**How to Structure a Creative Estate**

When deciding how to manage your creative estate after your death, here are a few points to consider to help guide your executor.

1. Provide specific instructions in your will or trust for your creative executor that explains their authority for governing your creative work and related creative property after you die. If not, then the main executor will have control of the work (who has a fiduciary responsibility that serves the estate, including the payment of expenses, outstanding bills, and taxes).
2. If your estate is not complex and/or does not produce much income, then a creative executor may not be necessary. The main executor of your will or trust may be able to manage disposition of your estate and govern your ongoing creative estate activities. A good benchmark – estates less than $100,000 and with copyright protected work that produces little income usually will not benefit from having a creative executor in addition to the main executor. But if your creative estate is complex and produces substantial income from multiple books, numerous publishers, and various licensing contracts governing subsidiary rights, then your estate will benefit from a business savvy creative executor. If you have an accountant, access to royalty reports and financial records will immensely help a creative executor understand the depth of your estate.
3. If your creative estate includes published books and various licenses of your intellectual property, then a creative executor must notify publishers and licensees of your death and how royalties should be paid. Make sure your will or trust includes a list of your creative properties (either in the body of the document, or as an attachment). Specify the persons or organizations and contact information to which the rights under your copyrights are granted. Identify the creative property conveyed and whether the work is published or unpublished. Include copies of contracts with your publishers, agents, and licensees. Cover art contracts are also important to add so there is no dispute as to who owns the cover art.
4. If you want more than one heir to benefit from your creative estate, then a creative executor may be necessary to manage multiple people with various interests and make decisions on behalf of the heirs collectively (because we all know how family dynamics can sometimes be, especially around the death of a loved one).
5. Make a list of your on-line life that an executor may need to manage. This would include websites, passwords, on-line accounts, and pertinent online forums in your creative world. Do not forget to include a list of your domain registrations and expirations.
6. If you have unpublished works that you want to remain unpublished, then name these specifically.
7. If you have unpublished works that you want published after your death, give your creative executor the power to have the unfinished works completed, and if possible provide instructions where needed. Who do you wish to edit or finish the work? Who do you wish to publish the work? Which subsidiary rights may be exploited, and by whom? Which subsidiary rights cannot be exploited? Which licenses should remain current, and which licenses do you wish terminated (see number 10 below)?
8. If you register your copyrights in your published work, transfer will be easier for your heirs and beneficiaries.
9. Under the copyright laws, the term of the copyright is for the life of the author, plus a renewal term of 70 years. Copyright renewal rights vest in the author’s heirs (the spouse, children, or the author’s next of kin) regardless of whether the author assigned the renewal term of copyright to a third-party prior to his or her death. If the next of kin are dead, then the creative executor must file the renewal in the name of the estate. Be aware there are differences in this general rule for renewals of older copyright work due to changes in the law.
10. The right to terminate a copyright license flows to your spouse or children. The creative executor normally does not have the right to terminate a copyright license.
11. If you want to transfer ownership of a copyright to a specific person who will own and manage the rights, then list those people. Remember that some heirs may lack the business skills to manage a creative estate (think contract negotiations or exploiting subsidiary rights).
12. Give the creative executor the ability to bring a lawsuit for infringement of your copyrights.
13. How long do you want your creative executor to serve? Is it until they die? Is it for a specific number of years? Who is the replacement? Who is the alternate?