] From the post-Reconstruction era through the 1930s, African Americans were also subject to conscripted labor and other forms of forced labor in both the northern and southern United States.[54] Laws in a number of states criminalized the failure or refusal of African Americans to work during this era.[55]

The career of composer and virtuoso pianist Thomas "Blind Tom" Wiggins highlights treatment of African American creators and the systematic deprivation of their ownership rights in their own creations both during and after slavery.[56] Thomas Wiggins was born enslaved in 1849.[57] From the age of eight, he was hired out by his owner to perform, "undoubtedly" becoming "the nineteenth century's most

52. LYNN ABBOT & DOUG SEROFF, OUT OF SIGHT: THE RISE OF AFRICAN AMERICAN POPULAR MUSIC 9 (2002).

53. *Lynching In America: Confronting the Legacy of Racial Terror*, EQUAL JUST. INITIATIVE, https://lynchinginamerica.eji.org/report/ [https://perma.cc/5J8Z-CAVV] (last visited Feb. 5, 2023) (documenting 4,084 racial terror lynchings in twelve Southern states and over 300 racial terror lynchings in other states between the end of Reconstruction in 1877 and 1950).

54. Heather A. Thompson, *Blinded by a 'Barbaric' South: Prison Horrors, Inmate Abuse, and the Ironic History of American Penal Reform*, *in* THE MYTH OF SOUTHERN EXCEPTIONALISM 74, 79 (Matthew D. Lassiter & Joseph Crespino eds., 2010).

55. *See, e.g.*, Lea VanderVelde, *Servitude and Captivity in the Common Law of Master-Servant: Judicial Interpretations of the Thirteenth Amendment's Labor Vision Immediately After Its Enactment*, 27 WM. & MARY BILL RTS. J. 1079, 1080 (2019).

56. Anjali Vagts, THE COLOR OF CREATORSHIP: INTELLECTUAL PROPERTY, RACE, AND THE MAKING OF AMERICANS 155–198 (2020).

57. John Toler, *A Sad Song from the Past: Blind Tom*, FAUQUIER TIMES (Aug. 9, 2019), https://www.fauquier.com/news/a-sad-song-from-the-past-blind-tom/article_85827a4a-ba1f-11e9-8fad-07464bd4bd6a.html [https://perma.cc/H98B-8LTV].

highly compensated pianist."[58] Wiggins was the first African American to give a command performance at the White House.[59] In the period before the Civil War, Wiggins was earning $100,000 per year ($1.4 million per year in 2004 dollars), which was deposited directly into the bank account of his owner, General James Neil Bethune, an attorney and anti-abolitionist.[60] After the Emancipation Proclamation, Bethune had the parents of Thomas Wiggins sign an indenture contract that bound Thomas Wiggins to Bethune in exchange for "a good home and subsistence and $500 a year" for his parents and "$20 per month and 2 percent of the net proceeds" for Thomas Wiggins.[61] When the indenture contract expired, Bethune, having moved Wiggins from Georgia to Virginia, had a Virginia probate judge declare Wiggins incompetent and appoint Bethune's son John as Wiggins's legal guardian.[62] Thomas Wiggins continued to be the focus of almost four decades of custody battles involving the Bethune family.[63]

Thomas Wiggins did not own copyrights in the music he created.[64] He also represents a template for the exploitation and marginalization of African American musicians, from being enslaved to being deprived of ownership rights in their creations after the end of slavery. Wiggins's experience was far from unique; in fact, his experience represents the rule and not the exception, as generations of musicians that followed Wiggins tried and were often deprived of the ability to exercise effective ownership over their creations, even long after the end of slavery.[65]

Intermediaries have policed racial genre market boundaries for their own purposes with the effect of silencing and closing off market access for African American musicians. In the later R&B era, white artists co-opted popular R&B songs through cover recordings.[66] They were able to use their market leverage to distribute these songs under

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58. *Blind Tom*, *in* AFRICAN AMERICAN LIVES 85 (Henry L. Gates & Evelyn B. Higginbotham eds., 2004).

59. *Id*.

60. *Id*.

61. *Id*.

62. *Id*.; Wiggins v. Bethune, 29 F. 51, 51 (C.C.E.D. Va. 1886).

63. *Blind Tom*, *supra* note 58, at 85–86.

64. *Id*. at 85.

65. K. J. Greene, *Copyright, Culture & Black Music: A Legacy of Unequal Protection*, 21 HASTINGS COMM. & ENT. L.J. 339, 385–88 (1998); ANJALI VATS, THE COLOR OF CREATORSHIP: INTELLECTUAL PROPERTY, RACE, AND THE MAKING OF AMERICANS 2–3 (2020).

