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On The Removal of Download Access to Grateful Dead Soundboards From the Live Music Archive

Abstract

In November 2005, access to all recordings of Grateful Dead shows on the Internet Live Music Archive was abruptly discontinued. Over the next nine days, the band, their fans, and the Archive argued the matter on a nationwide stage, before a compromise on access was reached. The controversy touched on issues of copyright, ownership, and the effects of the internet on making fan projects more widespread and organized than ever before. This case study traces the history of the controversy and its implications through primary and secondary sources and an original interview.

Introduction

On November 22, 2005¹, a message appeared on the Live Music Archive's Grateful Dead section stating that, after over a year of unlimited downloads to the 3,000-plus shows archived there, access had come to an abrupt and total halt (brewster and Vernon, "Grateful Dead"). The "Thanksgiving Day Massacre" (Burnett 695) touched off a firestorm of bitter arguments between the band and its fans, as well as between individual band members. Most notably, Bob Weir's confrontational public statements contrasted with Phil Lesh's praise of the Archive. The response was so vehement that after only nine days a new policy had been enacted: soundboard recordings could be streamed but not downloaded, audience recordings could be downloaded. However, the

¹ The Grateful Dead had ceased to exist as an active entity in 1995, following the death of Jerry Garcia.

debates ignited by the incident and the uncertainties that still cloud parts of it continue to resonate today, both specifically within the Grateful Dead fan community and as larger issues in music and archiving.

Background: Grateful Dead Tape Trading

The Grateful Dead made their reputation as a live band. Though they have two albums that are frequently cited as classics², many others are considered inferior to live renditions of the group's repertoire³, and none can hope to capture the jams⁴, segues between songs, constantly shifting setlists, and re-interpretations of material when the group's line-up shifted or they simply felt like rearranging their songs (for instance, the radically slowed down version of "Friend of the Devil" that premiered in 1978). For this reason, every concert was a unique experience, and, in the same way that fans of other bands seek to collect every album a group has put out, Deadheads seek to collect all, or at least a great deal, of the available recordings of Grateful Dead concerts.

Those recordings come in two varieties: soundboard recordings (SBDs) and audience recordings (AUDs). Audience recordings are made by fans from the audience, using portable recorders and high-end microphones. Despite the fact that the Dead's live reputation was bolstered by the circulation of concert recordings, audience taping was not officially sanctioned until 1984, 19 years after the band's inception (Getz and Dwork 1: xiv). At that point a "taper's section" behind the soundboard was created by Dan Healy, the Grateful Dead's live sound

² *Workingman's Dead* and *American Beauty*, both from 1970.

³ *Mojo* wrote that the Grateful Dead's first album "cemented the band's 'can't cut it in the studio' reputation." (Paytress 79). Additionally, while both the 1992 and 2004 editions of *The Rolling Stone Album Guide* award five out of five stars to *Workingman's Dead* and *American Beauty*, the 1992 edition only gives four stars to two other studio albums, *Go To Heaven* and *In The Dark*, and the 2004 edition only assigns four stars to one, *Terrapin Station*. Both editions rate all other studio albums at three and half stars or lower. (Evans 288; Kot 342)

⁴ Extended group improvisations.

engineer from 1966 (Getz and Dwork 1: 8) to 1994 (McNally 607). Prior to 1984, tapers had had to smuggle equipment into the concert venues and keep the microphones hidden from both venue security and the band's own crew, a practice known as "stealth recording" or "stealththing." In fact, stealth recording persisted even after the creation of the taper's section, as placing the microphones in front of the soundboard⁵ would capture the exact sound that the sound engineer was mixing for. FOBs still had to be stealthed, as Healy had specifically put the taper's section behind him so as not to have his line of sight blocked by a forest of microphones (Getz and Dwork 1: xiv).

Soundboard recordings are created by plugging a recorder directly into the output feed from the mixing board, rather than recording what was coming out of the public address system. The earliest recordings come from Owsley "Bear" Stanley, the famed LSD chemist and the band's original soundman (Getz and Dwork 1: 7). When Healy replaced Bear, he too made tapes. At the same time, Betty Cantor-Jackson⁶, who had engineered Grateful Dead studio recordings in partnership with her then boyfriend, Bob Matthews, was also making her own direct soundboard recordings. Additionally, soundboard recordings were made by people working at venues the band played at, such as Bob Cohen at the Avalon Ballroom (Getz and Dwork 1: 8), and Healy would sometimes let tapers patch into the soundboard (Mark qtd. in Pisces "Seeking").

The fan community had no official access to these sources, so the provenance of most soundboard recordings is unknown, as their origins were by nature clandestine. Stories about their origin range from gifts to friends of the band or crew, to unauthorized board patches, to the exchange of drugs with band or crew members for patch access or access to the master SBD recording for copying (Swartz "Personal Interview"). However, there are some known sources.

⁵ Known as FOBs- "front of board."

⁶ Then Betty Cantor.

Most famously, a large quantity of Cantor-Jackson's master recordings⁷ were purchased at auction after the foreclosure of her home (Getz and Dwork 2: 16-18).

