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“We Can Share What We Got of Yours”:  
Reflections on the Copyright Paradox  
in the Grateful Dead Community

SUSAN BALTER-REITZ

The greatest constraint on your future liberties may come not from government but from corporate legal departments laboring to protect by force what can no longer be protected by practical efficiency or general social consent.

—John Perry Barlow (1994, 86)<sup>1</sup>

Perhaps nothing is more emblematic of the culture of Deadheads than tape trading. Fans regularly shared recordings of concerts as one of the most important methods of creating their fan community. Many devotees were first exposed to the band through tapes and CDs played or given freely by friends anxious to coax them “on the bus.” When the Grateful Dead officially sanctioned taping in 1984 by creating a tapers’ section at shows, recording media were perishable and degraded over time while the recorders and microphones available ensured variable quality. Although Deadheads, and particularly tapers, have a well-earned reputation for being cutting-edge, discerning audiophiles, the quality of these recordings was necessarily limited by the available technology.

In many ways, the history of music sharing in the Deadhead community parallels the technological and social issues inherent in

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copyright disputes currently being debated in courts, legislatures, and corporate board rooms. Older technologies enabled fans to “time shift” their recordings (as the Court phrased it), yet the quality of the tapes available meant a short shelf life for a taper’s show recordings.<sup>2</sup> With the advent of digital media, the loss of quality, in both the copies and the life of the original media, became negligible.<sup>3</sup> Earlier, artists and record companies had little concern that tapes could replace original recordings; however, digital media can create precise copies of an original recording, with no degradation of the quality, while online archives and trading sites enable copies to be distributed without the necessity of traveling to a post office or physically meeting to trade tapes or CDs. Tape trees have been supplanted by bit-torrent streams that permit fans to choose their preferred file size and quality.<sup>4</sup> Most Deadheads are intimately familiar with music swapping technologies and sites; the fan community was one of the first online (Pattacini 2000, 8). Despite the legal woes of Napster and Grokster, fans of the Grateful Dead have felt protected by the notion that their band sanctions the free sharing of concert recordings, making fans immune to prosecution for music piracy.

Intellectual property rights have never been more contested than during the past ten years, in large part due to new technologies. While the popular rhetoric of copyright disputes has created a narrative that pits wealthy, heartless musicians against thieving fans who want free entertainment, the actual debate is much more nuanced. Copyright law, once a mechanism to ensure a balance between rewarding those who create with allowing those who would like to build on those creations to do so, has become a hammer used to punish individuals who infringe on the copyright holder’s exclusive rights. Clearly, there have been numerous incidents of people stealing songs outright, using peer-to-peer networks and recording CDs they did not purchase. Most often, however, the use of copyrighted material by fans is far more multifaceted than the current narrative suggests. It is in this vein that investigating the unique relationship between the Grateful Dead and their fans sheds light on the complexity of intellectual property issues and the relationships between the people who produce creative content, those who use it, and those who own the rights to that content.<sup>5</sup>

### **A Short Primer on Copyright Law**

The copyright provision in the Constitution intended to create a balance between the originator of intellectual property and others who would build upon those creations “To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries” (U.S. Const. art. 1, § 8). In order to promote creative and scientific development, the law provides affirmative rights to the holder of a copyright, including the ability to reproduce the work, prepare derivative works, and to perform the work publicly (USC § 107). Copyrights are fixed for a short time; they are not intended to be permanent.<sup>6</sup> Originally, the Constitution—and later, Congress—envisioned copyright to be an individual right, given to provide an incentive for creation. Over time, however, intellectual property law evolved from protecting the original author to protecting the owner of the copyright. In other words, copyright protection has become a property right; it is no longer a reward for creativity but a shield used by a titleholder against unauthorized use of the material it controls.

