

# The Grateful Dead as a Precursor to Creative Commons Licensing

By Matthew Helmke

From their founding in 1965, the Grateful Dead was an unusual band. They arose during and out of the counter culture movement in the San Francisco Bay Area.

The Grateful Dead played music that had its roots in multiple styles and genres, but which did not lend itself to easy categorization. Were they psychedelic? Folk? Blues? Country? Yes, all of these and more. Frequently, they performed songs that were public domain and well-known, but made the songs their own.

Members of the band could flow across many traditional and diverse styles easily. This facility often lead to songs being played at concerts in ways that seemed familiar at first, but which grew and evolved across styles and genres. Frequently, songs became long jam sessions, where the musicians played off of one another, discovering new musical motifs and expanding them together.

Fans of the Grateful Dead learned early in the band's existence that no two concerts were ever the same. The band built up a large repertoire of songs, many of which would never be recorded for a record company. When they played a known and recorded song, it was played differently than it had been in done in the recording.

This gave the band's music a life beyond its origins. But fans quickly began to lament that the commercially available recordings of the band only captured a glimpse of the band's live sound and feel.

While it was not uncommon for bands at the time to permit fans to record shows, the Grateful Dead took the idea a step further. Fans who purchased special "tapers" tickets were permitted to attend in a special area set aside near the sound board. The band allowed and encouraged tapers to share their recordings, as long as no profits were made on the sale of their tapes.

The band played more than 2,300 live shows, and of those tapes are known to exist of 2,200 of them (source: <http://www.nytimes.com/2009/04/12/arts/music/12ratl.html>).

In 2006 I began research for a book I wanted to write. I was working at a language school in the years prior and noticed that foreigners who came to Morocco wanting to learn the local language often did a good job of learning the book language; grammar, vocabulary, and so on. However, very few students really understood the culture. I wanted to help. I wasn't interested in earning money from it, although if any money was to be earned, I thought I should be the one to earn it.

I published *Humor and Moroccan Culture* (link: <https://www.amazon.com/Humor-Moroccan-Culture-Matthew-Helmke/dp/0615142842/>) through a small one-man publishing company I started in the country. I then self-published it so it could be sold on sites like Amazon and through retailers like Barnes & Noble. I used a print-on-demand

company that will be familiar to long-time open source aficionados, Lulu.com (link: <https://www.lulu.com/>), founded by Bob Young, who years earlier founded Red Hat, Inc.

It was during the writing process that I also decided to do something unusual with my work. Before the initial publication, I wanted to find a way to allow anyone who wanted to do so to copy the text of the book and share it. I wanted students in the language school to be able to share copies without guilt and without breaking my copyright ownership.

This is when I discovered Creative Commons (link: <https://creativecommons.org/>) and the licenses it has created. Creative Commons was founded in 2001 by people with an interest in the free flow of ideas, but who also had an interest in law and intellectual property rights.

Creative Commons took inspiration from the Free Software Foundation (FSF) and their GNU General Public License (GNU GPL) (link: <https://www.gnu.org/licenses/gpl-3.0.en.html>). The goal was and is to find ways to use private rights to create public good, to set creative works free, but only for certain uses.

The creator of the FSF, Richard Stallman, and the community of programmers he started his career with at MIT shared a set of values with the Grateful Dead. The programmers shared their work freely with one another to help one another learn, grow, and make better software. In the book Stallman co-authored with Sam Williams, *Free as in Freedom*, it is recorded that Stallman himself “has held up the Grateful Dead as an example” of business opportunities being able to coexist with freedom (link: [https://en.wikisource.org/wiki/Free\\_as\\_in\\_Freedom\\_2.0/Chapter\\_08](https://en.wikisource.org/wiki/Free_as_in_Freedom_2.0/Chapter_08)).

Over the years and with the input of artists, writers, filmmakers, academics, lawyers, and more, Creative Commons has come up with a set of licenses (link: <https://creativecommons.org/share-your-work/licensing-types-examples/>). These licenses keep the power over creative works in the hands of creators while also freeing the content to be used in ways that modern copyright law forbids...much like the Grateful Dead once did with their creative ticketing and “taping” permissions.

This time around, however, a extensive legal team was involved. The licenses have been tested in courts around the world, but not extensively (link: [https://wiki.creativecommons.org/wiki/Case\\_Law](https://wiki.creativecommons.org/wiki/Case_Law)). At the same time, the license terms are clear enough for anyone to understand them, making it obvious to the consumer what the creator intended.

In the end, we get a legal means of fulfilling the freedom that the Grateful Dead permitted its fans, but without the legal gray areas that could lead to problems such as the legal murkiness that the Internet Archive (link: <https://archive.org/>) had with the soundboard recordings of Grateful Dead concerts (link: <https://archive.org/post/47634/grateful-dead-concert-recordings-on-the-internet-archive>) which caused them to prevent access to those recordings for some time (the recordings are now available).

I published *Humor and Moroccan Culture* (and one more book) using Creative Commons licenses. As a result, they are not only available for purchase, but the content is also available for free from multiple sources, including the Internet Archive (link: <https://archive.org/details/HumorAndMoroccanCulture>). I did so because the license

helped me preserve my rights, permit users certain freedoms they would not otherwise have, and explicitly forbid uses that I have not already approved. If the soundboard recordings of the Grateful Dead had been as clearly licensed, access to them would never have been restricted in the first place, but thankfully, the band's wishes won out (link: <https://archive.org/search.php?query=collection%3AGratefulDead>) and multiple tapings of many of their concerts are freely available.

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