Recordings of all varieties are subject to modification and improvement. Tapes, SBD and AUD alike, suffer from any number of problems. They have to be flipped or swapped out for fresh blanks during recording, resulting in gaps in the music. Tape recorders being mechanical devices, the heads can run slowly or quickly as a result of dying batteries or a mechanical error, resulting in an off-speed recording that is flat or sharp. And those are just the routine issues. Taping stories are full of accidental pausings, audience members bumping into microphones, getting busted by security, and virtually anything else imaginable. Additionally, the transfer of recordings from reel-to-reel decks to cassettes, and later from master reels or cassettes to digital files, is an art in and of itself. Charlie Miller, who is the tape archivist for the Steve Kimock Band, is revered for his transfers- a Miller transfer of a tape is considered an upgraded source, sight unseen.

In addition to transfers, the above mentioned problems all require solutions. Gaps in recordings must be patched with other sources and flat or sharp tapes need speed-correction. Sometimes tapes are completely remastered by people with the equipment, skill, and resources. In addition to the effort put into processing and fixing recordings, sometimes a great deal of effort is expended just getting a hold of recordings, especially the master tapes. To give an idea of the amount of work and the number of contributors that have gone into putting some of these shows out to the community, here is the information file from an upgrade to a recording for the August 6, 1974 show, minus the setlist⁸:

⁷ Known to fans as "Betty Boards."

⁸ As traded online, shows usually consist of the audio files and an MD5 to verify the files' integrity, plus an info.txt file containing the date, venue, source of recording, and setlist. Occasionally there are other documents as well.

Grateful Dead
Roosevelt Stadium
Jersey City, NJ

8/6/74

MR > DAT > CD > Sonic Solutions > CD Circulation

shn:

Plextor SCSI 40x Reader > EAC

As of Sept 00, this copy is just entering circulation. For more info on the source of this copy, read Jim Powell's comments below.

.shn and .md5 created by Mike Hall (myko@well.com)

>From Jim Powell:

“OK, I just got the master of the DeadLists Edition of Roosevelt Stadium, Jersey City 8/6/74: a digital copy of the master SBD reels with the 20 second flip cut in Scarlet Begonias patched with an excellent AUD master. This is the entire show including Seastones, in perfect condition, on 4 CDs.

...

We owe thanks especially to Hugh Barroll, who passed along CDs of a digital copy of the master SBD; to Ihor Slabicky, who supplied a copy of his AUD master of the show; and to Dave Greenberg, who used Soundforge to patch the tape flip in Scarlet Begonias on the SBD and produce our masters. Noah Weiner also helped with the project, forwarding a copy of Barry Glassberg's AUD master.”

And later Jim reiterated:

“The lineage of this copy of 8/6/74 is MR > DAT > CDs. It is the entire show, uncut, including Seastones (and the encore). The flip chop in Scarlet is expertly patched with excellent AUD. It very markedly upgrades the copy that came around a year or so ago, as well as all other circulating copies. Until and unless they release this as a Dick's Picks, and do as good or better a job than we have with the patch, this is the ultimate copy of this alltime great show, hands down, no shit.”

FURTHER⁹: More work was done on this by David Gans using Sonic Solutions. A digital copy of Ihor Slabicky's tape and the cd's from Dave Greenberg were used to further patch the reel flips in Eyes of the World and Truckin'. David also edited the reel starts and stops between songs. Nothing that was said was removed. What we have here is the *FINAL* copy of this, my first show, to be circulated!

These .shn's have been generated from the discs David Gans made. MD5's have been generated for both the .wav and .shn files. I, before sending Greenbergs disks to Gans, retracked the original Disk 2 as there were 2 leadin tracks that were orphaned from the main song track.

Jim said it first, “ .. this is the ultimate copy of this alltime great show, hands down, no shit.”

The creation of a definitive copy of a show is not just a matter of removing cassette from a recorder, or tracking out a .wav file on a laptop. The raw product must be transferred, prepared, and sometimes supplemented, in a process that can last for years and is wholly volunteer.

Nor are corrections the only work done on shows. In addition to corrective measures, shows are sometimes matrixed. A matrix is technically the melding of any two or more sources, but it is almost invariably a SBD and an AUD, with the desired result being to combine the clarity of a SBD with the “you are there” feeling and crowd noise of an AUD. Matrixes are particularly prized for instances in which the SBD recording is clear but relatively lifeless¹⁰.

They are extraordinarily time-consuming, finicky projects, but when done well the results can be extremely impressive.

Etree.org

In addition to the music files being updated, cleaned up, and improved, the information pool on Grateful Dead concert recordings underwent a dramatic re-organization by the fans as

⁹ The spelling error here is deliberate, a reference to the sometime-spelling of “further” on Ken Kesey's Merry Pranksters bus.

¹⁰ A number of adjectives are used when describing such SBD recordings, including “sterile,” “flat,” and “airless.” As with any description of sound, the problem is difficult to fully put into words.

well. Tape trading began slowly as the Dead built a national following, with the first trades happening through occasional interactions and meetings of collectors (Getz and Dwork 1: 22). In 1974 Les Kippel founded *Dead Relics* magazine¹¹, providing a national forum for articles on trading and a central place for traders to connect (Getz and Dwork 1: 30, 37). When the Dead went on hiatus the following year, the trading network intensified as collectors focused on acquiring recordings rather than making new ones (Getz and Dwork 1: 37). The advent of the internet in the 1990s provided the perfect forum for traders to connect. Suddenly, space and access were unlimited and instant; it was now possible for traders to post their tape lists where everyone could see them and to contact each other instantly about a trade. As the average user's computing power, storage space, and connection speed increased apace with technology, shows began to be archived on FTP servers, and to websites where people could gather to trade via the Bit Torrent protocol¹². With increasingly centralized distribution, the next logical step with universal access was a database of available shows, and this database was created by etree.org.