Copyright for most creative material is often not held by recording artists or song writers, but by multimedia conglomerates that have rights assigned to them in exchange for a recording contract. The Big Four recording companies—Sony Music Entertainment, Universal Music Group, Warner Entertainment, and EMI—control approximately 80% of the U.S. music market (Sylla 2008, 85). These corporations have enormous power in the marketplace, including the ability to promote bands, ensure airtime on radio stations owned by the other arms of the media conglomerate to which the music division belongs, and underwrite expenses related to touring, recording, and advertising (Sylla 2008, 71).<sup>7</sup> In order to ensure that a profit is made from the investment put into a recording artist, these organizations often insist that copyright be transferred to the corporation. In practice, this means that copyright battles are fought between the corporate entity that owns a song and the user of that song. Brian Drobnick notes that:

[S]ince many artists relinquish both publishing rights and copyright control over their work during its production stages, the legal safeguards whose purpose it is to “protect” actually

do more to protect legal ownership than artistic origin. Little sympathy exists either in the corporate music arena or in the courtroom for the many songwriters and musicians who seek to salvage their rights from corporate exploitation. (2000, 251)

Two major pieces of legislation have affected the original copyright paradigm: The Copyright Act of 1976 clarified the type of material that could be copyrighted, and the Digital Millennium Copyright Act (DMCA) of 1998 attempted to update copyright protections for the digital environment. Although the 1976 revisions to the original copyright act were substantial, for the purpose of this essay, it is important to note just one provision. The 1976 Act enabled expression fixed in any tangible medium to be copyrighted (Copyright §102). Previously, material needed to be published, which meant that often only the composition of a song was protected. Under current copyright law, both the song composition and a performance fixed in any media qualify for copyright protection.

Two provisions of the DMCA are particularly important to note in the progression of copyright law towards corporate intellectual property interests (Hauser 2008, 339).<sup>8</sup> The first provision makes it illegal to circumvent copyright protection systems, also known as Digital Rights Management (DRM) (U.S. Cong Title 1 § 1201). The second provision protects Internet service providers (ISPs) from liability when users of their services commit infringing acts (U.S. Cong Title 2 §512). In the first provision, the law protects products produced by the Big Four (among others), including safeguards put on digital music downloads that limit reproduction and DRMs on physical DVDs and CDs. The second provision protects ISPs, which are often owned by the parent companies of the same corporations that produce content, from secondary liability when an individual is sued for copyright infringement. In other words, should a Deadhead be caught playing a snippet of “All Along the Watchtower” on her MySpace page, Sony, the parent company of Columbia Records, could sue the infringing user, but not Time Warner, who owns both Warner Bros. and Time Warner Cable (Columbia Journalism Review Resources n.d.).

Copyright battles in courts are precipitated by the owner of the copyright filing suit against an individual or organization that is suspected

of infringing on those rights. Until a copyright expires, the only legitimate defense against infringement currently recognized by the courts is “Fair Use.” Codified in 1976, fair use allows those who use copyrighted material without express permission grounds to argue that they have the right to reproduce intellectual property.<sup>9</sup> The purpose of fair use is to protect “criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research.” Fair use is determined based on four standards: the purpose and character of the use; the nature of the copyrighted work; the amount of material used, especially in relation to the entirety of the copyrighted use; and the effect of the use on the potential market for the original work (Copyright §107). In theory, no one of the standards is more important than any other and each is considered separately. A defendant does not need a positive ruling on all four standards in order to prevail in a fair use claim. This has led some commentators to argue that fair use is not a useful defense against copyright infringement because it is too inconsistent (Samuelson 2009, 2539).

Although no one standard is more important than any other, in practice, the courts have been persuaded by a claim of “transformative use,” or the idea that the new use of copyrighted material does something that provides value to society (Olson 2009, 154). In a case that involves the Grateful Dead universe, although not the Grateful Dead directly, the Second Circuit ruled on the transformative use standard in *Bill Graham Archives v. Dorling Kindersley*. In this case, Dorling Kindersley, the issuers of DK Books, published the coffee-table book, *Grateful Dead: The Illustrated Trip*, in 2003. Written and developed in collaboration with Grateful Dead Productions, the weighty book was a large-scale collage of visual and written items, unified by a timeline of the history of the band. Included were seven images that originally appeared as concert posters and tickets for performances staged by Bill Graham. Grateful Dead Productions attempted to obtain permission from Bill Graham Archives, but the parties could not come to agreement on terms.<sup>10</sup> Dorling Kindersley published the book without obtaining a license for the images.