66. *See* Abel Shifferaw, *"Hound Dog" and 9 More Times White Artists Covered Black Musicians' Songs*, OKAYPLAYER, https://www.okayplayer.com/news/hound-dog-and-10-covers-by-white-artists-of-black-musicians-songs.html [https://perma.cc/QL8W-7CRU] (last visited Feb. 5, 2023).

their own names.[67] These "cover versions . . . of songs on the jim-crowed [segregated, relegated] rhythm and blues charts . . . were sanitized, cleaned up, the rhythms rearranged; they were made recognizably 'white.'"[68] Thus, traditional recording industry racial assumptions and practices contributed to the whitewashing of R&B and the discrediting of African American artists that built the genre.[69] Record companies produced covers of African American artists' performances soon after the original recordings demonstrated commercial promise.[70] These de- and re-racialized covers capped demand for popular African American artists as mainstream (white) companies and cover artists took potential opportunities from African American artists and diverted proceeds that African American artists might otherwise have been able to receive themselves.[71]

The exclusion of African American artists from genre-oriented music markets since the 1930s, the production of covers of popular songs in the 1950s, and numerous other racialized recording industry practices[72] contribute to the portion of the racial wealth gap that constrained African American recording artists' social mobility in the later twentieth century. Even while the racial *income* gap may currently be closing, the racial *wealth* gap reached its smallest point in the 1970s but has been widening ever since.[73] The recording industry's racial distribution of resources crucially includes rights to royalty incomes deriving from the sale and license of recordings and compositions.[74] Royalty entitlements are financial assets, a form of wealth:

> Wealth is a special form of money not used [like income is] to purchase milk and shoes and other life necessities. More often it is used to create opportunities, secure a desired stature and standard of living, or pass class status along to one's children. . . . The command over resources that wealth entails is more encompassing than is income or education, and closer in meaning and theoretical significance to our traditional notions of economic well-being and access to life chances.[75]

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67. *Id.*

68. CHARLES W. MILLS, THE RACIAL CONTRACT: 25TH ANNIVERSARY EDITION 52 (2022).

69. Shifferaw, *supra* note 66.

70. *See id.* For example, there is Pat Boone's cover of Little Richard's "Tutti Frutti." *Id.*

71. *See id.*

72. *See, e.g.*, Stahl & Arewa, *supra* note 20, at 18.

73. Ellora Derenoncourt & Claire Montialoux, *Minimum Wages and Racial Inequality*, 136 Q.J. ECON. 169, 170 (2021).

74. Arewa & Stahl, *supra* note 20.

75. MELVIN L. OLIVER & THOMAS M. SHAPIRO, BLACK WEALTH/WHITE WEALTH: A NEW PERSPECTIVE ON RACIAL INEQUALITY 2 (2d ed. 2006).

When exploiters take advantage of their positions to extract assets like copyrights and royalty rights from African American artists, they are contributing to the racial wealth gap and impeding African Americans' capacity to accumulate wealth and pass it and the social and political capacities associated with wealth on to succeeding generations. Even where a recording artist has a demonstrable right to royalty income on songs that are still circulating profitably, the company may tell the artist she is not yet recouped and so cannot collect any royalties.[76] The century-old, dominant recording industry business model remains premised on the intermediary capturing all or most of the rights to musical assets; its associated continuing payments for as long as possible; and making it difficult for the artist to change the terms of the contract, exit the contract, or effectively audit the intermediaries' books.[77]

III. WILDCATTING, PROSPECTORS, AND NEW FRONTIERS OF MUSIC

Many early African American and "hillbilly" recording artists were recruited by independent "scouts" who sought marketable talent in regions far from the Northern cities that were home to record manufacturing companies.[78] These industry intermediaries refined a mode of extraction that involved making copyright ownership claims on material recorded by the individuals they recruited.[79] Notably, several early intermediaries had a standard practice of extracting copyright ownership for their personal benefit, effectively licensing rather than transferring ownership of these materials to the record manufacturers.[80] This resulted in many early artists' assigning copyright ownership to intermediaries but not necessarily to the recording companies themselves.[81] These intermediaries sought to exploit mechanical rights, which were incorporated into US copyright law with the 1909 Copyright Act.[82] For instance, Ralph Peer—a talent scout, recording engineer, and record producer—recruited key early "hillbilly" artists, including the Carter Family and Jimmie Rodgers,

76. *See* Stahl, *supra* note 40, at 341; *see also infra* notes 150–62 and accompanying text for a discussion of Ruth Brown's experience with Atlantic Records.

77. BRIAN WARD & PATRICK HUBER, A&R PIONEERS: ARCHITECTS OF AMERICAN ROOTS MUSIC ON RECORD 88 (2018)

78. *Id.* at 61.

79. *Id.* at chs. 2–3. Notably, the copyrights at issue at this point in time were copyrights for written musical compositions.

