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The Last Straw

Kool-Aid Sipper by Robin F. Williams sold for \$76,200 at Phillips Modern & Contemporary Art Sale, Afternoon Session on May 14, 2025, in New York City, p. 2.

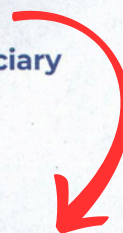
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FEATURES ON

Estate Planning & Taxation and **Fiduciary Professions**

COMMITTEE REPORTS ON **Elder Care / Special Needs** and **Ultra-High-Net-Worth Families & Family Offices**



Rethinking Trust and Estate Planning for Authors and Artists

By Daniel J. Scott and Charlotte Jones Voiklis

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Rethinking Trust and Estate Planning For Authors and Artists

Traditional strategies often don't work

Traditional estate planning typically involves organizing and distributing an individual's assets after death in accordance with their wishes and minimizing estate, gift and generation-skipping transfer taxes through tools such as wills, trusts and beneficiary designations. For authors and artists, this type of planning has traditionally included managing intellectual property, such as copyrights, licensing agreements and royalty streams, to ensure financial continuity for heirs or beneficiaries. The focus has been purely on managing an author's assets, that is, *what* the author owns at the time of the artist's death. But traditional estate planning doesn't address *why* they created it in the first place.

Artists and authors don't create for the purpose of making money, and their creative works are more than just investments or assets that generate revenue. There's a deeper purpose and meaning that's served through their creativity. What an artist is building during their lifetime, and what they'll leave on their death, is more than just an estate of assets—it's an enduring *legacy*. More than the financial value of their intellectual property and other assets, more than *what* they own, more than minimizing or avoiding taxes (another form of preserving financial value), artists and authors care about *why*.

We use the term "author" in its legal sense as

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defined by the Copyright Act, that is, the original creator of a work of authorship. While the word often evokes writers specifically, our use is meant to include all authors of original expressive works, including visual artists, composers, designers and others whose intellectual and cultural contributions shape their legacy.

Beyond Traditional Planning

Traditional estate planning is inadequate for addressing authors' needs and wishes. First, an artist's legacy is something built over their lifetime. It's a forward-looking endeavor, not one established at death, that must continue for generations after the artist's death. This requires its own legal structure that protects the artist, allows them the continued control over their creative works necessary during their lifetime and incorporates proper succession mechanisms. When it comes to succession, planning for authors raises significantly more complex questions: What's the artist's purpose? How should a work be preserved, adapted or reinterpreted over time? Who has the authority to speak for the artist's voice, values or intentions? Standard estate-planning documents rarely address these questions. Authors need a legacy plan.

Two Perspectives

We approach this article from two complementary perspectives: One of us is an estate manager with experience overseeing a high profile literary legacy; the other is a former estate-planning attorney who has devoted his career to helping authors build and preserve their legacies. We've encountered the limitations of traditional estate-planning tools, including wills, revocable trusts and limited liability companies (LLCs), which frequently leave creative

heirs without adequate guidance and living authors without meaningful mechanisms to ensure their work is represented and interpreted in ways that align with their values.

Limits of Traditional Planning

Most estate plans rely on a combination of wills, revocable trusts, LLCs and other legal instruments to direct the distribution and management of property. For authors of intellectual property, these plans typically include the assignment or bequest of copyrights, royalty interests and contractual rights tied to existing publishing, licensing or agency agreements.

In theory, this provides continuity: Heirs or beneficiaries receive the financial benefits of the author's work, and control over licensing decisions passes to the estate or a designated representative. In practice, however, these frameworks often fail to address the specific nature of the author's creative work as a living, interpretive legacy that may change in meaning and impact long after the author's death.

Federal copyright law offers authors and their heirs some important tools, most notably through 17 U.S.C. Sections 203 and 304(c). These provisions allow authors or their statutory heirs to terminate certain grants of copyright (such as publishing or licensing agreements) decades after they were made. These termination rights give authors and their families a second chance, often many years after the initial grant, to reclaim control of a work that may have gained significant commercial or cultural value.

- Section 203 applies to grants made on or after Jan. 1, 1978.
- Section 304(c) applies to works created before that date but still under copyright due to term extensions.

