

Estate Planning for Music Copyright Owners

If you are a music creator or the successor/representative of a music creator, planning how your music copyrights figure into your estate can ensure that they continue to provide revenue for years to come.

Planning an estate can be a complicated, time-consuming process, so we're happy to offer this brief three-part introduction to estate planning for music creators, their successors and other copyright owners.

Please keep in mind that ASCAP cannot offer legal, tax or estate planning advice. We strongly encourage you to consult with your tax advisor regarding estate planning. If legal advice or other expert assistance is required, seek out a professional to help.

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Estate Planning Part 1: A Brief Intro to Music Copyright

Before we get into the details of estate planning, you should be aware of certain copyright basics.

Copyright in General

A copyright is a "bundle" of legal rights initially owned by the author, so-called because each right is separate and divisible, including the right to perform the work publicly (commonly referred to as the "performance right"). With a few important exceptions, your music copyrights generally are treated like any other intangible assets of your estate. They can be owned jointly, held in trust, transferred by gift or at death and so on, just like any other property.

Inventory and Valuation

A first step in planning for the disposition (a legal term meaning "transferring" or "relinquishing") of your copyrights is to know what you have and how much it's worth. Estimating the value of your music copyrights can be difficult, so we recommend that you seek the help of a qualified appraiser. An appraiser can look at the income-producing history of your copyrights, or, where available, the value the open market has put on music copyrights. Having some idea of the value of your copyrights will make evaluating your estate planning options easier, and will also make it easier to predict any Gift or Estate Taxes that may be imposed upon them.

Having your copyrights appraised by a qualified professional may be mandatory if you need to report the copyright on a Gift Tax or Estate Tax return.

Transfer of Deceased Members' Royalties

Given the unique needs of the estates of songwriters and composers, ASCAP permits an estate to sell or irrevocably assign to others the right to receive ASCAP writer royalties. We also permit living members to irrevocably assign royalties to a family limited partnership.

You are permitted to transfer your right, title and interest in any musical works, including the right of public performance, to such heirs, legatees or other persons you designate in your will. But the Copyright Law has some critical rules that dictate who receives a writer's renewal or termination rights, even if there is an instruction to the contrary in the writer's will.

Duration & Renewal Rights (For Music Copyrighted Before 1978)

Copyrights do not have an unlimited duration. For works copyrighted before January 1, 1978, the copyright term is divided into two terms: (1) an initial term of 28 years following the creation, and then (2) a renewal term of an additional 67 years. "Renewal rights" generally refer to the right to obtain the renewal term for such pre-1978 works. Renewal rights are not relevant to works created after 1977, because they have a "unitary" copyright term that extends, in most cases, for the life of the author plus seventy years.

For pre-1978 works, renewal rights generally do not "vest" (the legal term for "confer upon someone") until the last year of the initial term, and then vest in the following individuals: (1) the writer; (2) if the writer is dead, the writer's surviving spouse and children, as a class; (3) if there are no surviving spouse or children, the writer's executor under his or her will; and (4) if the writer left no will, the writer's next of kin under state law.

What this means is that the Copyright Law, and not the owner of the work during the copyright's initial term, dictates who is entitled to the renewal rights in copyrights on pre-1978 works that are not in their renewal term when the writer dies. As an example, let's consider a writer who has a spouse and child. He or she is currently enjoying the initial term for a copyright on a pre-1978 work. Now, nothing surprising will happen if our writer is still alive in the final year of that initial term (the 28th year of the 28-year initial term) because the law provides that the renewal rights will "vest" in him at that time. Once vested, the renewal rights become an asset like any other, and the writer is free to keep or dispose of them as he or she sees fit (subject to ASCAP rules regarding transfers, if he is an ASCAP member).

But what if the writer dies before the renewal rights vest in the final year of the initial term? In that case, the law provides that the renewal rights will vest in the spouse and child if they are living, even if the writer wanted to give the renewal rights to, for example, a parent, sibling or charity. In this circumstance, the Copyright Law trumps any contrary wish of the writer, including his will, and requires that the renewal rights pass to the surviving spouse and child. Again, once the renewal right has "vested" in the spouse and child in the final year of the initial term, they are free to keep such renewal rights or dispose of them like any other interest (subject to ASCAP rules regarding transfers if they are successor members).