Judge Jane Ann Restani, writing for a unanimous court, carefully considered each of the fair use factors in deciding that DK was not

guilty of copyright infringement. However, the principal determination was that DK's collage effect, which included the images, constituted a transformative use. By placing the images in a timeline of the history of the band, DK had created new meaning and transcended the original context of the images as promotion for specific concerts. Though DK did not alter the images, by placing them in a biographical framework, they were transformed.

Under current doctrine, digital exchange of copyrighted music would not meet this standard; it does not add anything to the original work. However, the Grateful Dead community may provide a new context to think about transformative use. Jennifer Rothman proposes a paradigm change that considers the needs of users of copyrighted material who appropriate intellectual property as a way of creating identity. Rothman argues that intellectual property use is intimately woven into expressions of identity, and, as such, needs to be protected beyond the scope of First Amendment fair-use claims (2010, 467). Bands that encourage their fans to engage with them in the many ways that the Grateful Dead have are paradigmatic of this position. The copyrighted material becomes more than just a recorded song; it is transformed by its connection through personal identity and participation in the community.

Much has been written about the importance of music to individual identity construction: it serves as a touchstone for experience, and bridges both individual and communal definitions of the self. In a study of fans of Widespread Panic, Todd Fraley identified the elements of identity construction uniquely tied to the band as participating in concerts, traveling, and trading tapes (2003, 5). Deadheads would, without argument, ascribe these same elements to their sense of selfhood: the music is much more than a product to be consumed and discarded. The process of owning and sharing music has a kind of secular "sacredness" to it, a religious overtone that includes an ethical imperative to treat others and the band with respect (Barlow 2011, xxiii). Deadheads interacted frequently with the corporate Grateful Dead, but they viewed the band as more than simply another musical act. Grateful Dead Productions (GDP) occupies a peculiar place in the corporate world. Certainly GDP was, and still is, a capitalist enterprise; yet the philosophy of the organization

was inconsistent with the punitive stance many record companies adopt when pursuing intellectual property claims.<sup>11</sup> Phil Lesh remembers Jerry Garcia's take on the corporation as "a legal fiction, not a working reality." As Garcia observed, "It doesn't represent our real work. Just because we have an office doesn't mean we have to feel we have to be office workers, nor [need we] identify ourselves as a Corporation because we have a corporation" (Lesh 2005, 258).

Combined with the injunction that the music be communal, the Grateful Dead give the impression that the fans have a right to use the band's music as they choose, as long as that use is not profit-driven or exploitative. The idea that the Grateful Dead would prosecute Deadheads seems preposterous. Yet the Grateful Dead is also a corporation, part of the same system of music recording and distribution as the Big Four. Like many other paradoxes within the community, the Grateful Dead's mythic and corporate identities seem at odds. Barry Barnes detailed the often difficult conversations that the band had as they attempted to determine how to handle the increasing numbers of tapers who were disrupting others' experiences at shows. Despite the myth that the band wholeheartedly sanctioned taping, members of the organization often found themselves in conflict with tapers (Barnes 2011, 76–78). Notwithstanding the ambivalence within the organization about fan taping, the pursuit of copyright cases shows that GDP's behavior did not substantially depart from the ethos created by the band in concert. Despite their reputation for ruthlessly pursuing intellectual property claims against the unauthorized sale of their music, the history of the band's court appearances tells a consistent tale, Barnes notes, one that distinguished between the faithful and mere profiteers (2011, 70).

### **The Grateful Dead's Intellectual Property Trip**

While the mythos of the Grateful Dead may include unlimited sharing of the music, David Fraser and Vaughan Black note that in the courts, Grateful Dead Productions was unrelenting in its prosecution of those who sought to make money from the unauthorized distribution of its intellectual property:

[T]he Dead and their licensees jealously guard their intellectual property in the courts ... They have requested courts to take the unusual step of making the losing party pay the band's attorney's fees, even when the losers are small-time bootleggers ... Even when successful at trial on copyright infringement actions, they have appealed and asked for increased damages ... And they hired private detectives to track suspects and seek the enforcement of criminal sanctions against those who violate their property rights. In short, when they go to court they play hardball. (Fraser and Black 1999, 30)