While these provisions are powerful, they're also procedurally complex. Terminations require strict adherence to timelines, statutory notice and eligibility criteria. Many authors and heirs are unaware of their existence or uncertain how to exercise them. Even when properly executed, termination rights don't resolve broader questions around the future of the work, such as how it should be adapted, to whom rights should be re-granted

and how to ensure the creator's intent is honored after their death. Termination rights also don't apply to all grants, for example, works made for hire are excluded, and grants made by will aren't terminable.

In some cases, the use, or attempted use, of termination rights has led to litigation among heirs or against corporate rights holders. These disputes can drain estate resources and delay or distort the long-term cultural life of the work. They also expose a larger structural gap: While termination statutes offer a path to reclaiming legal control, they offer no guidance for how that control should be used.

From a legacy planning perspective, termination rights can be a double-edged sword. On one hand, they allow authors or their families to reclaim valuable rights and reassert control. On the other hand, they can disrupt carefully constructed legacy plans. If an artist transfers copyrights during their lifetime, such as to a trust or family entity, those grants may be subject to statutory termination by heirs, even if the transfer was made expressly to protect the artist's vision. In contrast, bequests made by will aren't terminable under current law, making testamentary transfers a more secure option. This tension poses a serious challenge for authors hoping to preserve both control and continuity. How do they plan for succession when the very planning tools are vulnerable to recapture?

In short, neither traditional estate-planning tools nor statutory termination rights are designed to answer the interpretive, moral and ethical questions that frequently arise in managing creative legacies. Unlike a traditional estate plan, a literary or artistic legacy isn't just a set of assets. It's a long-term cultural and editorial project that embodies the author's life purpose. Without additional frameworks, trustees and heirs may be left without the tools or guidance they need to manage it well. The consequences of poor management can be significant: Works may be mishandled, exploited or forgotten, eroding their cultural impact, artistic value and ability to generate income over time.

Considerations for a Legacy Plan

Creative works, whether novels, screenplays, design archives or musical catalogs, aren't merely financial instruments. They're legacy assets imbued with artistic intent, cultural value and often a personal or

moral vision that extends beyond the creator's lifetime. These assets demand a distinct planning approach that goes beyond the mechanics of wealth transfer.

Legacy vs. traditional financial assets. Whereas traditional financial assets (for example, securities, real estate and retirement accounts) can pass through a standard estate plan with predictable valuation and distribution pathways, legacy assets require ongoing interpretation, curation and stewardship. Their value isn't fixed; it evolves as markets shift, cultural contexts change and new formats emerge. More importantly, the creator's intent, what should or shouldn't be done with the work, can't always be captured through conventional testamentary instructions.



Eye of the Beholder

Curl by Farhad Moshiri sold for \$53,340 at Phillips Modern & Contemporary Art Day Sale, Afternoon Session in New York City. An Iranian artist, Moshiri was known for his Pop Art inspired works reinterpreted through traditional Persian craftsmanship. He's considered the most important contemporary artist from Iran in the years following the revolution.

A creative estate that fails to differentiate between legacy and financial assets may inadvertently leave moral, legal and commercial decisions in the hands of those ill-equipped or uninterested in protecting the work's integrity. A rights holder may find themselves with both legal ownership and economic control but no grounding in the ethos of the work.

For instance, the estate of the singer-songwriter Prince was initially managed without a will, leaving multiple heirs and advisors struggling to align financial interests with artistic intent.¹ Despite immense commercial value, decisions around licensing and posthumous releases faced criticism due to unclear direction.

Creating a perpetual structure. To ensure that legacy assets endure, estate planners should consider forming a perpetual structure, such as a trust, family-controlled entity or purpose-based legal vehicle, which can carry forward the assets' commercial and cultural value. This structure should be designed to:

- Centralize rights management, licensing and brand protection
- Embed interpretive or moral guardrails to guide decision making
- Adapt across generations without diluting the core vision

Rather than aiming solely for tax efficiency or ease of transfer, this kind of structure seeks to preserve *the meaning and momentum* of the work itself.

Balancing control and financial benefit. When planning for legacy assets, distinguishing between those responsible for decision making (for example, licensing, editorial approvals and partnerships) and those entitled to share in the financial benefit is often helpful. While estates unify these roles, others intentionally separate them to protect creative integrity, minimize conflict or reflect the varied strengths of beneficiaries.