Etree was founded in the summer of 1998 with the objective of creating a central network for the posting of people's tape lists and the location of live music FTP servers, which were the earliest form of internet digital distribution of shows ("What is Etree.org?"). This increased organization then led to an increased organization of sources. Etree ended up centralizing the online trading community, and with that central organization came a push to organize the data along with the traders and tapers. The information behind a recording had always been important to tape traders but there had been no universal standard for encoding it. Now, with the ability for all, or at least the majority, of traders to communicate with each other, the potential for a unified standard emerged. As the statement on Etree's naming standards page says:

¹¹ Now *Relix*.

¹² Bit Torrent trading was not common until after the Live Music Archive controversy.

When filesets are consistently named and organized, they are easier for downloaders to identify, catalog, archive and keep track of. Badly named files are confusing when they do not identify the artist or track properly. Worse, files with spaces or characters like ?s or 's do not always work on every operating system. (“Naming Standards”)

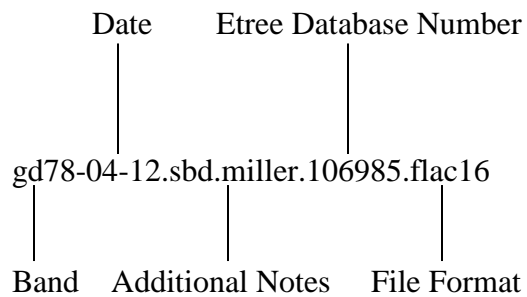
From a concern about obtaining the best possible sources, the Grateful Dead tape trading community became concerned with identifying and labeling all possible sources. Steve Swartz, one of the three people authorized to upload Dead shows to the Live Music Archive said:

The LMA is a library. Every source that circulates, every source with a SHNID, they're all uploaded. The best source, the worst source, they're all on the LMA. Someday a music critic will come along and indicate the good sources and the bad sources. But meanwhile, it wouldn't do if the librarian were to decide to only buy books they like. They serve the community. The community wants an archive of all Grateful Dead sources that they can stream and listen to in order to evaluate for themselves which is best. So that's what we do, we upload everything. (Swartz, “Personal Interview”)

To that end, Etree's naming standard encodes the show's date in a consistent format, as well as other indicators to differentiate multiple copies of the same show, such as the name of a taper, the type of microphone used in the recording, or the person who transferred the soundboard tape. An even higher level of organization was introduced with Etree's database, db.etree.org. Now, every show got assigned a unique number, known as an shnid¹³. Etree's standard is so effective in establishing a unique identifier for each show that it was adopted wholesale by the Internet Archive's Live Music Archive.

¹³ So named for Shorten files, abbreviated .shn, a lossless audio compression format that was initially the gold standard for digital recordings. It has since been supplanted by FLAC (.flac), Free Lossless Audio Codec, but the name remains.

Fig. 1: example of Etree’s naming standard.



The Live Music Archive

Brewster Kahle founded the Internet Archive in 1996 with the purpose of preserving what he felt were aspects of culture—specifically, websites—that were being lost through a lack of documentation in the “here today, gone tomorrow” environment of the internet (Marks 46). The Live Music Archive grew out of that desire to preserve ephemeral events, in this case concerts. Historically, many people have taped concerts by a wide variety of artists, and traded them in much the same evolution as the Grateful Dead recordings described above, if not always in such a large and devoted network. The LMA centralized these recordings to an equal degree, however. If the band gave permission – mostly given by artists that identified themselves as “taper-friendly” to begin with, though some taper-friendly bands declined to be archived and some bands that were not historically taper-friendly agreed to do so – recordings of their concerts could be uploaded according to each individual band’s policy. For example, I have personally uploaded concert recordings of The Walkmen and Acid Mothers Temple, while The Disco Biscuits have a set of specified uploaders who exercise quality control over which sources are added to the archive. The Grateful Dead were an early addition to the LMA, although just who gave permission is uncertain, which fed the controversy over the access removal.

The Removal of Soundboard Download Access

Though there had been speculation periodically amongst Deadheads that the Live Music Archive's collection would not be allowed to stand forever, it still shocked many when the following announcement was posted by Brewster Kahle on the morning of November 22, 2005:

Following the policies of the Grateful Dead and the Dead communities we have provided non-commercial access to thousands of great concerts. Based on discussions with many involved, the Internet Archive has been asked to change how the Grateful Dead concert recordings are being distributed on the Archive site for the time being. The full collection will remain safe in the Archive for preservation purposes.

Here is the plan:

Audience recordings are available in streaming format (m3u).

Soundboard recordings are not available.

