

WHAT HAPPENS TO MY MUSIC ROYALTIES WHEN I DIE?

A Guide for Canadian Composers

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 *Please note that this is a planning tool based on information from many different sources, and is not legal advice. You are invited to use this document to organize your personal details and develop a plan before you create or update your will with a lawyer.*

OVERVIEW

When someone dies in Canada, their executor has four main tasks: identify the estate assets and liabilities; administer and manage the estate; satisfy the debts and obligations of the estate; and distribute and account for the administration of the estate. In the simplest of cases, once these are done, the estate is settled and the executor has finished their job.

However, creative people like musicians, artists, poets and authors often have a more complicated estate. In Canada, all creative works remain under copyright for 50 years after the death of the creator, (for co-created works, after the death of the last remaining creator). This means there is the potential for revenues to continue to be earned during those 50 years.

(Note: negotiations are currently underway to expand the copyright period to 75 years across North America. This document will be updated if the proposed change becomes law.)

Composers who are currently earning royalties for musical works should provide their executor with a written plan to deal with potential revenues earned in the 50-year period following the composer's death.

PUT YOUR PLAN IN WRITING

1. Make a list of all current revenue streams for your music. Include login details to manage your accounts online, and contact information, such as a key contact or customer support for each. Many lawyers are now including a “digital asset” clause in the will and power of attorney, which allows the executor and/or attorney to deal with people’s digital assets. When writing a will, a statement can be included, such as “I have made a list of my current revenue streams for my executor/trustee/attorney.”

Many lawyers also encourage their clients to make a memorandum of specific items, which is similar to this. The will includes a statement, such as, “I have made a memorandum regarding household items; please follow it.” This allows clients to have their wishes heard, and they can easily change the list over time without having to

update the will. Composers might have specific wishes for valuable musical instruments or musical scores.

NOTE: Keep the list up to date as circumstances change.

EXAMPLE of a REVENUE STREAMS CHART

| INCOME SOURCE | WEBSITE | USERNAME | PASSWORD | CONTACT EMAIL | HOW YOU ARE PAID |
|-----------------------------------|---------|----------|----------|---------------|------------------|
| Publishers (traditional print) | | | | | Cheque by mail |
| Self-Published sales | | | | | PayPal |
| SOCAN performance royalties | | | | | Direct deposit |
| Streaming services | | | | | |
| Stock music sales | | | | | |
| Synchronization licenses | | | | | |
| Other ... | | | | | |

2. Think about all possible scenarios, and write plans for each.

- a. Best Case – one of your pieces becomes very popular, and is then included in the soundtrack of a hit Christmas movie, generating a lot of income. Because it's a hit Christmas movie, it continues to create new revenue for your estate every year until your copyright expires.
Where would you choose to distribute this money?
Who would you ask to manage it?
- b. Medium Case – your music has moderate or slowly declining sales over the first few years, but this gradually trickles down to a few dollars each year. What would you choose to do with this money? Who would you ask to manage it?
- c. Worst Case – your music earns a few dollars for a few years, but not enough to pay a trustee to manage it. What would you choose to do with this money? Who would you ask to manage it?

AREA OF CONCERN: one composer was advised by a lawyer not to divide the estate by percentages, because the value of the entire estate would have to be assessed before any money could be disbursed, (which could take many months). Instead, it was recommended that each beneficiary be left a specific dollar amount, which would be paid out much more quickly. Then the remainder of the estate could be settled after. This leads to the question about royalties and other income trickling in after the composer's death. We probably DON'T want settlement of the entire estate to be held

up for 50 years! Ask your lawyer how to set up your will so the existing estate at time of death can be disbursed, and potential future revenue be dealt with separately.

POSSIBILITIES:

- a. Set up a trustee (could also be your executor, or someone else) to manage future income, receiving it and disbursing it according to your wishes
- b. Assign future income to one or more specific heirs. Name a backup heir or organization in case the first person is not available when the time comes.
- c. Assign future income to a charity of your choice. Include a backup plan if that charity ceases operations in the future.
- d. Other ideas? (Please let me know, and I'll update this document!)

3. Make a folder or package for your executor that includes:
 - a. A copy of your will
 - b. Any special instructions for treasured items being left to special people or organizations; E.g., musical instruments, original scores, etc.
 - c. A copy of your current revenue stream document (sample above) for their reference
 - d. A copy of your most recent income tax form with a list of music income earned that year (also for their reference)
 - e. A list of any other instructions you would like your executor to follow
 - f. A complete listing of all of your compositions, published and unpublished, and where to find them
4. Give the folder or package to your executor, or let them know exactly where to find it when it is needed. (E.g. In a safety deposit box)
5. Make sure you update the information when changes happen. (Consider checking this annually to make sure your records are up to date.)

ANECDOTAL NOTE – A Publisher’s Perspective

The owner of a large Canadian choral music publishing house recently told me about a couple of composers who passed away, leaving no contact information for their executor or next of kin. This made it very difficult for him to track down the heirs and disburse royalties for continuing music sales!

LESSON – give your executor the contact information they need, and give your publishers the contact information they need!

ANECDOTAL NOTE – A Lawyer’s Perspective

A prominent Calgary lawyer specializing in wills and estate law says:

“I have dealt with this issue in an estate where the deceased had published music in North America and in Europe. We went through SOCAN to ensure that the ownership rights to the

music, video and manuscripts were transferred over to the spouse. The spouse did quite a bit of legwork, but in the end, all has been transferred over to her.

For his will, we did mention within the will the specific music interest. We knew that the spouse would need to 'hang her hat' on the gift as listed in the will when she contacted SOCAN. In this instance the deceased had a huge collection of music, published and unpublished, so it was summarised in the will (e.g. "all my music, published and unpublished, videos, manuscripts,... to my wife), and the deceased provided me with a detailed list of his inventory."

LESSON – give your lawyer a complete inventory of your compositions, and a specific list of what goes to whom. Who gets the:

- Royalties
- Original manuscripts
- Copies of published works
- Etc.

REFERENCES - CANADIAN

How to Plan Your Artist Estate (Pacific Legal Education and Outreach Society)

<https://www.pacificlegaloutreach.com/news/how-to-plan-your-artist-estate>

REFERENCES – AMERICAN

Estate Planning Part 1: A Brief Intro to Music Copyright (ASCAP)

<https://www.ascap.com/help/my-ascap-membership/estate-trust-planning/estate-planning-copyright-intro>

Estate Planning Part 2: Basic Steps (ASCAP)

<https://www.ascap.com/help/my-ascap-membership/estate-trust-planning/estate-planning-basic-steps>

Estate Planning Part 3: ASCAP Membership (ASCAP)

<https://www.ascap.com/help/my-ascap-membership/estate-trust-planning/estate-planning-ascap-forms>

FACT-CHECKING & ADDITIONAL INFORMATION

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☞ This article is provided as is to help composers organize the information needed to plan their will and estate. It is recommended that each composer work with a knowledgeable lawyer to create a will that meets their personal, specific needs.

☞ This draft article will be updated as new information comes to light. The most recent version will be posted at www.dgeoffreybell.com on the Articles page. The article is free to share with anyone, but please don't alter it. If changes should be made, please contact dgeoffreybell@gmail.com with details.