Here are several common approaches:

- *Unified control and benefit.* A single individual or group holds both authority over the legacy and a right to its revenue. This can be effective when there's a clear, trusted heir with business acumen and a deep understanding of the creator's vision.

It can also introduce challenges if future decisions are guided more by short-term gain than long-term stewardship.

- *Divided authority.* One party (such as a trustee, fiduciary or literary executor) is responsible for making strategic and creative decisions, while another set of individuals (often family members) receives income distributions. This model allows for professional management and consistent vision while ensuring the economic benefit flows to the creator's intended beneficiaries.
- *Collaborative or tiered governance.* Some estates create a governance body, such as a family council, advisory board or committee, with layered input. For example, heirs may retain veto rights over major decisions while a designated agent or trust manager handles day-to-day management.
- *Institutional partnerships.* In certain cases, the estate may grant control to an outside institution (such as a foundation, publisher or academic partner) while retaining the financial benefits. This model is particularly useful when the work's long-term value is tied to cultural, scholarly or philanthropic goals.

There's no one-size-fits-all solution. The most effective structure will reflect the nature of the work, the capacities and desires of the heirs and the values the creator hoped to carry forward. A thoughtful plan doesn't just divide rights. It creates clarity around roles, relationships and responsibilities for generations to come.

Dealing with Termination Rights

Copyright termination rights under 17 U.S.C. Sections 203 and 304(c) exist to allow authors (or, more commonly, their heirs) to reclaim rights they granted earlier in their careers, often under less-than-favorable terms. For estate planners working with creative clients, these rights aren't a point of historical interest but a legal and logistical obstacle to long-term legacy planning.

The fundamental challenge is determining how a creator can ensure that their heirs don't upend their carefully considered legacy plan by exercising the statutory right of termination. Planners can employ three primary strategies to neutralize this risk:

Use a work-for-hire structure for future works.

Termination rights don't apply to works made for hire. By establishing a legacy entity, such as an LLC or trust, and designating that entity as the author's employer for works created moving forward, planners can ensure that those future works fall outside the scope of termination. This strategy is particularly helpful for authors with ongoing or serialized output, such as authors of book series, visual artists producing under a studio name or screenwriters developing episodic works.

Andy Warhol's studio operated under a work-for-hire model, with many works attributed to assistants or produced through the Warhol Foundation. While not without legal controversy, this structure allowed the Foundation to assert greater control over licensing and legacy decisions after his death.

In addition to legal structuring, planners may consider emotional and economic disincentives that discourage heirs from exercising termination.

In *Horror Inc. v. Miller*,² the U.S. Court of Appeals for the Second Circuit found that the screenwriter of *Friday the 13th* could reclaim rights to the screenplay under Section 203 because he wasn't a traditional employee and the work wasn't for hire. This ruling affirmed the importance of clearly structured work-for-hire relationships in avoiding termination vulnerability.

Leave existing works by will, not inter vivos transfer. For preexisting works, the recommended strategy is to bequeath copyrights through a will, rather than transferring them inter vivos to a trust or entity. Under 17 U.S.C. Sections 203 and 304(c), termination rights apply to inter vivos grants, including those made for estate-planning purposes, but not to bequests made by will. This distinction

means that copyrights transferred during the creator's lifetime may be vulnerable to statutory recapture by heirs, even if the intent was purely legacy-driven. Bequeathing copyrights by will helps ensure that the artist's plan remains intact and not subject to termination by statutory heirs.

*Penguin Group (USA) Inc. v. Steinbeck*³ illustrates the risk of heirs attempting to circumvent or reinterpret earlier agreements. While the Steinbeck heirs lost their claim, the case underscores the importance of careful drafting and the pitfalls of ambiguity regarding earlier transfers or agreements affecting termination.

Consider disincentives and structural safeguards. In addition to legal structuring, planners may consider emotional and economic disincentives that discourage heirs from exercising termination. These could include forfeiture clauses, loss of revenue participation or reputational consequences built into family agreements. While not foolproof, they reinforce the creator's intent and create meaningful consequences for deviation.