Additionally, the Grateful Dead recordings will be separated from the Live Music Archive into its own collection. The metadata and reviews for all shows and recordings will remain available. We appreciate that this change will be a surprise and upset many of you, but please channel reactions in ways that you genuinely think will be productive. If we keep the bigger picture in mind that there are many experiments going on right now, and experiments working well, we can build on the momentum that tape trading started decades ago (brewster and Vernon, "Grateful Dead concert recordings").

The reaction from the fan community was swift; in fact, it preceded the official announcement by a few hours when users noticed that the collection was no longer available. Reactions ranged all the way from people who said they understood the Dead's position to a post that moderator Diana Hamilton edited heavily because it contained possible death threats (brewster and Vernon, "Grateful Dead concert recordings"). As the controversy played out over the next nine days, the positions of the three involved parties— the fans, the band, and the Archive— shifted, adapting to each other, but much remained, and to some extent, remains, in confusion.

For one thing, there are conflicting reports as to whether or not authorization was ever given to post the Grateful Dead's shows in the first place. Matt Vernon, the lead volunteer archivist for the Dead's collection in the Live Music Archive, posted a message on November 30, 2005 that detailed the history of the endeavor and expressed his support for whatever direction the band wished to go. In it, he stated that the presence of Grateful Dead Shows on the LMA was an offshoot of a project that he had already been involved in since 2000 to digitize and archive all available copies of all available Grateful Dead concert recordings. They were originally stored only on a server located in Sweden, tol.etree.org. He then stated:

Around fall 2003, I contacted Brewster Kahle, the vision behind the Internet Archive, if the Internet Archive would be interested in backing up the contents on tol.etree.org.

Enough time and money had been expended by so many people that we thought it best to try to implement a contingency plan in the event [tol](http://tol.etree.org) experienced a catastrophic hardware failure or was no longer available. The Internet Archive's vision of building a digital library of Internet sites and other cultural artifacts in digital form [to] provide free access

to researchers, historians, scholars, and the general public was an ideal match considering the pivotal role of the Grateful Dead in live concert recordings. Brewster and I met and he agreed to archive tol's gd collection and to host it on the Internet Archive as an etree server, consistent with our understanding of the band's trading policies regarding live recordings.

Vernon adds that Grateful Dead Productions, the band's company, was eventually contacted:

Several months ago, Brewster, Parker and I met with representatives of Grateful Dead Productions (GDP) and presented our visions of where the GDIAP [Grateful Dead Internet Archive Project] project was going. These meetings were very productive. I felt very much that GDP understood the materials we had presented to them.

He is vague about the details of the meeting, and in fact never mentions the controversy directly. Because of this, it is difficult to say for sure whether or not his account of meeting with GDP and the construction of the Dead archive on the LMA dovetails with statements made by Grateful Dead lyricist John Perry Barlow and Grateful Dead spokesman Dennis McNally.

The matter was an especially sore point for Barlow, a founder of the Electronic Frontier Foundation. Though the Electronic Freedom Foundation's mission to protect online free speech had begun as a fight against government intervention ("Eff's History"), they expanded into copyright issues and hold the view that copyrights are frequently enforced to an unfair degree that inhibits creativity ("Intellectual Property"). Unsurprisingly, Barlow disapproved of the band's stance, and told *Boing Boing* so in no uncertain terms on November 29, 2005:

It's like finding out that your brother is a child molester. And then, worse, having everyone then assume that you're a child molester too. I've been called a hypocrite in three languages already.

In a *New York Times* article from December 1, 2005, Barlow implied that he had been contacted about and had granted permission to post Grateful Dead shows on the Live Music Archive:

Mr. Barlow said the band had had a policy since 1997 that “we had no more problem with someone digital file sharing than we had with tape sharing.” He said he had relayed that policy to operators of the archive when they contacted him.

“I said that, given that’s our policy, I don’t see a problem,” Mr. Barlow said. But, he acknowledged, he had also feared that a request for explicit permission from the band’s corporate entity might get snarled in band politics — which seemed to be the case this week. (qtd. in Mayshark, “Downloads”)

That same article, however, states that lyricists¹⁴ are not full voting members of the band.

Another uncertain aspect of the case, therefore, is how valid Barlow’s permission was.

McNally’s statement in another *Times* article, while again offering room for the idea that Barlow or someone else had been contacted, largely sounded as though Grateful Dead shows had been posted to the Archive without anyone asking permission:

“These folks assembled a Deadhead’s dream collection and made it available,” Mr.

McNally said. “When we discovered it, we decided to take a wait-and-see approach.

¹⁴ Barlow started writing for the band in 1971, partnering with his childhood friend Bob Weir, whose working relationship with original Grateful Dead lyricist Robert Hunter had disintegrated (McNally 394). Hunter thereafter only worked with Jerry Garcia and Phil Lesh.

