



Our Last Will and Testament may not be as interesting as William Shakespeare's, but there's a very good reason why **every** writer needs one.

Four hundred years ago, on 25th March 1616, William Shakespeare wrote his last will and testament. This turned out to be a wise move, because one month later he was dead. Reading through his will (a copy of which can be viewed on the National Archives website, <http://tinyurl.com/jde9d8v>), he made several interesting bequests. He left thirty pounds to his sister Joan, ten pounds to the poor of Stratford, and to his wife, Anne, he left his second best bed ... as any decent writer would.

Although Shakespeare was in the business of writing, one aspect his will didn't have to deal with was copyright, because the first British statute on copyright didn't appear until 1710. Yet this is something anyone writing today must consider. It doesn't matter whether we're traditionally published, self-published, or yet to be published, as soon as we write something it is automatically protected under copyright law. It's this copyright that allows us to grant publishers the right to print (and produce in other formats) our work in return for royalties. However, copyright doesn't exist just for our lifetime. It continues for another 70 years after our death, which means our writing continues living, even though we've passed on. That's why *all* writers should

have a will, because our work is an asset that, along with our royalties, we can leave to others.

## Dying Intestate

Nobody likes thinking about their own death, and a recent survey by the National Will Register suggests 58% of the adult population doesn't have one.

Emily Grosvenor-Taylor, a solicitor at Harbottle & Lewis LLP, explains that those writers who don't prepare a will are making life for their loved ones complicated. 'If a person dies without making a will, this is known as dying "intestate" and a set of rules known as "the intestacy rules" provide for who is beneficially entitled to a person's estate and who is entitled to administer their estate. If a writer dies without making a will, there is very little flexibility in deciding who will be appointed to deal with their assets and who can benefit from them. As royalties can continue for many years after death, a writer may want to give careful consideration as to who should receive the benefit of this income as well as who is best placed to deal with continuing the literary legacy of the writer, if necessary.'

Royalties are not just an issue for famous writers. Those of us who've self-published a novel, a collection of short



stories, or a non-fiction book via websites like Amazon or Smashwords are in receipt of royalties every time we make a sale. Those works continue selling after our death, so dying intestate means the loved ones we'd like to benefit from that income could miss out.

It's not just our royalties we need to think about. We should consider all of our income streams. We can bequeath our annual Public Lending Right income and any payments from the Authors Licensing and Collecting Society to one or more beneficiaries. We can leave the copyright in our work to someone, enabling them to exploit further rights (including those that don't yet exist) in our text. For example, if we grant a publisher the right to publish our novel then, depending upon the contract, there are other rights, such as TV, film or computer games rights that could still be licensed by a beneficiary.

No writer knows when their final scene on this planet will take place, so we should consider current as well as completed works. 'If any of a writer's work is found unfinished after death,' says Emily, 'then it is possible for another author to be commissioned to complete it. Authors such as Jill Paton Walsh and Robert Parker have been asked to complete the works of Dorothy L Sayers and Raymond Chandler, who died before their last books were

completed.'

Making our intentions clear about what we'd like to happen with our rights, royalties and creations in a will makes life so much easier for our beneficiaries.

Although not part of a will, some people leave another document alongside it, called a letter of wishes. This is a written statement of what you would like to happen to your assets, but it does not have to be actioned. 'A letter of wishes,' Emily advises, 'gives guidance to executors as to how a testator would wish their estate to be administered. It is important to note that the testator's wishes, as set out in such a letter, are not binding. The letter is simply there for guidance to inform the executors as to the testator's wishes and cannot be prescriptive. A letter of wishes can, however, be a very persuasive tool in evidencing how an author wished for their literary estate to be managed.'

## Accurate Records

Getting a will drafted is important, but every writer must maintain accurate records now. When we've died there's no one to explain how our filing system works, or where we kept a copy of those terms and conditions that clarifies which rights we've granted to Smashwords to publish our work electronically.



'A writer should maintain a good system of record keeping in order to prevent problems further down the line,' Emily recommends. 'For example, copies of correspondence and other dealings with copyright and licensing agencies should be filed appropriately to ensure a suitable record is maintained for use by the executors after the writer has passed away.'

'It is also advisable,' she continues, 'for a writer to keep a full list of their works and those holding the copyright and other interests in them to assist executors who may seek to commercially exploit those interests or to investigate infringement.'

Beneficiaries should also keep accurate records themselves. 'It is important that documents evidencing chain of title are kept and are up to date,' says Emily. 'This will make it clear who owns the rights in any of the writer's works and is therefore legally allowed to exploit them. Chain of title documents will include instruments such as wills, grants of probate and thereafter any retirement and appointment.'

## Separate Estates

The business world of writing can be confusing, even for those of us in it. If we don't fully understand the implications of the particular rights we've sold in an article, how can we

expect Cousin Thelma to understand, if we leave her the copyright to exploit further? Matthew Barnett, also a solicitor at Harbottle & Lewis LLP, makes this suggestion. 'Writers may consider the benefit of appointing two separate or groups of executors - one to deal with their personal estate, such as property and shares, for example a family member or friend - and one to manage their literary estate, such as an agent or professional, such as a lawyer or accountant.'

'The advantage of this,' Matthew continues, 'is that the people who are best placed to deal with the personal and the business affairs of the writer will be appointed. If there is an executor appointed who can manage and exploit the works of a writer in a commercial manner and handle that part of the estate, it can be a great assurance to the other executors.'

Set aside some time to go through your work, and itemise your personal and literary assets. It's all too easy to think about physical assets, such as computers, manuscripts, books, research material, as well as personal items, but, as Matthew points out, we mustn't forget our digital assets either. 'Much work is now created and stored on computers, either in hard drives or in the cloud. Writers tend not to think about their digital footprint, and they should think about preparing private



lists of electronic locations, passwords and other important information, which can be placed with their will to assist their executors.'

Creating such a list in advance will prove useful and save time when it comes to meeting a solicitor and drawing up your will. Seek professional guidance, because those preprinted will forms from the local stationers are unsuitable.

'Engaging a solicitor,' says Matthew, 'who has experience of writing wills for authors is certainly beneficial, as they can recommend the most suitable form of will for a writer to have, in order to best manage and exploit their literary estate. In some cases it may be necessary to consider a trust structure or other more complex forms of succession planning beyond a simple will.'

### Business Directory

Find A Solicitor: <http://solicitors.lawsociety.org.uk>

Run by the Law Society, this database enables you to search your local area for solicitors. Ask potential solicitors for their experience with creative rights, before engaging them.

The Society of Authors has an information guide: Guide to Copyrights After Your Death (free to members, £2 to non-members). [www.societyofauthors.org](http://www.societyofauthors.org)

Guidance for dealing with PLR in your Will:

<https://www.plr.uk.com/registrationservice/forms/ewillguide.pdf>

Harbottle & Lewis: <http://www.harbottle.com>

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Wills should not be seen as documents to be forgotten about once drawn up. They should be reviewed regularly and updated as our circumstances change.

If you think writers don't need a proper will, put yourself in the shoes of Eva Gabrielsson, the long-term partner of author Stieg Larsson. Although she found a will, drawn up 27 years before his death, it wasn't properly witnessed, which meant it wasn't valid. Swedish law meant everything went to his father and brother. Eva was left with nothing, leading to a bitter dispute between her and Stieg's family.

So, if you haven't yet drawn up a will, it's time to make a start. And if you've not updated your existing will for some time then add it to your list of priorities. Oh, and don't forget to make it clear to whom you're leaving your second best bed.