

Chapter 4

Expansion, Resistance, and Legitimation in the 'Traditional' Domain

Introduction

This chapter again highlights the cycle of expansion, following the Irish Music Rights Organisation (IMRO) as it expanded its jurisdictional claims into the contexts of what many would consider 'traditional music'. This happened almost by accident. The issue of 'traditional music' had been co-opted by the Vintners' Federation of Ireland (VFI) as a seriously contentious issue in negotiations with IMRO. The issue served its purpose in the push to have the tariffs for blanket licensing agreements reduced. This aspect of the VFI's negotiation strategy alerted many people to the activities of the Irish Music Rights Organisation. For many until this time, the organisation had been unknown or had simply been ignored. Many were thereby alerted for the first time to the immediate relevance of the principles of copyright legislation, hitherto considered esoteric and of little concern.

The issue of 'traditional music' was much more than a question of tariffs for people who played music and sang in what might have been considered 'traditional' contexts.¹ IMRO's activities, policy positions, and aggressive expansion were thought by many people to be wholly inappropriate to the casual, informal practices at the heart of 'traditional music'. There was widespread confusion and anger as fears of legislative enclosure set in. As a result, a high level of antagonism arose against the organisation, not least of all from the national traditional music body *Comhaltas Ceoltóirí Éireann* (CCÉ or 'Comhaltas'). Once the representatives of the Irish Music Rights Organisation had been alerted to the field of 'traditional music', establishing unquestioned jurisdiction in this domain became an organisational imperative. This was made all the more urgent

¹ The term 'tradition' is a problematic one. This is shown, for example, in the writings of Shils (1981), or Hobsbawm and Ranger, eds. (1983). The term 'tradition' is not defined here. Nonetheless, what is interesting throughout this chapter is the way in which the term is used by many as a synonym for 'non-copyright' or 'public domain'. The breadth and variety of locally-negotiated understandings of 'traditional music' in Ireland will be the focus of future research, being beyond the scope of this thesis.

on account of the widespread vitriol levelled against IMRO in this regard. The disputes appeared as intractable as they were complex. By the end of 1998, however, it appeared legitimation had been achieved and the issues had been solved. A contractual agreement was signed between the heads of CCE and IMRO, and “traditional music in its original form” was declared “copyright-free”.

The Rumble at the Crossroads

The conference organisers had done a great job under the circumstances. Somehow, the months of scramble for funding, presenters, amplification, and peace of mind had come to fruition. The conference, ‘Crosbhealach an Cheoil - The Crossroads Conference’ (April 19-21, 1996), had been convened as an independent forum in response to growing commercial development within Irish ‘traditional’ culture. The call for discussion had been answered by forty one speakers, and by another three hundred or so conference participants. This was not your usual conference. The corridors weren’t swelling with corporate delegates or academics. For perhaps the first time in history, a conference had been called at which practising traditional musicians were in the majority. Not only were they in the majority, but they had plenty to say, and they were going to make sure that they got to say it. Many were annoyed at a continuous stream of misrepresentation among documentary makers and the national media. Others were tired of those who continually trotted out the tradition versus innovation debate. Some were angry at what they saw as the dilution of the national race and its culture. Others just had a chip on their shoulder. Some were just there for the ‘crack’².

The Temple Bar Music Centre hadn’t been officially open for more than a year, and the building still had that vague mixture of promise and chaos about it. Outside was wet and windy, as could only be expected from an Irish April. Inside, up there in a newly-painted room on the third floor, a room probably reserved for the storage of sound equipment at some later date, there was quite a buzz in the air. It was the buzz of expectation, in anticipation of wigs upon the green. The general air was almost bloodthirsty. Up to this point there hadn’t been any fights.