Eventually, it was the band's conclusion, after a long discussion with them, to request that they change their policies" and make the live recordings available only as streams. (qtd. in Leeds, "Deadheads Outraged")

At this point, matters only increased in complication. It quickly became clear that, while the position put out by McNally was indeed the official statement of the band, it was a majority opinion rather than a unanimous one. McNally spoke to the *Times* on November 30, Barlow gave a dissenting opinion on December 1, and added that he had argued with Bob Weir¹⁵, who was firmly in favor of pulling download access. Bassist Phil Lesh went a step further by issuing a statement on his website, also on November 30, that strongly voiced his disagreement with the official position, endorsed the presence of the shows on the LMA, and stated that he had had no hand in the decision whatsoever:

It was brought to my attention that all of the Grateful Dead shows were taken down from Archive.org right before Thanksgiving. I was not part of this decision making process and was not notified that the shows were to be pulled. I do feel that the music is the Grateful Dead's legacy and I hope that one way or another all of it is available for those who want it . I have enjoyed using Archive.org and found it invaluable during the writing of my book. I found myself being pulled back in time listening to old Grateful Dead shows while giggling with glee or feeling that ache in my heart listening to Jerry's poetic guitar and sweet voice.

¹⁵ The Grateful Dead's rhythm guitarist and co-lead singer.

In a December 5th radio interview, Weir claimed that he was the only member of the band who could be reached to make a decision, a statement that is somewhat suspect as Lesh claims not to have been consulted and the recordings had been present on the LMA for at least a year by that point. Even the reasoning given for the removal was inconsistent. Weir voiced two completely different rationales within a matter of days. First he said that the problem was decreased revenue for the band since touring had ceased (Serpick). Then he claimed and that the Grateful Dead were legally liable for any of the artists they had covered who wished to contest the Dead's versions of their songs being freely available for download (Weir "Interview"). It is also possible that the true impetus was an emergent deal with Rhino, which band members may not have been authorized to discuss at that time. When I asked Steve Swartz whether it was the band's decision or Rhino's to demand removal of download access he replied, "The story is that Rhino wanted to increase the difficulty level of getting SBDs. Hundreds of thousands of people could get sources from the LMA. Only thousands could get them from torrent sites."

Later on, Weir would acknowledge that the band members had not been organized enough to make any kind of unified decision at the time. In July of 2006, when it was announced that Rhino Records had been put in charge of future releases and of generally running the recording end of Grateful Dead Productions, Weir stated: "In the last couple of years, it became apparent that the business was just too much trouble. . . The Grateful Dead of yore was built around being a touring band, and when we stopped touring, the structure wasn't there" (qtd. in Light, "A Resurrection"). He directly linked the idea to the issue of the Live Music Archive controversy, adding "That was a perfect example of why we got a bellyful of being a record label (Light, "A Resurrection")."

While the deal with Rhino was not yet public knowledge, fan speculation nonetheless centered on a monetary motive, which angered many people. Shawn Boyle posted the following petition online, ultimately garnering over 7100 signatures:

To: GDM

Dear Grateful Dead Merchandising,

For years, we have supported the Grateful Dead unquestioned. We have purchased countless albums, releases, concert tickets, merchandise, and more. A large percentage of our income has gone straight from our bank accounts, into yours. I assure you, there are many more like us.

You have a core group of fans that are dedicated to the music, and to the band. We followed the band for years, jumped at every release, and anxiously awaited new releases. When Jerry passed a decade ago, we trusted you would continue to make the right decisions.

You laid your rules on the line, and as fans we followed them. As traders, we never copied a released GD album. When you said not to trade released soundboards, we understood.

It is our understanding that in November 2005, the internet archive(archive.org) was asked to remove all Grateful Dead soundboard concerts from their site. The internet archive has been a resource that is important to all of us. We use it to experience the

Grateful Dead's growth and transition throughout the years. Between the music, and interviews in the archive we are able to experience the Grateful Dead fully.

This technology has opened doors to introduce new fans to the real Grateful Dead. It has allowed us to experience different eras of the Grateful Dead, and made us more anxious to purchase releases as they came out.

Now it appears doing the right thing for the fans, has given way to greed.

So here is our resolution. You want to change the rules as you go along, so will we. We don't care anymore; We've lost all respect for this organization. Between the utter disgust of your decisions with Jerry's guitars, and now taking away our access to the music we care about most, we refuse to support any aspect of GDM until we see change. No more CD's, no more tickets, no more merchandise. We ask all deadheads to join us in this protest.

GDM, you should be ashamed of yourselves.

Have you forgotten all you have taught us?

If you plant ice

Your gonna harvest wind¹⁶

Sincerely,

¹⁶ This is a line from the Grateful Dead song "Franklin's Tower."

The Undersigned

There were a number of core fan reactions to the situation, mostly negative. Several of them manifest in the first petition.¹⁷ First, the assumption that the removal was economically motivated, which was granted legitimacy by some of Weir's statements and the later revelation of the deal with Rhino, and that such a motivation soiled what the fans felt the band represented. Second, the idea that the fans had already given plenty of money to the band in the past, making the action not just greedy but unfair. Third, the idea that the Deadheads had played fair, purchasing official releases and respecting the removal from the Archive of soundboards for shows that had been officially released, while the band had not, suddenly cutting off access to recordings that had been traded freely for decades. Fourth, though not stated as explicitly here as elsewhere, the idea that if Jerry Garcia had still been alive, he would never have allowed the removal to occur.

The phenomenon that I think of as "St. Jerry" is one of the more interesting side effects of the whole LMA situation. Right away there was a split in the fans' perception of the band: the music it had given them remained good and pure, a thing to be loved, but many of the people who had created that music were to be protested, boycotted, and castigated. As individual band members' statements came forth, the perception splintered further. Lesh, Barlow, and occasionally Hunter¹⁸ were hailed by many for holding up what they felt to be the true spirit of the Grateful Dead's music and ideology. Jamie Hallac appended the following to his/her signature on the second petition:

¹⁷ A second was issued a few days later by Joanna Maloney.