Unquestionably, the corporate Dead give the impression that they are no different than any other music industry monolith in their dedication to protecting their intellectual property. Yet, upon closer examination, the band protected its ability to sell music, as opposed to its ability to exercise complete control over its product. The delineation between these two positions is nuanced; one prosecutes those who intended to profit over music made available through concert recordings, while the other assumes that any unauthorized distribution would create negative consequences for the band. The Grateful Dead were not threatened by having copies of their shows circulating throughout its community; in fact, many see this as a positive business choice (Barnes 2011; Green 2010). A brief overview of the copyright infringement cases in which GDP was the plaintiff illustrates that the band's primary concern was to prevent bootleggers from profiting from Grateful Dead music, not to control all distribution of that music in the marketplace. Two cases in particular illustrate the types of infringement cases that the Grateful Dead pursued. In each case the plaintiff sold the intellectual property of the band; one plaintiff believed it had purchased the rights to a studio album, the other sold copies of shows taped by audience members.

Grateful Dead Productions and Ice Nine Publishing sued Auditory Odyssey for copyright infringement when Auditory Odyssey purchased the master tapes to *Wake of the Flood* and assumed they had a clear title that enabled them to reproduce the album and sell it. A California District Court found that Auditory Odyssey had not performed due diligence to determine that it had actually purchased the rights to the album rather

than just the tapes, and found them guilty of copyright infringement. The District Court awarded the Grateful Dead \$42,000 in damages. Unhappy with this verdict, the Grateful Dead appealed the amount of damages in the Ninth Circuit Court of Appeals, claiming that Auditory Odyssey had willfully exploited the Grateful Dead's copyright. They requested both increased damages and attorney's fees. In a unanimous opinion, the three-judge panel reaffirmed that Auditory Odyssey had made a mistake by distributing its copies; however, this was not the same as willful infringement, and the panel refused to increase the award granted to the Grateful Dead and Ice Nine.

In *Grateful Dead Productions v. Come 'N' Get It*, the band sued the owner of a small record store in Greenwich Village, Revolver Records, for selling 300 bootlegs of concerts bought from a man named Ron who dropped by the store every few weeks with cassettes for sale. At the initial trial, Keith Sluchansky, the store's owner, testified that he knew that the tapes were illegal, but bought them because other stores were doing the same and he did not want to lose customers seeking bootlegs. Judge Lasker, writing for the District Court of New York, agreed with the Grateful Dead that Sluchansky's behavior entailed willful violation of copyright and granted \$163,500 in damages as well as a permanent injunction against the sale of illicit Grateful Dead concert recordings. Although the Grateful Dead prosecuted Sluchansky fully, they were amenable to waiving \$109,000 of the penalty as long as the record store abided by the injunction.<sup>12</sup>

Notwithstanding Grateful Dead Production's efforts to increase damages from defendants, the general ethos of the relationship between the Grateful Dead and the majority of tapers who used their recordings for personal and communitarian reasons remains strong and positive. The band and its fans have established a mutual respect for each other that has created an environment in which the band has little problem selling its product even with countless copies of the same concert in general circulation, some with exceptional audio quality. Conventional wisdom would argue that individuals will not pay for what they can access for free, thus the Grateful Dead should not be successful in the music marketplace. Yet in 2010, when Rhino Records announced the release of a

complete set of recordings from the classic Europe 1972 tour, Deadheads crashed the online system during a pre-sale of the \$450 collection. How is it that Grateful Dead Productions and Rhino are able to expect fans to respect their intellectual property? The answer is most likely found in the unique ethical relationship that the Grateful Dead have created with the Deadheads. Early in the band's history, tapers would smuggle audio equipment into shows, a decade before the Grateful Dead began issuing tapers' tickets. These tapes, along with numerous performances recorded from FM broadcasts of live shows, created a plethora of material for Deadheads to collect and trade. Jerry Garcia, in an interview in 1975, seemed to sanction taping:

I think it's OK ... If people like it they can certainly keep doing it. I don't have any desire to control people as to what they're doing and what they have. There's something to be said for being able to record an experience you've liked, or being able to obtain a recording of it. (Jackson 1999, 277)

Whether explicit or not, the choices made by the band, including allowing fans to tape shows, created a culture of mutual respect that provides a strong model for other musicians and record labels. Drobnick highlights the expectations that band and fans have for each other: "They simply required that others not take advantage of their generosity. In return, they never pushed the exploitation of themselves to the point where it became the exploitation of their audience" (2000, 252). Barlow echoes Drobnick's conclusion in his explanation of why the relationship between the band and the fans endured, noting that "just about every time we showed faith in our 'market' it was rewarded" (2011, xxv).