The room was jammed, packed to the rafters. In the absence of a place to sit I had seated myself precariously and rather uncomfortably on the top of my wooden bodhrán case. Áine Hensey was in the process of wrapping up her presentation on Irish traditional music and the media from her perspective as a critic and radio presenter. A number of comments were raised from the floor regarding aesthetic judgment-calls and the role of media figures as mediators of judgment, but it wasn’t Áine that most people had come to see. The lifeblood of this conference was rumoured to be controversy, and the paper that followed Áine’s was nothing if not controversial. There must have been a good fifty people in a room which would have comfortably sat thirty.

² As Terry Eagleton (1999) has noted, the word ‘crack’ or ‘craic’ is ‘rapidly approaching the status of ‘begorrah’. Most likely of Anglo-saxon rather than Gaelic etymology, the term most commonly refers in Ireland to an atmosphere of comfortable and pervasive conviviality, a complete absence of distrust in pleasant, relaxed, and relaxing company, most likely among friends. Heightened euphoria is not a necessary requirement. Those who wish to understand, participate in or experience ‘crack’ or ‘craic’ must commit themselves to its creation. Ciarán Carson indulges in a digression on the subject during his book *Last Night’s Fun*: “‘crack’... popularly and recently Gaelicised as *craic* and advertised in countless retro-renovated bars throughout the land, as in ‘Live Ceol [Music], Sandwiches and Craic’. Non Irish speakers in particular will insist on its ancient Gaelic lineage and will laboriously enunciate this shibboleth to foreigners who take it for a pharmacological rather than a social high. In fact, the Oxford English Dictionary dates crack, ‘chat, talk of the news’, to 1450” (1996:83). Carson suggests that ‘crack’ as a term was, until fairly recently, primarily confined to the North of Ireland.

It was to be entitled, "Irish Traditional Music - Whose Copyright?" As the applause died down for the previous speaker, William Hammond, the next speaker, took a seat in front of the microphone at the table. As he did so, I was aware of the presence, not two feet from where I sat, of the Chief Executive Officer of the Irish Music Rights Organisation (IMRO), Hugh Duffy. I imagined that the same man would have his ears cocked to listen to this particular paper. IMRO had been at the centre of a growing swirl of speculation and discontent among traditional musicians over the previous months, as IMRO had engaged with publicans around the country in pursuit of performance royalties for their members. This continued to cause controversy and confusion, many musicians feeling that one of the vital features of what they considered 'traditional music', the 'session', was now being placed under threat.

In his broad Cork accent, William Hammond proceeded to describe what he saw as a 'tollgate' on the 'crossroads' of Irish traditional music. Willie, known more for his prowess as a set-dancer and festival organiser than for his forays into legal difficulties, explained how, in his view, the life of traditional music was being hampered by overzealous collecting on the part of IMRO as they took on the publicans of the Vintners' Federation of Ireland. The Vintners' position was simple. While they respected IMRO's right to property, they were unable to agree upon charges which, in their view, were inequitable and which, they felt, derived from IMRO's monopolistic position.

Willie spoke quietly, and a little hesitantly, obviously not used to speaking in such terms in front of a crowd.

"You can picture the scene where a few lads and lassies who are fed up with competitions and fed up playing on their own, decide to find a place to play a few tunes on a Friday night, and they ask around, and one says,

- I've an uncle, he has a bar. He'll let us play a few tunes for a few pints and expenses.

So the uncle, who pays all his bills to IMRO and PPI for the radio, is delighted to have a few tunes on a Friday night. He decides to put an ad in the paper. So, on the Friday night the group comes in and they take a seat in the corner of the bar for a night of music-making, working out tunes, and tune-swapping.

This is where the law steps in. The local representative of the collection society sees the advert and decides to visit the pub. The representative, seeing the live music, copyrighted music, visits the uncle the next day saying,

- Listen here, you've live music going on here. You have to pay £500 a year in advance for the session.

So what does the publican do in that situation?"