Termination and Recapture of Renewal Rights

If the renewal rights in a work (other than a work-for-hire) in its renewal term had already been granted as of January 1, 1978, other than by will, the law extended the renewal term by 39 years (when added to the initially-conferred 28 year renewal term, matching the 67-year renewal term for pre-1978 works) by the writer, if living; if the writer is dead, the recapture right belongs to the writer's surviving spouse and children (including grandchildren by a predeceased child), or, if there are none, to the writer's executor or administrator. This termination and recapture right must be exercised by issuing highly specific and complex notices set forth in the law. Once again, the law - not the writer's will - is the governing instrument. The right of the surviving spouse and children, or if there are none, of the writer's executor or administrator, to recapture the renewal rights in the event of the writer's death is uncontroverted and absolute. Finally, if the time period for this recapture had passed without its being exercised, an additional termination right exists pertaining to the last 20 years of the copyright term.

Other Termination and Recapture Rights (For Music Copyrighted After 1978)

Another peculiarity in the transfer of copyrights relates to the right of termination. For works (other than works-for-hire) created after January 1, 1978, the law currently provides that any transfer of copyright, other than by will or by operation of law, made on or after January 1, 1978, can be terminated by either the writer or by a beneficiary designated by legal statute. In other words, all rights in the copyright can be recaptured, notwithstanding any contractual agreement to the contrary.

The termination right can be exercised only during a specified five-year window beginning 35 years after the date of transfer. Thus, because the termination provision applies only to works created after January 1, 1978, 2013 was the first year the exercise of these recapture rights could have occurred, for transfers made in 1978.

In the event the writer dies before the opening of this five-year window, the law provides that the writer's entire termination right passes to the surviving spouse or, if there are living children, to the spouse and the writer's children. The spouse would receive one-half of the writer's interest, while the surviving children (including the surviving children of any deceased child of the writer) would share the remaining half equally. The rights of the writer's children and grandchildren are in all cases divided among them per stirpes according to the number of children represented. The share of the children of a deceased child in a termination interest can be exercised only by the action of a majority of them. If there is no surviving spouse or child, the recapture right passes to the writer's executor or administrator.

Thus, when planning for the disposition of a copyright of a post-1978 work that has previously been transferred, you should be aware of the possibility that the grant of rights may be terminated and the copyright recaptured by the writer, a surviving spouse/child, or (if there are none), by the writer's executor or administrator, during the five-year window occurring between 35 and 40 years after such transfer.

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Estate Planning Part 2: Basic Steps

What Is Estate Planning?

"Estate planning" is simply a way of providing for the disposition of the property, including your copyrights, that you accumulate during your life. An estate plan can, at its simplest, be reduced to the following questions:

To whom do you wish to leave your property? (The list usually includes family members and/or charities.)

What share of your property shall each beneficiary receive?

When should you transfer the property to the beneficiaries? (Often the only option is to transfer property at death, since the property is needed during your lifetime. However, those who have more than sufficient assets to satisfy lifetime needs may find that lifetime giving is an important part of an estate plan.)

How should you transfer the property to the beneficiaries? (Outright gifts are the most common form of transfer, but trusts can also be useful in tax planning.)

One of the key considerations in estate planning is "transfer" taxation, including estate, gift and generation-skipping transfer taxes. Not only can these taxes be expensive (reaching rates in excess of 55%), but the taxes are complicated, and may change depending upon who receives your property. Proper planning for transfer taxation is very important. Speak with a tax advisor to decide what is right for your unique situation.

Estate Planning Isn't Only for the Rich

Regardless of your financial outlook, everybody should consider some form of estate plan to dispose of his or her property. While complicated and expensive planning may be more appropriate for wealthy individuals, even people of modest means should plan for the orderly distribution of their property to the beneficiaries they choose.

The Importance of Preparing a Will

One main goal of estate planning is to execute an appropriate will - the legal document that contains instructions about what will happen to your money and property after your death. Fortunately, the will is, in most cases, a simple document that can be prepared inexpensively.

If you die “intestate” - or without a will - you may leave your children or other beneficiaries with a legal and financial mess that can take a lot of time, money and stress to clean up. There is another good reason to write a will: If you die intestate, then state law determines who gets your property at death, without any regard to your particular wishes or your survivors' needs.