¹⁸ Hunter declined to comment and was mostly left out of the discussions.

Just a terrible decision that has and will continue to ruin EVERYTHING that the GD stood for. Phil and Jerry are in a class by themselves. Money hungry people are never happy and that is what all of us deadheads will be at peace with regardless of your soulless decisions.

Weir and drummers Mickey Hart and Bill Kreutzman had voted in favor of the removal and were cast as the villains, as typified by this statement from Ty Andreasen, also from the second petition in which members of the band are somehow cast as now being against the band: “It WILL BE KNOWN that Billy, Mickey, & Bob were actually ‘anti-Grateful Dead’ and ‘pro-establishment’ in matters spiritual & financial. Can’t y’all b happy NOW with what u have? (e.g. our \$\$\$).” Obviously this is not the case; what people like Andreasen are really saying is that Weir, Hart, and Kreutzman had violated their perception of what the band stood for. As Gary Burnett says in his article “Colliding Norms, Community, and the Place of Online Information: The Case of archive.org,” “For many participants, the problem with the decision is that it signals a move away from the ‘compassion’ that they feel is intrinsic to the open ‘sharing’ of tapes toward the twin scourges of commerce and profit.”

The one party unavailable for comment was guitarist/singer/songwriter Jerry Garcia, whose death in 1995 had ended the band. Garcia had been seen as the face of the Grateful Dead, and many discussions claimed that he would be ashamed of the band’s current actions. Comments such as “what you just did goes against every thing that jerry stood for...” (billy b qtd. in Boyle) and “Its A sad day when after a month of downloading, all this what the dead stood for is gone for now, Remember fellows, Jerry is watching all of you!!!” (tamb qtd. in brewster and Vernon, “Grateful Dead concert recordings”) were not uncommon in the various LMA forums

and petition signature comments. Part of this attitude comes from the fact that Garcia, being dead, could be viewed however people wanted to see him, though one of his statements also fueled this perception:

Such appeals to the presumed values of the Grateful Dead do have a source in a remark made by Jerry Garcia in an interview, where he commented “when we’re done with [the performance], they [i.e. tape traders] can have it” (cited in Gans & Simon, 1985, p. 91; for a similar Garcia comment, see Jackson, 1999, p. 277, where he says “my responsibility to the notes is over after I’ve played them. At that point I don’t care where they go”). (Burnett 704)

It is, of course, impossible to know what Garcia would actually have thought of the situation. The technology simply did not exist at the time of his death in 1995; it was never a situation he could have envisioned. But his public image, coupled with his statement about the band being done with the music after it had been played, ensured that his name was frequently invoked in attempts to shame Weir and the drummers. This idea was aided by the fact that Garcia and Weir had, during the band’s lifetime, frequently been seen as each others’ foils, as befit them being the two guitar players, principal singers, and principle songwriters.

Their dual roles continued. In contrast to fan perception of Garcia’s stand, Weir was the public face of the new policy, and he was making statements that generally inflamed rather than soothed the controversy, including sarcastically wishing the boycott luck and ending with “see ya” to the upset fans during an infamous December 5th radio interview in Boulder. As some Deadheads seemed to have forgotten in their anger that the people they were mad at had made the music that caused them to care in the first place, so Weir seemed to be ignoring the fans’ role in putting him in a position where any of this mattered.

Weir, however, had always been famously contentious. In the four-month span in 1968 that the Dead, Jefferson Airplane, and Quicksilver Messenger Service operated the Carousel Ballroom (McNally 252, 266), he took to singing “burn down the Fillmore, gas the Avalon” to the tune of the wordless vocal chant in the song “Alligator,” referring to a pair of Bill Graham-operated venues they had played at. He did this despite the fact that the Carousel was on shaky financial ground to begin with (McNally 254), and that the Dead still played for Graham during that period, breaking into the East Coast market at his Fillmore East in New York (McNally 264). Deadheads were used to this aspect of Weir’s personality. However, in 1968 Weir was a member of an active, evolving group that made policy decisions as a unit, and were close enough to each other that such individual statements could be subsumed into a united statement rather than hanging on their own. In 2005, the band had been inactive for ten years. There was no more Grateful Dead; Weir’s statements were seen as his alone, and the fact that he was dictating policy against what some others in the band wanted made it easy to cast him as a villain. Weir remains a divisive figure to this day in the Deadhead community.

Responses to the new policy from the Deadhead community were likewise split. The comments blasting Weir and GDP were only one reaction. There were those who wrote that they understood that the band was a business, and there was sound reasoning in the policy. Someone identifying themselves as “REAL deadhead” became the fifth person to sign Boyle’s petition, apparently just so they could post “WHINY BABIES. LEARN TO TRADE!” Some of the fans were as suspect of the ability to download shows instantly as the band were, agreeing with Weir’s statement that the LMA is not a “community” (Serpick). Tape trading, after all, had originally centered around making personal, local connections, only occasionally graduating to trading by mail. Even in this response a splintered perspective arose: of those who posted that it

was simply time to get back to traditional trading by mail¹⁹, some seemed to think that the Archive approach had been wrong to begin with on account of the perceived lack of personal connection, some thought that continuing to trade soundboard recordings in the face of the restrictions was a blow to be struck against the Dead's policy, and some simply felt that the Archive downloads had been nice while they lasted and it was important to bring the trading networks back up to speed so that distribution could continue apace.

