

What happens to copyright when the owner dies?

Many individuals have protected their copyright in creative works (for example, inventors, musicians, authors, artists, photographers, videographers, software writers, architects). But what happens to these copyrights when they die? Do they terminate upon death or are they passed on? If so, how are copyrights passed on to others?

The length of copyright protection depends on the year the work was created. Most copyright material enjoys copyright protections the life of the author plus 70 years, or in the case of a joint authorship, 70 years from the death of the last surviving author.¹ Unlike copyright protection, which extends after the owner's death, moral rights in copyrighted works end when the author dies. They cannot be passed on. . Moral rights protect an author's integrity and right of attribution, meaning the author has the right to claim authorship of his work and prevent others from modifying the integrity of his name. Moral rights also protect works against intentional distortion, mutilation, or other modification that is objectionable to the author or artist.

Copyrights can pass via a will or trust designating who should be the beneficiary of that property. Ideally, there is a specific clause in the will or trust dealing with the devise of the copyright property. In the absence of a specific bequest of the copyright property, it will pass with the residuary estate according to the will. If the copyright owner died intestate with no will, the copyright property will pass via the state's laws of intestate succession.

The beneficiary(ies) should file a copyright assignment with the US Copyright Office to reflect the new ownership. The estate's executor or administrator will sign the assignment on behalf of the estate. These assignments must be carefully drafted and contain specific language not generally found in boilerplate assignment documents. (That language is not commonly used in other areas of law.)

Estate fiduciaries and beneficiaries should be aware that creative works by individuals that are not subject to work for hire provisions will have a one-time window where they may terminate a license agreement that was unfair to the author or artist because they did not have adequate bargaining power at the time they entered the license agreement. 35 years after the work is first published, there is a 5-year window in which that license can be terminated.

Copyright assets present a unique set of considerations. When in doubt, a fiduciary or estate attorney can and should hire knowledgeable IP counsel to advise on these assets. Evans Fox LLP has experienced estate and probate attorneys as well as intellectual property attorneys to help navigate these complex issues. If you find yourself navigating copyrights in your estate matters, reach out to our team for representation or co-counseling.

The forgoing is not intended to be and should not be construed as legal advice. Only after an attorney client relationship is established in writing may legal advice be given.

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¹ [Copyright Term and the Public Domain - Copyright Services - LibGuides at Cornell University](#)

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