The Basic Steps of an Estate Plan

1. Inventory and Valuation

The first step of estate planning is to list all of your assets and get a general idea of how much they are worth. While valuation is straightforward for most assets, it can be difficult with intellectual property like your music copyrights. If you have little or no idea what your copyrights are worth, consult a professional appraiser.

2. Determine the Beneficiaries of Your Estate

Next, identify the beneficiaries of your estate and what property or shares you want each of them to receive. The nature of your relationship to the beneficiaries and their needs will probably inform these decisions. This is also a good time to consider whether you are able and willing to make gifts to anybody during your lifetime.

3. Determine the Transfer Tax Consequences

After determining how you would like to leave your property, consider the tax consequences of your proposed dispositions. The basic question is: Will transfer taxes apply, and if so, are there ways to reduce my and my beneficiaries' tax burden? If the taxes can be reduced through planning, you must then balance your original wishes against the tax consequences. Make sure to consult with a trusted advisor about any tax questions related to your estate planning.

4. The Estate Planning Documents

Once you have chosen your estate plan, it is time to prepare and execute the relevant documents to implement your plan. Again, a qualified professional may be necessary to assist you here. These documents will normally include a will, and may also include a revocable trust (sometimes called a "living" trust). In preparing these documents, you will need to choose your executors (or "personal representatives" as they are called in some states) and, if necessary, trustees and guardians.

5. Subsequent Changes to Your Estate Plan

An estate plan is generally not written "in stone." Your will in particular, and also revocable trust agreements, can and should be changed anytime that you have a change of heart or a change in circumstances (*e.g.* marriage, birth of a child, divorce, etc.). However, some aspects of your estate plan, such as lifetime transfers, may be irrevocable once made.

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Estate Planning Part 3: ASCAP Membership

Upon the death of an ASCAP member, his or her ASCAP membership may be passed on to a spouse, child, loved one, or anyone he or she chooses, or state law dictates. Individuals who receive a membership interest are called "successor members." So long as the original member's copyrights continue, when a successor member dies or multiple successor members die, further successors can be appointed.

ASCAP relies upon survivors of deceased members to advise ASCAP of the date of death so that ASCAP can provide the appropriate forms that must be submitted to name a successor to the deceased member's ASCAP membership. The time it takes to name a successor member generally depends on the complexity of the process required to settle the deceased member's estate.

Even if the deceased songwriter or composer was not an ASCAP member at the time of death, he or she may be posthumously elected to membership, and then have a successor appointed to that membership. Someone may also file a posthumous application for publisher membership on behalf of the deceased.

Please keep in mind that ASCAP cannot offer legal, tax or estate planning advice. We strongly encourage you to consult with your tax advisor regarding estate planning. If legal advice or other expert assistance is required, seek out a professional to help.

ASCAP Applications for Deceased and Successor Members

Once the application that applies to your circumstances has been completed, return it along with the documents requested in the application to ASCAP's Global Services Department. Our address, telephone and fax number are included on the applications. For the fastest service, please submit a copy of the deceased's will, death certificate, trust or any other estate planning documents requested on the application form.



Successor Appointment for a Deceased ASCAP Member

Use this application if the deceased was an ASCAP writer member, in order to appoint a person (or persons) to succeed that writer member in his or her membership. You should also use this form if the deceased was both an ASCAP writer and publisher member.

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Successor Appointment to a Successor Member of a Deceased Member

Use this application if the deceased was already a successor member to an ASCAP writer member, and another successor (or successors) needs to be appointed to membership. This form should also be used if the deceased was both a successor to an ASCAP writer and publisher member.

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Posthumous Election to Membership and Appointment of a Successor for a Deceased Writer

Use this application if you need to appoint a successor to a deceased individual who has yet to be elected to ASCAP membership. This assumes that the deceased would have qualified for ASCAP membership during his or her lifetime. If applying posthumously for writer membership, consider applying for publisher membership. Contact ASCAP's Global Services Department (1-800-95-ASCAP) for an application.

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Application to Transfer Publisher Membership of a Deceased Owner

Use this form if the deceased was an owner or officer of an ASCAP publisher membership, but was not an ASCAP writer member. If the deceased was also an ASCAP writer member, use the Application for a Successor Appointment for a Deceased Writer Member.

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More questions about estate planning? [View our Estate Planning FAQs](#) or contact our Global Services team at 1-800-95-ASCAP.

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