

## LAW TALK

By Richard Gee

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As I write this, St. Patrick's Day is looming, and for those of us whose music is steeped in the Celtic traditions, it is the busiest time of the year. Hope it was a good time for you. As always, please note that nothing in this column is meant to constitute legal advice. If you wish to act on anything discussed in this article, please consult a qualified legal professional.

***I've been a folk musician all of my life. I've written some tunes and songs. I've been thinking about including these in my will. Can I do this and how?***

The short answer is, yes. Your original tunes and songs are, of course, the subjects of copyright, as are any of your recorded works. Each is considered your personal property (unless created as a work for hire), and becomes part of your estate at death. At death, the copyright on the works continues to be owned by the estate for an additional 70 years before falling into the public domain. During that 70-year period, your heirs can publish anthologies of your work, as well as compilation recordings of your work, each of which will have its own copyright term as of the date of the release of the compilation or anthology. However, the underlying song or tune will cease to have the protection of copyright 70 years after the date of your death.

The U.S. is a signatory to the Berne International Copyright convention, which covers the protection of your copyright worldwide. Hence, your heirs' rights internationally could be either greater or less than the rights afforded under U.S. law.

Your right to a copyright exists at the creation of the work, if it was done before March 1, 1989. If the work was created after 1978 but before March 1, 1989, a simple notice on any recording or printed rendition of your tune or song is sufficient to afford you protection under the copyright law.

The best way to ensure copyright protection is, of course, to register your tune, song or recording with the U.S. Registrar of Copyrights. This is easily done, as the forms are available on the website of the U.S. Copyright Office, located at [www.copyright.gov](http://www.copyright.gov). There is a \$30 fee for registration, which gives you the full protection of Federal and international copyright law.

From an estate-planning standpoint, the decision of what type of plan you should opt for is highly personal. While it is often difficult for an individual to contemplate his or her own mortality, it is more and more important in this age of information and technology for the artist whose goal is to benefit their heirs to structure his or her affairs in life with a view of extending the value of their assets for their heirs and beneficiaries. For example, the use of your songs or tunes in various media, such as recordings, films, "Muzak,"

computer games, ring tones, digital downloads, etc. creates a series of income streams for your music that will benefit you during your lifetime and your heirs after your death.

Treating your music as a multi-faceted business is the first step in creating a personal life and estate plan. In writing this, I am not trying to place a lesser emphasis on the artistic or social value of your songs or tunes, or for that matter the communal value of folk music in general. Your music is, at the same time, a personal artistic statement, a social commentary and a personal asset.

From there, you can discuss with your legal advisor the various vehicles by which you can accomplish your estate planning needs. In some instances, a simple will is sufficient, while in others one or more trusts may be the answer. The decision of which vehicle to use depends on your personal circumstances. Don't be fooled by the "one size fits all" estate planning road shows. Your estate plan should not be a "cookie cutter" affair. Although it may cost more than the estate planning schlock shops, the fact is that every person's estate and goals is different and requires a different set of tools to accomplish its mission.

***I am a folk dancer and teacher and have developed some distinctive dance steps. How can I protect these from use by others without my permission?***

Choreography is an appropriate subject of copyright. The choreography in several Broadway musicals is the subject of a separate license, which repertory groups and other theater groups must pay for in addition to the license to use the set design, music and folio of the play. Assuming your dance steps have been "fixed in a tangible medium" (i.e., paper or video), your dance steps can be protected by copyright. See the previous question for the steps required to assure copyright protection.