It is worth noting here that these same distribution networks were the only options for people trading certain other recordings. Prominent taper-friendly bands such as Phish, Widespread Panic, Galactic, and Medeski, Martin, & Wood, to name just a few, had opted out of the LMA in the first place, and nothing approaching this level of furor had occurred within their fanbases. In fact, Jerry Garcia's estate had declined to allow the posting of his solo endeavors to the LMA, and there had been no significant complaints. Garcia, as mentioned earlier, was actually held up time and again as an example of how things should be. What really upset the Deadhead community, it seems, was to have access given and taken away. Not only was this a sudden reversal, even if it was caused by the fact that the initial permission, if at all granted, came from a very muddled situation, but for all the credit that the band had given to its fans over the years for spreading the music, it felt as though they were being taken for granted.

Compromise and Aftermath

Nine days after the near-complete removal of the collection, a compromise was instituted. On December 1, 2005, Kahle and Vernon posted the following message to the LMA forums with the subject header "Good News and an Apology: GD on the Internet Archive":

¹⁹ Bit Torrent would not be prominent for a year or so.

We at archive.org now realize that our mistaken attempts to move quickly were based on what we thought the Grateful Dead wanted.

For this we apologize both to the Grateful Dead and their community.

There has been a great deal of reaction, our actions have caused more than necessary.

We believe these changes will be more appropriate for both the Grateful Dead and its community:

- * Audience recordings will be restored as they were before—for download and streaming.

- * Soundboard recordings will be available streaming only.

This policy has remained in effect ever since, and there are a number of ways to interpret it. Certainly it is a concession to the fan community, though whether as a public relations gesture, an indication of genuine fear over the impact of a boycott, or a purely emotionally motivated decision it is again impossible to know. Soundboards, regardless of provenance, had some tie to a Grateful Dead soundman and Grateful Dead mixing equipment, but audience recordings had been created solely by the tapers. Allowing AUDs to be downloaded got a much better reception than the initial flat ban had, and the fact that one could at least stream the SBDs was an

improvement. Nonetheless, issues of accessibility remained. In the late 1960s, the Dead did not have a dedicated fanbase to record them. *The Deadhead's Taping Compendium Vol. 1* states:

In the 1960s, however, Deadhead recordists and traders were very few and far between. Cooks, for example, didn't meet another taper until mid-1972. Fewer than twenty audience-recorded shows dated before 1970 are in circulation today, though no doubt more than that were recorded (Getz and Dwork).

Additionally, audience recording equipment evolved throughout the 1970s, — the quality of an early 1970s AUD was likely to be poor. The argument that the presence of AUDs made up for the lack of SBDs was invalid when considering at least the first five years of the band's career. While it is true that neither the band nor Rhino has made any efforts to shut down the trading of soundboard recordings, the very fact that they have not points to the lower accessibility of trading networks and bit torrent sites, as Swartz pointed out earlier. Still, they are at least available to listen to on the Archive and do continue to circulate freely.

The LMA controversy has had a galvanizing effect on the Deadhead tape trading community. The advent of digital audio offered the chance to cease the degradation of recording quality and make sure that everyone got a first generation copy, and the advent of the internet presented the best possible opportunity for both gathering and displaying knowledge — in this case, nailing down all details and uncertainties about the source, date, and generation of tapes — and the Archive then seemed to unite the promise of each, providing a well-maintained, permanent storage space for all of those neatly restored and cataloged shows. The knowledge that maintaining a distributable supply of all available sources of all available shows must instead lie in the decentralized fan community has led many people at Lossless Legs, a Grateful

Dead-centered bit torrent tracker site, to adopt the slogan “We are the archive!” The site allows for random uploads and the posting of new sources as they happen, but also runs highly organized year-by-year projects in which all soundboard sources are tormented²⁰. If anyone desires a source that is not currently being seeded, someone can generally re-seed. With the Archive no longer available, the fan community has created a rough approximation. And there are always the trade-by-mail networks.

The initial heated response to the situation has lessened as well. Nothing much ever came of the boycott; in fact, the vault releases put out by Rhino are frequent topics of discussion on the Lossless Legs forums. The issue does occasionally rear its head: the torrent for a SBD source of the October 16, 1989 show, which has been officially released as *A Nightfall of Diamonds*²¹, featured a discussion over whether or not it was O.K. to torrent the show with there being an official release. This discussion in turn stirred up some of the old issues, and various complaints were aired once again. Writing on July 11, 2007, a Lossless Legs member posting **as jman** wrote:

I’m afraid everyone is quite confused as to the intentions and legalities of the music. Of course I expect the rino would be best served banking on our interest and desire to BUY stuff from them rather than fuck with their best customers.

I’m afraid that I personally no longer respect the ‘band’s wishes’ because they don’t seem to know what they are themselves. At least, this fan really can’t decipher their public statements about recording or our support for their scene then and now.