Willie continued, admitting that he found it difficult to find where all the pieces fitted into what was overall a very confusing puzzle. He admitted that even finding the smallest amount of information had been a time-consuming exercise. Questioning whether performance rights should cover traditional sessions, he claimed that musicians were finding it harder to find new places to play, and that publicans were cutting back on the number of sessions that they held each week. He expressed worry that the session, the "practice room of Irish traditional music", was under threat: "No single person is responsible for that tradition. It's the collective work of many generations of Irish musicians. What rights does it have? None." Willie finished the talk with a suggestion that maybe it was time for a new society to be formed, a traditional music protection society. The room rang with considered applause. The room was small, the acoustics bright. A number of hands were quickly raised to the chairman as people sought a place to speak in reply.

Dermot McLaughlin, then Music Officer for the Arts Council, was one of the first to speak. He expressed reservations about the tone with which the paper had been delivered. "The paper suggested," he offered, "that copyright legislation is almost a bad thing, when, in fact, a fuller understanding of how the system works would actually suggest something quite different. I think the specifics of how traditional music fits in is actually catered for in law. I think the copyright agencies have certainly done, in my opinion, a fair bit of work to bring traditional music back into the mainstream, so that people who trade and who earn a living from it can do so, and can enjoy the full protection and remuneration that the laws have already put in place. They guarantee a future and an income for the music."

Willie replied that his only area of conflict with copyright was where it interferes with traditional music. It was hard to hold Hugh Duffy of IMRO from speaking. He was obviously

incensed, and undoubtedly confrontational in response to the paper. He stood up, barely waiting for permission to speak. Pointing out a number of inaccuracies in Willie's presentation, Mr. Duffy sternly reprimanded that he had found a lot of the information very biased.

"Purists like yourself," he began defiantly, "who defy innovation and question copyright-innovation have allowed the multi-national drinks industry to hijack you, and you are doing no service to the arrangers of copyright music! The arrangers of copyright have been pillaged for the last fifty years both in this country, in the UK, and in America. They haven't got a penny out of it, and massive fortunes have been made." "You make the case," he continued adamantly, "about the poor publican. The publicans are in the business of selling drink. They're not in the business of anything else ...". He restated his accusation of misinformation, and pointed out the financial support that IMRO had provided for the conference.

There were a number of other voices to be heard. Concern was expressed that copyright, developing out of a long tradition of publishing, composing and arranging, was not adequate to deal with an 'oral' tradition like Irish traditional music. Nicholas Carolan of the Irish Traditional Music Archive pointed out that copyright in sound recordings lasts for only fifty years, as contrasted with the general seventy year law, hence leaving a lot of early 78rpm Irish traditional recordings in the 'public domain'.

Sitting next to Hugh Duffy was record producer, song collector and record label director, Robin Morton, now based in Scotland. He rose animatedly to make a number of points:

"I've been interested in this issue of copyright protection for twenty five years, and have been fighting the same battle that IMRO have won. I think there's an awful lot of misunderstanding here of what IMRO's about and the battle they won with an English organisation called the Performing Right Society. They can put an awful lot of money into an awful lot of people's pockets in this country and they've done a damn good job, and you really should be talking to them. You shouldn't be coming here!

"The picture you developed there was rather like the picture of an Ancient Ireland where we all sit around in the pubs, and I was nearly crying into my pint, and it was a very emotional scene you were drawing up! This man's right," he said, pointing to Hugh Duffy, "The pub owner, this guy's uncle, is making a lot of money out of it, and you can rest assured that there's absolutely no reason why that shouldn't go back to traditional musicians. You can work out a system how that should happen and these people are open to it. I know, I've talked to them. They're reasonable people. They've put up a battle for a lot of great musicians in this country to be properly paid. You really should be talking to them, not fighting with them. For Christ's sake, get in there and talk to them and understand what they're saying and let them understand what you're saying!"

The Chair passed the right to speak to Tom Munnely, a longtime folklorist and song collector from Dublin, now living in County Clare, a place often regarded as the heartland of traditional music, if you're from County Clare.