80. *Id.*

81. *Id.*

82. *Id.*; Copyright Act of 1909, 60 Pub. L. No. 349, ch. 320, §§ 23–24, 35 Stat. 1075, 1080–81, 60 (repealed 1976).

who were foundational in the development of country music.[83] Peer was also associated with Okeh Records when it released Mamie Smith's revolutionary song "Crazy Blues."[84] When Peer moved to Victor in 1926, he collected copyrights by claiming " publishing rights on virtually all the material he recorded."[85] Peer's ownership of rights formed the basis of the Peer family publishing business, which has led the Peer family "to be widely considered the first family of country music publishing with a history of delivering 'firsts' in the industry" for nearly 100 years.[86] Peermusic is "the largest independent music publisher in the world, with [thirty-eight] offices in [thirty-one] countries and owning or administering over 1 million copyrights."[87] Intermediaries at times engaged in manifestly dishonest conduct in the process of collecting copyrights from creators.[88]

A sound recording involves two copyrights: one in the written musical composition (including lyrics and aspects of the music) and, since February 1972, another in the sound recording.[89] Today, the songwriter may retain all or a portion of the copyright in the musical composition. Typically, recording contracts require artists to assign copyrights in sound recordings to the recording company.[90] Record labels thus own master recordings, which are the original of a song from which copies are made.[91] The master recording is typically sonically superior to such copies.[92] To name a contemporary example, Taylor Swift's disputes concerning her master recordings have drawn greater

83. WARD & HUBER, *supra* note 77, at 24.

84. *Id.*

85. *Id.* at 95.

86. L.B. Cantrell, *Michael Knox Named President of Peermusic Nashville*, MUSICROW (Oct. 19, 2022), https://musicrow.com/2022/10/breaking-michael-knox-named-president-of-peer-music-nashville/ [https://perma.cc/75UY-VKYW].

87. *Who We Are*, PEERMUSIC, https://www.peermusic.com/aboutus/companyhistory [https://perma.cc/V8KP-UWHQ] (last visited Feb. 10, 2022).

88. WARD & HUBER, *supra* note 77, at 91.

89. *See* 17 U.S.C. § 102(a)(7) (granting copyright protection to sound recordings); Sound Recording Act of 1971, Pub. L. No. 92–140, 85 Stat. 391 (amending the Copyright Act to provide for the creation of a limited copyright in sound recordings for various purposes, including protecting against unauthorized duplication and piracy of sound recordings).

90. *See* Judy Rosen, *The Day the Music Burned*, N.Y. TIMES MAG. (June 11, 2019), https://www.nytimes.com/2019/06/11/magazine/universal-fire-master-recordings.html [https://perma.cc/T7JJ-SZ6J].

91. Kyle Kim, *We Compared 'Taylor's Version' Songs with the Original Taylor Swift Albums*, WALL ST. J. (Nov. 12, 2021, 10:49 AM), https://www.wsj.com/articles/we-compared-taylors-version-songs-with-the-original-taylor-swift-albums-11636383601 [https://perma.cc/Z7ZC-YV2V].

92. *See* Rosen, *supra* note 90.

attention to dominant recording industry practices that typically give ownership of masters to record labels.[93]

Later recording industry practices have drawn from the 1920s template for allocating ownership to enterprising industry intermediaries. In 1986, Marshall Chess, son of Chess Records founder Leonard Chess and co-owner of ARC Music,[94] was asked by an interviewer about his recollections of working at Chess Records in the 1950s.[95] His metaphor is unambiguous: "It was the greatest period of the music business, as far as I'm concerned. It was like the wildcatting of the oil business, you know, it was great."[96] Comparing the independent record business of the 1950s to drilling for oil without title or permission, Chess told the interviewer:

> [T]here was a very close clique, you know, those original guys – Ahmed, Hymie Weiss from Old Town Records, George Goldner, my father, the Biharis from California, they were like a big clique . . . they weren't white collar kind of guys, they were all white guys. . . . And they, like, found a way, it was like oil, like hitting oil. The timing of it, the economics; black people had money to buy records, [then it] spread to white [consumers]. . . . It was a wild period. A lot of money was made very quickly. You had a million sellers then with no overheads.[97]

In Chess's words, being the first entrepreneur to contract and market an artist or composer who had yet to recognize her or his potential commercial value was like "wildcatting" in pristine oil fields.[98] Securing claims on artistic labor and property was one way of helping ensure that there would be "no overheads," as Chess Records extracted and marketed recordings and compositions.[99]

Chess Records' business model, like that of many of the independent record companies that sprang to life in the 1940s and 1950s, exploited marginalized African Americans and African American culture. In this historical context, African American artists were eager for opportunities to record and perform,[100] African American

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93. *See* Kim, *supra* note 91.

