

Bootleg-music law tossed out by judge

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Long before there was Napster, there were concert tapes, live recordings made and swapped by fans of groups like the Grateful Dead and Country Joe and the Fish.

Those recordings have narrow constitutional protection from copyright, a federal judge in New York ruled Friday, handing the Recording Industry Association of America's anti-piracy crusade another defeat.

The ruling came in the criminal case against a longtime fixture in the New York music scene, J.D. Martignon, owner of the Midnight Record store in Manhattan.

At issue was a federal law that criminalizes the sale of bootleg recordings of live performances. U.S. District Judge Harold Beard said the law was unconstitutional because it sets no limits on the length of copyright.

Copyright law covers a work for life of the author plus 70 years. The 1994 criminal anti-bootlegging statute runs afoul of that legal standard because it "grants seemingly perpetual protection to live musical performances."

Martignon, a former rock singer and writer for a French music publication, had offered about 1,000 individual concert sessions for sale for \$10 to \$20 per concert at his store, which closed after the government seized his stock as evidence, said his attorney, Legal Aid lawyer David Patton. Martignon said Friday that he is still selling vintage recordings legally at his Web site, midnightrecords.com, but he can't offer concert tapes pending appeal of the ruling.

Patton said Friday that the ruling solely affects concert tapes of performances where artists do not record their own work for copyright or sale.