### **The Culture of Deadhead Sharing**

Mark Schultz has proposed a revolutionary theory of intellectual property based on the normative rules of the jam band community, grounded primarily in the behaviors and culture of Deadheads. He postulates that instead of creating deterrent strategies to punish copyright infringers, the music industry would do well to follow the lead of the Grateful Dead and similar bands in developing a norm of reciprocity between the bands and their fans (2006, 656). Schultz is obviously an

admirer of the jam band scene and the individuals comprising it, and his theory accords with the research available on the Grateful Dead phenomenon. As any Deadhead will proudly proclaim, there is something special going on. In this case, what makes the Grateful Dead unique in the world of intellectual property is the relationship that has been developed around the recordings that forms an important touchstone for both the band and the fans.

Very few rock and roll bands, particularly those as popular as the Grateful Dead, can claim the kind of allegiance that the Dead earned from their fans, almost from their inception. Carol Brightman speculates that Deadheads have a sense of ownership that differentiates them from other fans. She believes that “the obliteration of the subject/object experience is the linchpin of the Grateful Dead experience” (1998, 271). Author Ken Kesey explained to Brightman that it was not a one-way relationship: “Garcia understood that he was in a relationship with his audience. He was not playing at them ... He was playing with them” (Brightman 1998, 272). This mutual connection reifies the fans’ devotion; unlike many rock bands, especially during the eighties, the Grateful Dead never appeared to have sold out to corporate America (Drobnick 2000, 245). Even as the Grateful Dead’s popularity skyrocketed, and the number of fans at shows meant that more and more of them were further away from the band, the audience was still able to feel the connectedness of the experience.

Deadheads’ ownership of the music transcended the bounds of the concert hall and the albums issued by recording companies. Distribution of concert tapes is perhaps the most salient feature of the relationship built between the Grateful Dead and their fans, as Barlow remarked:

I think it is probably the single most important reason that we have the popularity that we have ... the proliferation of tapes ... formed the basis of a culture and something weirdly like a religion. A lot of what we are selling is community. That’s our main product; it’s not music. (McNally 2002, 386)

The duality of the relationship, with both sides valuing the tapers’ contributions, created a sense that the band was generous and the fans are worthy of that generosity, a mutuality and reciprocity that defined

both the live performance and the artifact of the recording that could be experienced after the show.

Gary Burnett's important study of the discourse on the Internet Archive that occurred after the decision was made to limit access to the Grateful Dead collections documents the importance of recorded concerts to Deadheads.<sup>13</sup> Burnett found that Deadheads "link their very identities to their encounters with the Grateful Dead, its music and each other" (2009, 694–95). The discourse Burnett analyzed in the wake of the "Thanksgiving Day Massacre," as the decision was referred to by Deadheads, indicated that the extraordinarily strong bond that Deadheads have established over the years was integrally connected to their ability to download and share concerts. Deadheads might have been upset that they were no longer receiving free material, but their unhappiness had much deeper roots. They viewed the decision, loosely alluded to as coming from the band, as personal. Burnett noted that Garcia's promise to Deadheads that "when we're done with it, they can have it" is "treated as a 'sacred writ' among tapers and collectors" (2009, 704). When the music was suddenly restricted, fans viewed it as a transgression of the promise made by the band.

Despite the sense of entitlement that Burnett finds in the discourse of the Deadhead community, there is a strong ethic within that community that protects the band's intellectual property. Deadheads themselves discipline those who try to make money from concert recordings. In a series of interviews with Deadheads in 2000, Melissa Pattacini found that fans were offended when she asked about a bootleg industry: "There is no industry and we actively try to destroy anyone's chances of profiting off the Grateful Dead's tapes. They are a gift from the band" (2000, 7–8). This language reinforces the notion that fans recognize the uniqueness of their relationship with the band; no other rock and roll touring act would be described as bestowing gifts. Pamela Hunt's exploration of identity in the jam band culture also found that taping is central to that identity (2008, 359). Her analysis of community norms affirms Pattacini's findings that taping—and internalizing the community value that the tapes are part of the culture, not an opportunity to profit—are central to the identity of a Deadhead.