94 ARC Music, now controlled by BMG, is the publishing firm established by the legendary Chess Records. See Tim Ingham, BMG Buys Control of Chess Records Publishing Company Arc, Music Business Worldwide (Jan. 19, 2016), https://www.musicbusinessworldwide.com/bmg-buys-control-of-chess-records-publishing-company-arc/.

95. Interview by Joe Smith with Marshall Chess (July 24, 1986), *available at Off the Record Interview with Marshall Chess*, LIBR. OF CONG., https://www.loc.gov/item/jsmith000154/ [https://perma.cc/C3B7-MS3E] (Feb. 8, 2023).

96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.*

100. *See id.*

publics were eager to purchase recordings,[101] and artists and audiences alike were economically and politically dependent on and vulnerable to members of the white majority, which controlled access to markets and resources.[102] The Chess family, according to one historian, "[wasn't] doing anything different from any of the other independent label owners."[103] Early record scouts' and independent record companies' ownership claims over copyrights and master recordings enabled them to maximize profits by minimizing or eliminating the costs of securing and retaining control over these important resources.[104] Marshall Chess's phrase "no overheads" means, in this case, no continuing financial obligation to creators.

According to political philosopher Charles Mills, an abiding, tacit, and even unconscious agreement among many (if not most) white people that "the moral and juridical rules normally regulating the behavior of whites in their dealings with one another either do not apply at all in dealings with non-whites or apply only in a qualified form"[105] has defined race relations throughout US history. For Mills, this framework is rooted in and reproduced through white "cognition," or the racialized determination of what counts as effective or valid knowledge in Anglo-European society.[106] This tacit agreement among white people shows up when non-white spaces "are domesticated, transformed, made familiar, made a part of [white] space, brought into the world of European (which is human) cognition, so they can be knowable and known."[107] In extracting and marketing recorded performances of African American music, Chess Records domesticated and transformed Chicago's blues and rhythm and blues scene. Mills points out that "the vocabulary of 'discovery' and 'exploration' . . . still in use until recently, basically impl[ies] that if no white person has been there before, then cognition cannot really have taken place"[108]—that whatever was going on in those non-white spaces did not have value or validity of its own before the white person got there. This vocabulary and sense of exploration and discovery precisely characterizes accounts of the early

101. *Id.*

102. *See id.*

103. NADINE COHADAS, SPINNING BLUES INTO GOLD: THE CHESS BROTHERS AND THE LEGENDARY CHESS RECORDS 310 (2000).

104. *See* A. Voice., *History of the Record Industry, 1920–1950s*, MEDIUM (June 8, 2014), https://medium.com/@Vinylmint/history-of-the-record-industry-1920-1950s-6d491d7cb606 [https://perma.cc/4P9K-BSH9]; *Decoded: The History of Record Deals*, AWAL (Apr. 30, 2019), https://www.awal.com/blog/history-of-record-deals/ [https://perma.cc/HB9T-UQFL].

105. MILLS, *supra* note 68, at 11.

106. *See id.* at 17–18.

107. *Id.* at 45.

108. *Id.*

"scouts" who travelled the city and countryside to sign up African American artists for recording and publishing deals.[109]

Producers' and record companies' ownership claims cohere with a Lockean "ideology of improvement" that justifies "the transfer of possession from idle owners to industrious users, or rewards development over conservation, wealth maximization over personal attachment."[110] What can be described with a nostalgic sense of thrill and adventure as "wildcatting" looks different from a perspective that takes creators' interests into account. The argument so far is that intermediaries play a key role in determining artists' access to markets and other resources, that recording industry intermediation is racialized from the ground up, and that Marshall Chess's rhetoric marks out the racially extractive relation characteristic of the record industry.

IV. SHARECROPPING, RISK, AND REWARD

Sharecropping and peonage, racialized systems of labor conveyance and compulsion active in the United States between the end of the Civil War and the 1940s,[111] offer an illuminating parallel case. The recording relation, like the sharecropping relation, is a contractual relationship between one party that holds all the assets necessary for production other than labor and another party lacking all assets but offering labor.[112] Both the sharecropping contract and the recording contract constitute these parties as creditor and debtor, respectively;[113] in both cases, labor is conveyed through commodities (produce and recordings) rather than time, and thus neither is in any simple sense a wage relation;[114] the basic terms are nonnegotiable (though the pressures on sharecroppers to enter the contract are different from

109. *See* WARD & HUBER, *supra* note 77, at 55.

110. Sherally Munshi, *Dispossession: An American Property Law Tradition*, 110 GEO. L.J. 1021, 1053 (2022).

111. *See* Larian Angelo, *Wage Labor Deferred: The Recreation of Unfree Labor in the US South*, 22 J. PEASANT STUD. 581, 590 (2008).