A Purposeful Legacy Plan

For creative legacies, legal mechanisms are necessary but not sufficient. In our experience, the most effective plans combine the clarity of formal legal structures with the nuance of purpose, narrative and intent. Rather than asking only *who owns the rights*, legacy planning also asks:

- What values should guide decisions about this work after the creator is gone?
- What uses are consistent with the creator's purpose and vision, and what aren't?

Traditional wills, trusts and operating agreements aren't designed to answer these questions on their own, but they can be supplemented.

Increasingly, we see planners and authors turning to documents that capture voice, vision and values, such as ethical wills, letters of intent, mission statements or other legacy directives. While these materials aren't typically legally binding, they can play a powerful interpretive role. Courts, trustees and family members often rely on extrinsic evidence to understand intent, especially in disputes involving

discretionary powers or moral questions about use. For fiduciaries managing literary or artistic estates, such documents can reduce ambiguity and serve as an interpretive guide, helping distinguish between faithful stewardship and well-meaning overreach.

This planning becomes especially important when statutory termination rights are in play. As discussed above, heirs may have the legal right to terminate, but no roadmap for what to do next. A thoughtfully constructed legacy plan can provide guidance on how to handle reversionary rights:

- What licenses to seek (or avoid)
- What adaptations may be welcome or contrary to the spirit of the work
- Whether and how the work can evolve across formats or generations

Legal Structures

Estate structures like LLCs, trusts and family-controlled entities can also be designed to reflect a living legacy mindset. Rather than focusing solely on income generation or asset protection, these vehicles can embed values-based decision-making processes and appoint fiduciaries who reflect the artistic, moral or editorial insight necessary to carry forward the work.

In particular, purpose trusts, which are structured around a specific, non-charitable purpose rather than individual beneficiaries, can provide a flexible and enduring structure for literary or artistic estates. These trusts are increasingly available through enabling statutes in approximately two dozen U.S. states. In jurisdictions without such statutes, a purpose trust may still be possible by appointing an independent enforcer to represent the trust's interests.

One of the main benefits of purpose trusts is their ability to isolate an author's works from litigation brought by heirs. Unlike a traditional trust, a purpose trust has no beneficiaries. As a result, heirs or other potential beneficiaries lack legal standing to challenge the structure or pressure the trustees, because the trustees don't owe them any fiduciary duty. This can be a critical advantage when planning for the long-term, values-aligned stewardship of intellectual property, especially when paired with a

corporate trustee or advisory committee that brings editorial or artistic expertise.

When traditional trusts are used, planners may still incorporate legacy letters or statements of intent into the trust's administrative file or as guiding exhibits. These documents can help trustees interpret broad discretionary powers and resolve tensions between income beneficiaries and creative stewards. Fiduciary duties of loyalty and prudence, while typically understood in financial terms, can be interpreted in light of the settlor's expressed vision, particularly when the work holds cultural or moral significance beyond its commercial value.

Some estates also benefit from a structural separation between creative and financial management. For example, one entity or individual might handle licensing and revenue collection, while another oversees editorial decisions or curatorial use of the work. This separation allows multiple skill sets to be honored and can help reduce conflicts among heirs with differing priorities.

Effective Tools

Estate planners should begin with a basic inventory when they have clients who are living authors. They should ask questions such as:

What intellectual property do you control?

What rights have been granted and under what terms?

Are there contracts in place that could complicate a future termination effort?

Creative estate planning also requires deeper reflection. Authors should consider articulating their intentions for how their work should be used, adapted or interpreted over time. This might take the form of a legacy letter, ethical will or mission statement that supplements formal legal documents. These tools can help future trustees or heirs understand not only what decisions to make, but why.

Trustees and heirs, meanwhile, need practical guidance and clear governance structures. To help avoid confusion or conflict, they should:

- **Clarify decision-making roles.** Who has authority over financial matters (for example,

licensing, royalties), and who's responsible for editorial or curatorial decisions (for example, adaptations, publication choices)? In some cases, these roles may be divided.

- **Document legacy intentions.** If the creator is still alive, encourage them to write down preferences regarding adaptations, translations, reissues or licensing categories (for example, educational, commercial, nonprofit). These can serve as reference points without being legally binding.

Structured, values-based conversations early in the process can help clarify expectations, reduce conflict and lead to more durable, purpose-aligned outcomes.

