

## Q&A WITH DR. ELIZABETH VERCOE ON TERMINATING TRANSFERS OF COPYRIGHT

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photograph courtesy of Dr. Elizabeth Vercoe

Called “one of the most inventive composers working in America today” by *The Washington Post*, **Dr. Elizabeth Vercoe** has been a composer at the St. Petersburg Spring Music Festival in Russia, the Cité Internationale des Arts in Paris, and the MacDowell Colony. Her music is published by Noteworthy Sheet Music, Certosa Verlag (Germany), and Arsis Press and is recorded on the Owl, Centaur, Navona and Capstone labels. We recently sat down with Dr. Vercoe for a Q&A about her efforts to terminate the transfer of copyright to six of her nine early musical compositions published by Arsis Press, including *Herstory II* (1982).

**Authors Alliance:** Can you share why you were motivated to explore the possibility of terminating the transfers of copyrights for your works? What problem did you hope to solve?

**Dr. Elizabeth Vercoe:** As a composer of nine pieces published by Arsis Press, I was appalled when the successor publisher (Empire Publishing Services) ceased filling orders for our music and gave no notice or explanation for the apparent demise of the business. Because I was also a former associate editor of Arsis, I felt some responsibility for keeping the other composers informed and helping them in any way I could. We were unable to make copies of our own work legally since the press owned our copyrights, and we were unable to enter into recording contracts and other agreements without the consent of Empire. Moreover, Empire continued receiving half of our performance royalties from ASCAP and BMI while doing nothing for us. We were angry and upset at the injustice and decided to investigate what we could do about the situation.

**AuAll:** What steps did you take to initiate the termination of transfer process? Are there resources that you found particularly helpful?

**EV:** Initially we consulted several copyright lawyers to see what options were open to us to retrieve our copyrights. We were told that the lawyers could negotiate with Empire or they could facilitate copyright terminations for work eligible under current copyright law. On discovering the expense of even minimal action to negotiate with Empire or file copyright terminations for us, we were grateful that one attorney referred us to the website [rightsback.org](http://rightsback.org) as a starting point for doing the work ourselves. We also studied the instructions for terminations on the Copyright Office website, pooled our information, and began helping each other with the paperwork.

We also spent a day at the Library of Congress looking through the 25 boxes of records of Arsis Press. The records were preserved by the library since the press is of historical interest as the first publisher in the U.S. devoted to women's concert music. We hoped to find a contract between Arsis Press and the successor owner enumerating the terms of agreement. Unfortunately, we found no contract, and BMI was clear that it was obligated to continue to send half of our performance royalties to Empire.

**AuAll:** Do you have advice for other creators considering terminating their transfers of copyright? Are there things that policymakers could do to make copyright work better for creators?

**EV:** As a relatively naïve graduate student, I knew little or nothing about the risk of publication by a small press when Arsis Press began publishing my music. Someone could have suggested an additional sentence in a contract requiring that copyrights revert to the author if the press ceased doing business. If we had done this, we would have had some protection if the press failed. But nobody told any of the 40 composers published by Arsis Press that we should request such language in our contracts. I don't think the founder of Arsis Press thought about this either or she would have insisted upon it. Organizations for composers like the Society of Composers and the International Alliance for Women in Music could help their members by providing guidance about such matters as could BMI and ASCAP.

"Orphan works" live in limbo after a press fails. Apparently, this is a massive problem for composers, film makers, and authors throughout the world as well as in the U.S. The Copyright Office has issued an extensive report about the matter that suggests solutions, primarily in the form of changes to the copyright law. However, the proposed copyright laws are themselves in limbo since Congress has not enacted the needed reforms. A future project could be organizing composers and authors to complain to their representatives in Congress about inaction on the proposed bill.

**AuAll:** Is there anything that you wish you knew prior to signing your early publication contracts, or that you would do differently today?

**EV:** Of course, we wish we had known how to protect our rights before signing contracts. All of us are now very wary of such agreements, but it is too late for the 140 works published by Arsis Press. In the case of the dozen composers in the catalog who are deceased, we know of only a few beneficiaries to fight their copyright battles for them. All we can do is proceed with copyright terminations for those works published 35 year ago or less in order to take advantage of the brief 5-year window allowed for such action under current law. But the process is complex and few of the composers are sufficiently persistent to jump over the hurdles required to file for terminations.

It is worth mentioning that there are some publishers who do not take ownership of copyrights for music in the first place. I am published by two of them: Certosa Verlag in Germany and Noteworthy Sheet Music in the U.S. Again, these are small presses like Arsis Press, but anyone published by them retains copyright ownership.

**AuAll:** When you do regain your rights, what do you hope to do with your musical compositions?

**EV:** Once my Arsis copyrights revert to me, I will either assign the music to the American Composers Alliance or publish with a company that allows me to retain the copyrights to my music. The ACA also has a legacy program that continues to keep one's music available into the distant future, so at age 79 that is an attractive possibility for me as well.

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We thank Dr. Vercoe for generously sharing her experiences and hope that her efforts inspire our members, readers, and allies to advocate for sound **contract terms** and to consider the options available—including **termination of transfer** and **rights reversion**—to ensure the long-term availability of their works. Authors can also consult the Authors Alliance/Creative Commons Termination of Transfer Tool at [rightsback.org](https://rightsback.org) to learn more about termination of transfer.

For more about Dr. Vercoe's experience with termination of transfers, we encourage readers to check out her article, *The Perils of Publishing*, in the Fall 2020 issue of the *Journal of the International Alliance for Women in Music*.

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