112. *See* Reclamation Project*, The Music Moguls Who Bled Millions from a Black Legend*, AFR. AM. LITERATURE BOOK CLUB (Mar. 27, 2017), https://aalbc.com/authors/article.php?id=1934 [https://perma.cc/H4G7-4TMX]; Robin Casse, *Musicians, Labor, and COVID19*, HYPOTHESES: WORKING IN MUSIC BLOG, https://wim.hypotheses.org/1352 [https://perma.cc/Z3ME-5QK4] (Oct. 28, 2020).

113. *See* Angelo*, supra* note 111, at 609; Mark Tavern, *An Artist's Guide to Royalties, Recoupment & Cross-Collateralization*, DJ BOOTH (July 30, 2020), https://djbooth.net/features/2020-07-30-kreayshawn-contracts-recoupments-record-labels [https://perma.cc/N9DS-4KGQ].

114. *See* Angelo, *supra* note 111, at 595; Casse, *supra* note 112.

those on recording artists or composers);[115] and, again in both cases, the accounting is hidden and the supplier of labor (produce and sound recordings) has effectively little or no ability to audit the books and demand evidence-backed reckoning.[116]

In the early days of the recording industry, recording industry participants assumed that culture had ephemeral value.[117] Given this, early agreements did not contemplate the potential long-term value of cultural products that today constitutes a normative assumption of these arrangements.[118] The recording industry has long justified the continuing presence of terms significantly adverse to artists based on arguments about risk:

> Pop music, executives say, is a high-risk, low-margin business in which more than 90% of the CDs released each year flop—at great expense to the companies, not the artists. . . . It's an industry, the executives say, in which even unknown acts are treated like royalty, receiving millions of dollars in advances per project as their labels struggle to transform them into global stars.[119]

Industry arguments about risk are difficult to assess due to a lack of transparency about accounting and manipulative industry accounting practices; accounting practices for established record labels "can be described as clandestine."[120]

A number of commentators have compared the terms of recording industry contracts to sharecropping arrangements.[121] Like sharecropping arrangements, record labels have been able to use industry contracts as "a means of extracting cheap labour,"[122] often from

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115. *See* Stahl & Arewa, *supra* note 20, at 4, 5.

116. *See* Chuck Philips, *Record Label Chorus: High Risk, Low Margin*, L.A. TIMES (May 31, 2001, 12:00 AM), https://www.latimes.com/archives/la-xpm-2001-may-31-mn-4713-story.html [https://perma.cc/CUQ8-45ME]; MATT STAHL, UNFREE MASTERS: RECORDING ARTISTS AND THE POLITICS OF WORK 156 n.40 (2012).

117. *See* Olufunmilayo Arewa, *Curating Black Music: Ownership and Commodification* (draft on file with authors); Karen Fishman & Jan McKee, *Scrap for Victory*!, LIBR. CONG.: NOW SEE HEAR! (Jan. 15, 2015), blogs.loc.gov/now-see-hear/2015/01/scrap-for-victory/ [https://perma.cc/A5GF-AJDS].

118. *See* Fishman & McKee, *supra* note 117.

119. Phillips, *supra* note 116.

120. Theo Papadopoulos, *Financial Risk and Return in the Music Recording Industry*, 5 J. MUSIC & ENT. INDUS. EDUCATORS ASS'N 19, 22 (2005); *see also* Stahl & Arewa, *supra* note 20, at 4, 15.

121. Reclamation Project, *supra* note 112; Casse, *supra* note 112; Courtney Love, *Courtney Love Does the Math*, SALON (June 14, 2000, 7:02 PM), https://www.salon.com/2000/06/14/love_7/ [https://perma.cc/3HQD-6BFR]; Ezra Fishman, *YouTube, Indie Music Labels, and the Dangers of Digital Sharecropping*, WISTIA (June 20, 2014), https://wistia.com/learn/culture/youtube-music-digital-sharecropping [https://perma.cc/9X5D-D2QF].

122. FOOD & AGRIC. ORG. OF THE UNITED NATIONS, GOOD PRACTICE GUIDELINES FOR AGRICULTURAL LEASING ARRANGEMENTS § 2.15 (2001), https://www.fao.org/3/Y2560E/y2560e00.htm#Contents [https://perma.cc/6E3D-NFPH].

property-poor artists who have typically assigned all or a portion of their ownership rights to intermediaries through standard-form legal contracts: "Promotional narratives in the media highlight the individuality and originality of aspiring and established stars. . . . Yet the legal arrangements undergirding stardom and its cultivation constitute stable structures of authority and subordination, of property creation and appropriation."[123]

After a recording company decides to support an artist as an investment, often under conditions of uncertainty,[124] it might consider its expected return in light of the inherent risk of that investment. Generally, those making investments with higher risk have expectations of a higher return as compensation for that risk. Determination of risk and returns may be challenging in the recording industry context due to payment models that typically include advances, cost allocations to artists, and recoupment. However, artists could negotiate payment models that might include, for example, "the payment of a higher royalty . . . at some mutually agreed sales volume (for example, when the title-specific target profit or rate of return has been achieved)."[125] Artists could then benefit from the industry's consideration of more varied models for the allocation of returns, including models with greater sharing of returns, industry reductions, or even caps on returns once a certain risk-adjusted threshold of returns is reached.