- **Identify advisors beyond the family.** Creative estates often benefit from including trusted literary agents, editors, scholars or collaborators in an advisory role. These individuals can help interpret both the work and the creator's values.
- **Plan for disputes.** Even the most harmonious families can encounter disagreements when managing an estate. Mechanisms for dispute resolution, whether via majority vote, an independent mediator or an advisory board, can help prevent breakdowns.
- **Track deadlines for termination rights.** As discussed earlier, statutory termination under 17 U.S.C. Sections 203 and 304(c) involves strict timelines. Trustees must know when those windows open, how notices must be served and what rights are eligible.

Many of these tools are simple to implement and can be adapted over time. The key is to start early and recognize that managing a creative legacy isn't

just about protecting value, but protecting meaning and purpose.

Legacy Conversations

One of the most overlooked aspects of creative estate planning isn't legal—it's relational. Many estates involve multiple heirs or stakeholders with differing views of the author's legacy. Structured, values-based conversations early in the process can help clarify expectations, reduce conflict and lead to more durable, purpose-aligned outcomes.

These conversations can be especially helpful before estate documents are created, when heirs are preparing to administer a legacy or when major decisions arise, such as licensing, adaptation or termination. Tools like legacy consulting, alignment sessions or facilitated family conversations can uncover assumptions, resolve underlying tensions and establish shared goals. While these discussions don't replace legal instruments, they can shape the process by clarifying intent. When issues are surfaced early, the resulting documents tend to be more coherent, resilient and enduring.

In our respective professional work, we've seen the value of this approach firsthand. One of us, in legal practice, has helped authors and families craft legacy plans grounded in purpose, using narrative tools to complement legal frameworks. In a consulting capacity, the other has guided creative estates through conversations that focus not just on rights and revenue but also on voice, meaning and cultural responsibility. Even a single structured conversation can shift entrenched dynamics, restore trust and lay the groundwork for long-term stewardship.

Trustees and estate administrators can benefit from bringing in a neutral facilitator, especially someone familiar with both creative work and the family dynamic. Initiating these conversations may be one of the most caring and impactful actions authors can take.

Creative estates are shaped not only by documents but also by relationships. Making time for thoughtful, values-centered dialogue before legal conflict arises may be one of the most important forms of planning.

For example, the estate of the author Toni Morrison took deliberate steps to preserve the

author's voice, including partnerships with scholars and archivists.⁴

Creative Thinking

Creative estates aren't static assets. They're living, evolving ecosystems of meaning, memory and value. Planning for them requires more than legal ownership structures or profit-sharing formulas. It demands careful consideration of voice, interpretation and responsibility, not just in the present, but across generations.

The tools already exist: copyright termination rights, trusts and LLCs, legacy letters and values-based planning frameworks. But they're often used in isolation or too late in the process. Termination rights under 17 U.S.C. Sections 203 and 304(c) offer families a rare and powerful second chance to reclaim control.

By integrating legal, narrative and relational approaches early and intentionally, authors and their heirs can shape legacies that are not only protected but also purposeful.

Creative estates require creative thinking. We encourage estate planners, attorneys and trustees to make space for these conversations so that the documents they draft not only pass on property but also carry forward meaning and purpose. In a field in which missteps can lead to lost value, reputational harm or fractured families, there's an opportunity to lead with both rigor and empathy. This combination not only fosters trust; it produces more durable, values-aligned outcomes for the people and the work that creative estates are meant to protect. 🌀

Endnotes

1. Emily G. Morris, "The Artist Dies Without a Will: The Prince Estate and Lessons for Estate Planners," *Trusts & Estates* (November 2018).
2. *Horror Inc. v. Miller*, 15 F.4th 232 (2d Cir. 2021)
3. *Penguin Group (USA) Inc. v. Steinbeck*, 537 F.3d 193 (2d Cir. 2008).
4. See *Toni Morrison Papers*, Princeton University Library, <https://library.princeton.edu/special-collections/toni-morrison-papers> (detailing Morrison's archival donation to Princeton, reflecting her commitment to scholarly stewardship); see also The Africa Institute, "Toni Morrison Senior Fellowship in African Diaspora Literature and Cultural Studies," <https://theafricainstitute.org/toni-morrison-fellowship> (highlighting posthumous fellowships fostering engagement with Morrison's legacy).