I have bought every official live CD and DVD but not the downloads. I have bought my

²⁰ AUDs are not seeded, as they are available on the LMA.

²¹ *A Nightfall of Diamonds* was sourced from different tapes made for the purpose of making a commercial release.

tickets to the shows (qtd. in cletus_boy “Lossless Legs gd89-10-16.dsbd.barrick.446.sbeok.shnf”).

However, four years after the fact, the rules are the status quo rather than a fresh controversy, and the Deadhead community mostly treats them accordingly. The band as well has moved away from the disruption. As Weir stated above, Rhino now handles the record company business. Grateful Dead band members have performed together in various configurations since – a new line-up called Furthur, anchored by Bob Weir and Phil Lesh, formed in 2009 and remains active at the time of writing (Lesh, “About”).

Conclusion

The history of the Grateful Dead is full of pioneering moments in recording, performing, live sound, and audience building. The case of their early interaction with the Live Music Archive was another pioneering instance; however, it was not a positive one. It is difficult to imagine the situation having gone any worse than it did: access was cut off suddenly and with no prior discussion, the band members argued amongst themselves in public, the band managed to anger one of the most loyal fanbases in rock music intensely, and that loyal fanbase’s anger grew out of all proportion to the incident. What makes the whole matter worse is that it arose out of legitimate concerns brought on by new technology. The issues addressed of authorship and the grey copyright area that live recordings in general and soundboard recordings in particular occupy were and remain real, and the high-speed, centralized access granted to them by the Live Music Archive brought matters to a head. Unfortunately, sorting out what to do proved a process of trial and error carried out in public. Steve Swartz opined, “Myself, I understand the whole

conflict as a mistake between ignorant corporate lawyers, detached band members, and idealistic deadheads. I think the reason they settled on this outcome was merely a face-saving middle-ground solution.”

This seems a logical assessment. The fact that the user community has done a lot of work to organize these sources is undeniable; however, the music was made by a group of people, and they, therefore, have rights to it even if exactly what form and how extensive those rights are is uncertain.

In the current digital age, a body of work will live on long after its creators have gone or ceased maintaining it. This is not a new phenomenon of course, but the extent is. Fan projects such as tape trading can now receive a level of organization and prominence nearly on par with an artist’s official output. During the Grateful Dead’s lifetime, recordings were traded within a relatively small, hermetic environment. The internet forever changed that, but the band ended in 1995, before internet use became truly widespread, and they did not make the leap forward with their fans. In the absence of a new policy, the trade grew to whatever extent technology allowed. That it did so is a testament to the popularity of the Grateful Dead even after they had ceased to exist. That this proved a negative idea to some band members shows both the difficulty of controlling one’s legacy in the digital age and that an organization can be so out of touch with change that they attack the people preserving that legacy.

The LMA soundboard controversy was the culmination of the disconnect between the band and their fans that grew from the new technology. Both the initial sudden and extreme reaction and the subsequent compromise illustrate that what had been tolerated for 30 years as a small-scale activity assumed new implications once it became widespread. The nature of the compromise reflects an attempt to return tape trading to an organized network of devotees rather

than allow a central distribution point. This was accomplished, after a fashion, but even the earliest stages of internet-based trading constituted an easier and more centralized organization, with a higher quality product, than at any point in the Dead's lifetime. Limits can be imposed, but the clock cannot be turned back.

In fact, the eventual compromise was really a failure for the band and a reminder that putting the genie back in the bottle is impossible on the internet. No other band has compromised their Live Music Archive presence the way the Grateful Dead were forced to. The Disco Biscuits do not allow any post-1/1/2000 soundboard recordings to be uploaded ("Rights"), and there are none. Phish do not allow their shows to be uploaded at all (Hamilton), and they do not have a page on the LMA. Neither band has an archived-but-not-accessible status, and neither has a stream-but-not-download option. Both controlled their representation on the Live Music Archive by making a group decision at the very beginning. The pace of technology at the time that the LMA began, to say nothing of the present, ensures that decisions can almost never be undone, while the power any individual has with a worldwide platform ensures that if the artist does not make a decision about how their online presence will manifest, someone else will. By not keeping up with technological advancements, the Grateful Dead forfeited these decisions to their fans, who had. The band then attempted to treat the matter the way that pre-internet copyright and trading issues had been addressed: by observing growth and then ordering a halt and, if necessary, a reverse. However, the advancement of technology since the end of the band made such tactics completely ineffective. Arguably, they made two mistakes: not staying on top of what the changes in technology meant for the trading of live recordings, and attempting to regain control of the uncontrollable, thereby coming off as bullies while gaining nothing.

With the internet a fact of daily life, fan-based initiatives are now born as widespread as Grateful Dead tape trading became. Had the Dead been on top of technology, they could have established their preferred policy well before they found themselves in the position of having to take something away from their fans. The damage to the band's reputation was not lasting, but it could have been. Unlimited distribution of fan content is a reality now, and artists must find a way to deal with being on a more even footing with their fans, with clarity and proactivity going a long way towards forging a good artist/fan relationship. The decisions can no longer be made after the fact, only before.

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On The Removal of Download Access to Grateful Dead Soundboards From the Live Music
Archive

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