V. VENTURE CAPITAL AND SWEAT EQUITY—PAYING ARTISTS FOR THEIR INVESTMENTS

Recording industry participants should give greater consideration to models based on equity rather than debt, including those derived from venture capital contexts. The high failure rate persistently cited by industry executives as necessary compensation for the risk they undertake must be queried and supporting data disclosed and examined. Current recording industry models are comparable in structure to sharecropping arrangements because they reflect a licensing model that typically grants industry players property rights in artists' products.[126] These models may leave artists with little return on their investments in the creation of cultural products, even for highly

123. STAHL, *supra* note 116, at 3.

124. *See* Theo Papadopoulos & Clyde Phillip Rolston, *Stochastic Demand and Sound Recording Pricing*, 6 J. MUSIC & ENT. INDUS. EDUCATORS ASS'N 59, 61 (2006).

125. Papadopoulos, *supra* note 120, at 23.

126. *See* STAHL, *supra* note 116, at 2–3.

successful artists.[127] Copyright assignments and manipulative accounting practices surrounding entitlements to royalties deprive many artists of a share of proceeds that flow from the exploitation of their creations.[128]

Even if one accepts the recording industry's estimates of high failure rates, high levels of failure do not mean that allocation of returns should be extractive and one-sided. Venture capital failure rates are close to the 80 percent range, depending on the time in the company's maturity that an investment is made.[129] Early-stage investments in start-up companies have a much higher likelihood of failure than investments in later-stage start-up companies.[130] The likelihood of failure in investments in early-stage start-up companies has been estimated to be as high as 97 percent.[131]

Even in such early-stage companies with a very high rate of failure, typical venture capital investment models tend to be based on the sharing of returns from investments.[132] For example, founders typically own stock in the start-up companies they establish.[133] Employees of such companies also frequently receive equity ownership in such companies.[134] This means that returns from successful start-ups are shared with non-investor employees who typically contribute not money but hard work—an arrangement based on so-called "sweat equity."[135] This leads to potentially high returns for employees of successful start-ups. For example, the 2012 Facebook IPO created several billionaires and over 900 millionaires, at least on paper.[136] The venture capital industry's equity-sharing model, where individuals can reap the rewards of their non-monetary contributions and investments,

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127. *See id.*

128. *See* Stahl & Arewa, *supra* note 20, at 4, 7.

129. *See* Sebastian Quintero, *Dissecting Startup Failure Rates by Stage*, MEDIUM (Nov. 7, 2017), https://medium.com/journal-of-empirical-entrepreneurship/dissecting-startup-failure-by-stage-34bb70354a36 [https://perma.cc/A6W9-KTYF].

130. *See id.* (explaining that start-up success rates increase from 3 percent at the "Seed stage" of investment to 74 percent at the "Series G stage" of investment, all other things being equal).

131. *See id.*

132. *See* Bob Zider, *How Venture Capital Works*, HARV. BUS. REV. (Nov.–Dec. 1998), https://hbr.org/1998/11/how-venture-capital-works [https://perma.cc/F4FC-7ELK].

133. *See id.*

134. Will Kenton, *Sweat Equity: What It Is, How It Works, and Example*, INVESTOPEDIA, https://www.investopedia.com/terms/s/sweatequity.asp [https://perma.cc/C4JU-8KV5] (June 27, 2022).

135. *Id.*

136. Barry Evangelista, *Facebook IPO Will Create Billionaires*, SF GATE, https://www.sfgate.com/business/article/Facebook-IPO-will-create-billionaires-3036102.php [https://perma.cc/8D74-QWXS] (Jan. 8, 2013, 2:53 PM).

could be a model for recording industry participants to consider and implement.

VI. CONCLUSION

Record executives often characterize their relations with artists as anything but exploitive: "If anything, we serve them," Warner Bros. Records executive Jeff Ayeroff told California legislators in 2002.[137] "We are people who invest, we are a combination of investors, marketers, promoters, salespeople, and we sometimes are cheerleaders, advisors, psychologists," he explained.[138] Ayeroff then noted that "we end up having a very tight relationship with many of our artists that has value."[139] Yet, this "very tight relationship" is one in which the artist is distinctly subordinated, and this relationship's "value" to the record company is based in large part on the certainty that intermediaries gain through contracting and accounting norms, as well as other institutional features of the recording industry.