As part of Hunt's study, she asked respondents (418 self-identified jam band followers) to rate the value of four roles of people found at concerts: vendors, environmentalists, capitalists, and narks. Two roles, capitalists and narks, were ranked as negative (2008, 373). The community sees profiteering as destructive to the community; this reinforces behaviors that protect the band from bootleggers only interested in profit.

One final study illustrates important elements that the Grateful Dead community has incorporated that also help to explain why the Grateful Dead's trust in their fans has not been misplaced. Bill Herman (2005) analyzed twenty fan trading sites in 2004 in order to determine what community norms were being followed (or ignored). In addition to noting that the sites followed the Dead's rules for not profiting from the trades (2005, 14), Herman adds an important observation to how the community is maintained. He found that the trading sites were invitational: they helped create more fans by aiding newcomers in learning the rules of trading (2005, 10). While many cultures define themselves by their exclusivity, Deadheads welcome new members and are lavish with their social capital—the music—a trait also seen at shows (Wilgoren 1999, 192). Herman found most sites provided easy entry into the fan trading community.

Fans of the Grateful Dead, especially those invested in the culture, have created a set of social norms that simultaneously encourage sharing and consumer consumption. Fans support the band; they buy tickets to performances, spend money on CDs and digital downloads, and buy officially licensed merchandise on the band's website. They do this even with unrestricted free music availability. Are Deadheads a special breed of human beings who invalidate the Hobbesian notion that people are only out for their own benefit? Perhaps.

### **Embracing Deadheads: The Golden Road**

As David Pelovitz argues, it is dangerous to essentialize Deadheads into a singular body (1999, 56). In fact, doing so has created a great deal of discord within the community. This essay does not intend to ascribe a specific definition to the community. Yet, given the challenges in the mainstream entertainment industry and on the legal frontier of intellectual

property, much can be learned from Deadhead culture, however defined. As content providers struggle to develop a profitable model for online distribution, perhaps the relational model established by the Grateful Dead can aid in distinguishing between free content and paid content. Drobnick believes the key to the Grateful Dead's success can be found by understanding the interrelationship between the band, the audience, and the music: in his view, "the Dead created a strong relationship with a particular audience, and provided a product cheaply enough and of high enough quality to inspire reliance—and ultimately unheard-of devotion—from that audience (2000, 249).

Barry Barnes' *Everything I Know About Business I Learned from the Grateful Dead* (2011) distills a number of lessons from the Dead's business career, including the distinctive position that the band adopted toward its intellectual property. This can be summarized as, "Pursue those who infringe on the right to sell property, but provide value, including free product, as a way to increase audience." If a corporation does as the Grateful Dead do, they would find themselves only prosecuting willful infringement, not pursuing thousands of individuals who have downloaded digital music. Rather than attempting to create scarcity to increase product worth, the Grateful Dead embraced abundance as a means to invite more fans to the party (Hermann 2005, 19).

Any organization looking to copy the model provided by the Grateful Dead and its fans needs to be careful that the relationship they create with their potential audience is authentic. Trust is built on the real, not on a simulacrum. It's easy to steal music from a faceless corporate entity, especially one that pretends to be a friend. Media economies make it unlikely that the music industry will decentralize, but even large companies can provide a real experience to the fans of its artists.

The Dead's legal battles over intellectual property complicate their ability to serve as a model for rethinking copyright. Neither Congress nor the courts are likely to change their pro-corporate paradigm in the near future. The Supreme Court's recent decision in *Citizens United v. F.E.C.* is just the most recent in a long list of opinions that have expanded corporate rights.<sup>14</sup> As long as the property component of copyright is given the most weight, individual users of music risk continued prosecution and

legislation aimed at limiting their rights to access digital (and analog) music. Perhaps the most fruitful position is advocated by Rothman, who challenges the current standard for determining fair use.