The recording industry and sharecropping have both depended on the labor of African Americans, and they developed around African Americans' politically and socio-culturally heightened vulnerability and dependence.[140] Sharecroppers and recording artists of all kinds have been exploited in ways that entrepreneurs invented for this context specifically. Correspondingly, African American sharecroppers and recording artists had their contractual alternatives drastically foreclosed, and their situations thereby defined the limits of potential exploitation.[141]

In the recording industry, in Maureen Mahon's words, "a convergence of economic, racial, and artistic ideologies and practices . . . have produced a business and creative environment in which African Americans occupy a subordinate position[,] even as African American cultural productions serve as a central creative resource."[142] This Article proposes that the recording industry's "racialized political economy"[143] has had consequences for African

137. STAHL, *supra* note 116, at 164.

138. *Id.*

139. *Id.*

140. *See* Michelle Veena Chandra, The Black/White Wealth Gap: The Transgenerational Effects of Sharecropping Systems and Anti-Black Racial Systems on African Americans Today 11–12 (Aug. 2011) (M.A. thesis, University of British Columbia) (on file with the University of British Columbia Library).

141. *See id.* at 11; Stahl & Arewa, *supra* note 20, at 4.

142. MAUREEN MAHON, RIGHT TO ROCK: THE BLACK ROCK COALITION AND THE CULTURAL POLITICS OF RACE 146 (2004).

143. *Id.*

American families' capacity to accumulate wealth and the forms of social and cultural power that wealth supports.[144]

As of 2019, write Melvin Oliver and Thomas Shapiro, "[African American] families . . . possess a dime for every dollar of White families' wealth."[145] In their landmark book *Black Wealth/White Wealth*, Oliver and Shapiro explain the significance of this still-growing disparity:

> Most people use income for day-to-day necessities. Substantial wealth, by contrast, often brings income, power, and independence. Significant wealth relieves individuals from dependence on others for an income, freeing them from authority structures associated with occupational differentiation that constitute an important aspect of the stratification system in the United States. If money derived from wealth is used to purchase significant ownership of the means of production, it can bring authority to the holder of such wealth.[146]

Insofar as compositions and performances generate royalties, they are—like oil wells and farms—means of production, assets, and claims, which can bring authority and independence. Drawing on a Ford Foundation publication, Oliver and Shapiro define an asset as "a stock . . . that can be acquired, developed, improved and transferred across generations. A stock endures; it is not entirely consumed. It generates flows or consumption, as well as additional stock."[147] In the context of this study, such a definition is germane to the understanding of contractual and copyright royalty rights, which can amount to substantial assets.

Record companies and other intermediaries have unjustly, unethically, and even fraudulently denied African American artists the opportunity to accumulate wealth commensurate with their commercial success and the long-lived value of their compositions and recordings.[148] The US recording industry's "racialized political economy"[149] left many chart-topping R&B singers of the 1950s and 1960s without the prospect of a comfortable retirement (or even access to affordable healthcare),[150] let alone the ability to pass along substantial wealth to their children.

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144. *See id.*; Chandra, *supra* note 140, at 4.

145. Melvin L. Oliver & Thomas M. Shapiro, *Disrupting the Racial Wealth Gap*, 18 CONTEXTS 16, 18 (2019).

146. OLIVER & SHAPIRO, *supra* note 75, at 32.

147. *Id.* at 260.

148. Stahl, *supra* note 40, at 344.

149. MAHON, *supra* note 142, at 146.

150. *See* Marilyn A. Gillen, *60s Artists Sue Unions, Labels for Health Benefits*, BILLBOARD, Nov. 13, 1993, at 14.

R&B singer Ruth Brown, whose hits of the 1950s caused many in the industry to call Atlantic Records "the house that Ruth built,"[151] told ABC's Nightline in 1995 about how she got by, economically, in the 1960s and 1970s, having ceased recording for Atlantic in 1961: "I did domestic work, I drove a school bus, I worked in the Head Start program, I worked in day care, I worked as a counselor in drug abuse, I did domestic work in private homes, whatever was necessary."[152]

In 1969, Brown inquired with Atlantic Records about her royalties, and the company informed her that her account "show[ed] a balance in [Atlantic's] favor for advances and session costs in the amount of $25,849.54. No further statements were sent . . . because the negative balance was increasing due to returns and there was no new product."[153] A 1980 inquiry brought this response from the company: "We have updated Miss Brown's account from 4/1/60 through 5/31/80 indicating domestic and foreign sales which have been credited to her account. The statement shows a balance in our favor of $11,420.76."[154] Twenty years after concluding their active relationship, Atlantic Records claimed that Brown was still deep in debt to the company.[155]

Ruth Brown told Nightline in 1995:

> [O]ne day . . . I realized I would not be able to send my children to school to further their education with the sums of money that I was earning. . . . I was working in a private home and I heard my music being played on the air and the announcer speaking and giving all these wonderful accolades to my contributions to the music. And all of a sudden I decided "well that's all good and true, but where's the check?"[156]

In the 1980s, Ruth Brown discovered not only that her recordings were still being played on the radio, but that they were still being manufactured and sold around the world.[157] Shortly thereafter, she had the good fortune to meet Howell Begle, a mergers and acquisitions attorney and R&B fan.[158] Begle told the *Legal Times* about confronting Atlantic Records: "I was screaming at them all the time, 'Don't you have royalty statements? Don't you have copies of

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151. Mike Greenblatt, *Meet the Ruth Who Swung into History as Atlantic Records' First MVP*, GOLDMINE (Oct. 24, 2013), https://www.goldminemag.com/articles/meet-the-ruth-who-swung-into-history-as-atlantic-records-first-mvp [https://perma.cc/9ENU-8JEL].

152. *Nightline: Segment on Royalty Reform, Howard Begle, Ruth Brown, Jimmy Scott* (ABC television broadcast Mar. 6, 1995) (on file with author).

153. Letter from Atl. Recording Corp. to Alfred Rosenstein, Esq. (Jan. 17, 1969) (on file with author).

154. Letter from Francine Wakshal, Dir. of Foreign Royalties, Atl. Recording Corp., to Christopher Voires, C/J Mgmt. (June 30, 1980) (on file with author) (emphasis in original).

155. *See* Stahl, *supra* note 40, at 10.

156. *Nightline*, *supra* note 152.

157. *See* Stahl, *supra* note 40, at 15.

158. *Id.* at 10.

anything?'"[159] Among the documents Atlantic eventually turned over to Begle was a handwritten internal office memo noting that "[Atlantic] did not pick up royalties earned from 4/1/60 to 9/30/71."[160] In this memo, in Begle's words, the company admitted

> that when all these artists finished their careers in the 1960s and they had all these large debit balances, the company decided there was no way in hell these people were ever going to work their way of [of their debit balances] so let's don't even bother to go through the exercise of even posting what they earned. All of Atlantic's [subsequent] royalty statements were fraudulent because they knew they were missing eleven years' worth of data in those [royalty accounts] that had debit balances.[161]

Begle and Brown's pressure on Atlantic was part of a broader movement of "royalty reform."[162] By demonstrating Atlantic Records' fraud and negligence, royalty reform was able to press several companies into making small but arguably meaningful changes in their relations with aging African American artists, in some cases wiping out old debit balances in royalty accounts and even raising record royalty rates in some old contracts.[163]

What royalty reform could not do, however, was address the failure of these artists to accumulate wealth commensurate with their contributions "to the music" and recording companies. The forms of exploitation and extraction outlined above ensured that recording artists retained little—if any—claim on royalties flowing from record sales, despite companies' promises to account for artists' royalties and make payments once artists are recouped.[164] Oliver and Shapiro argue that racial wealth inequality "has been structured over many generations through the same systemic barriers that have hampered blacks throughout their history in American society: slavery, Jim Crow, so-called de jure discrimination, and institutionalized racism."[165]

In the context of the present study, Atlantic Records' 1969 and 1980 invocations of Ruth Brown's indebtedness appear as defenses against accountability that bear striking resemblance to the functions of debt in the sharecropping relation. In the early 1930s, an investigator for the Department of Labor told journalist Walter Wilson that

> in many cases the Negro does not dare ask for a settlement. Planters often regard it an insult to be required, even by the courts, "to go to their books". A lawyer and

159. *Id.* at 11.
160. *Id.* at 12.
161. *Id.*
162. *Id.* at 2.
163. *Id.* at 16.
164. *See id.* at 3–4.
165. OLIVER & SHAPIRO, *supra* note 75, at 12–13.

> planter cited to me the planters' typical excuse: "It is unnecessary to make a settlement, when the tenant is in debt". As to the facts in the case the landlord's word must suffice.[166]

Sharecropping "worked" by ensuring that croppers shared the risks of farming without receiving any ownership stake in the crops in the ground.[167] Sharecropping contracts ensured that the sharecroppers remained dependent on and indebted to the landlord for means of production and means of subsistence.[168] Sharecroppers without access to other sources of credit were unable to achieve the status of entrepreneur and thereby free themselves "from the contract labour law system altogether."[169]

In her study of sharecropping's contribution to the racial wealth gap, Michelle Chandra argues that "it is only in tracing the intersection where race meets wealth historically that we can begin to understand the maladies of the present."[170] Placing the recording industry's business practices in context with other extractive, dispossessive, and highly racialized twentieth-century enterprises contributes to the project Chandra proposes and hopefully contributes to discussion about the possibility and desirability of alternative models.

166. WALTER WILSON, FORCED LABOR IN THE UNITED STATES 90 (1933).

167. Angelo, *supra* note 111, at 595.

168. *See id.* at 600.

169. *Id.*

170. Chandra, *supra* note 140, at 9–10.