Current copyright law does not allow for transformative use to be viewed as personal expression—or a means through which fans use the music as part their identity. In Grateful Dead culture, the music is central to the experience and has been recognized as such, not only by the fans but by the band as well. Both Jerry Garcia and John Perry Barlow publicly acknowledged that not only is it important for fans to be able to buy the music, but also to be able to record, trade, and keep copies of shows as souvenirs and touchstones of their concert experience. This attitude changes the perception of copyright as property, as something to be managed and controlled.

Deadheads' mantra, "There is nothing like a Grateful Dead show," is borne out by the band's attitude toward intellectual property. The show is the experience; the fan recordings are simply a means for Deadheads to re-create those memories and share them with new audiences. The freedom found at a Grateful Dead show has been reinforced by the taper culture, both in terms of reliving experiences and reinforcing the fundamental relationship between the band and the Deadheads. As the Dead's experience suggests, that freedom could provide a foundation for reassessing copyright and returning it to its earlier mandate, without sacrificing its protections. There is perhaps some irony in a band forged in the countercultural ferment of the 1960s providing a compelling voice for older, deeply held mainstream American ideals, but as Dead scholars know, that is entirely in keeping with the Grateful Dead's example, on so many levels.

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## NOTES

1. Barlow's position on copyright has purportedly changed over time; however his groundbreaking work clearly explains the move away from intellectual property as a creative mechanism and toward corporate control of content.

2. In a strange communion, the Supreme Court case that introduced this term to the lexicon of copyright legislation, *Sony v. Universal*, was also decided in 1984. In this case the Court determined that the manufacturers of taping technologies (in this case, the Sony Betamax) could not be held liable for copyright infringement in part because the machines essentially enabled consumers to shift the time that they watched their favorite television shows and movies for their convenience.
3. Nika Aldrich (2007) provides a comprehensive overview of the history of recording media and the legal issues inherent in each development.
4. Recent uploads to the Internet Archive ([www.archive.org](http://www.archive.org)) include the choice to download in Ogg Vorbis, Shorten, and two different types of MP3. The quality available to fans is limited only by the bandwidth of their connection and the time required for the download process.
5. In this case I include under the term Grateful Dead all the bands that have followed, including JGB, Furthur, Phil and Friends, RatDog, etc.
6. The current term of copyright is the life of the author plus 70 years. If the work is made for hire, the copyright lasts for 95 years from the date of publication or 120 years from the date of creation, whichever comes first.
7. Technological advances in recording and distribution are changing the landscape of the music industry, and the domination of the Big Four is not absolute. Despite these changes, the obstacles musicians face without the backing of these companies remain daunting.
8. Hauser is a strong proponent of the DMCA's provisions for protecting DRM. His work supports corporate copyrights.
9. The copyright act also allows a consumer who buys a CD to make copies for his or her own use.
10. Bill Graham Archives wanted to produce and distribute DVDs and CDs of concert footage of the Grateful Dead that it has in its archives. Grateful Dead Productions was not willing to give Bill Graham Archives rights to this material.
11. Perhaps the most horrific example of the efforts of the Big Four to pursue copyright infringement claims is that of Jammie Thomas-Rasset, a woman from Minnesota who downloaded 24 songs using Kazaa. In the last of three trials, a jury found her guilty of infringement and ordered her to pay \$1.5 million in damages (Gonsalves).
12. Sluchansky argued that he did not have the resources to pay the full penalty, which both the judge and GDP acknowledged. This was the primary reason that the corporation waived the increased damages, even though they wanted the award on record.
13. The Internet Archive ([www.archive.org](http://www.archive.org)) is a not-for-profit organization whose goal is to provide an Internet library. Its primary mission is to preserve the history

of the Internet. Interestingly, the Internet Archive is currently the defendant in several copyright infringement suits (Jines-Storey 2007). After the initial furor, the Internet Archive made an agreement with the band to allow all concerts to stay online. Audience recordings may still be downloaded, but soundboard recordings are only available for streaming, and soundboard recordings of shows that have been released are removed.

14. The Citizens United case reaffirmed corporate speech rights in relation to political discourse. Outcry from academics against this decision was immediate and strident.

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