"I live in an area of West Clare where there are quite a number of pubs and they do have music in them, and they supply a few pints. In fact, if the musicians were paid they'd probably be cheaper." Laughter broke the tension somewhat. "But this is from personal experience. I am a great believer in 'Public Domain'. I believe that traditional music and song genuinely belongs to anybody who cares to use it." He detailed how certain songs he had collected from a singer named John Reilly, for example, *The Well Below the Valley*, *Lord Baker*, and *the Raggle Taggle Gypsy*, had been recorded by singer Christy Moore and the Irish group Planxty. This he had no problem with. "Where I do have a problem is when I get the Planxty songbook and I see 'The Well Below the Valley, Copyright Phil Coulter.' Now that pisses me off!"

Robin Morton jumped to Phil Coulter's defence, saying that if Phil Coulter had not copyrighted the song the money would have gone to some corporation elsewhere. He also testified as a friend to Coulter's good character, and insisted that there had been no malice intended in Coulter's actions. "There's money there to be earned," Morton insisted, as the Chair repeatedly made attempts to call the session to a close on account of time restrictions, "For God's sake, take the money from these big organisations! I think the real problem is that no-one knows where it's coming from. It's not a rip off!" At that the Chair called a halt to proceedings, joking that from that point on all were banned from speaking any more about this topic, as I raised myself gently from my bodhrán case.

The stand-off at the Crossroads was clearly adversarial in nature. Not only confusion, but open hostility was seen to emerge from the competing meanings that had been brought to the room. The protectionist position of William Hammond, strove to preserve the 'traditional session' from what was being increasingly perceived as a threat to its survival. The threat was seen to approach from a number of angles. It was felt that royalty collectors from the Irish Music Rights Organisation were going too far, and being overzealous. They were over-reaching their jurisdiction. This, it was claimed, was leading to fewer sessions.

'Irish traditional music' was portrayed as a thing in need of protection, a tradition 'without rights', the fragile, collective legacy of generations that was being dismissed on the basis of commercial gain. In reply, appeals were also made to the persuasive notion of protection, but to the protection of the livelihoods of the commercial musicians who make their living playing 'Irish Traditional Music'. It was stated that the law and copyright legislation adequately caters for commercial needs, and should be afforded respect accordingly. It was a good thing, it was claimed, that finally "a future and an income for the music" could be guaranteed. Traditionalist opposition was characterised as 'purist', in direct defiance of 'innovation', or the more curiously worded 'copyright-innovation'. Those in support of 'tradition' were also characterised as having allowed themselves to be hijacked by the multi-national drinks industry.

The retention of unclaimed or unpaid royalties was portrayed as 'pillage'. Putative massive fortunes in other people's hands were offered as a justification for fighting for the rights of 'arrangers' of 'traditional' tunes. Profit was championed, as was the Irish Music Rights Organisation as the bringer of profit. Objections to copyright and protectionism in behalf of the 'session' were portrayed as nostalgic and emotional.

The boundaries of the discussion still weren't particularly clear. The conflicts were surely significant, and 'traditional music' had certainly become an emotive issue in IMRO's political landscape. Still, the overwhelming impression of the rumble at the crossroads was more heat than light.

The Vintners and 'Traditional Music'

The opposition that arose from among the supporters of primary schools undoubtedly provided the Vintners' Federation with encouragement for their own opposition to the Irish Music Rights Organisation, and raised the emotional stakes in IMRO's "vigorous pursuit" of royalties. What had complicated the issue tremendously by 1996, however, was the co-optation of 'traditional music' as a major issue in the Vintners' negotiations. In October of 1996, for example, vintner associates threatened to boycott a music industry event, an Irish traditional Music Expo, ITMEX, in Ennis, County Clare, unless IMRO withdrew their participation. As Vallely comments: "this was akin to having a board meeting without the treasurer" (unpubl. 1996:9). As the VFI continued to oppose royalty payments, they turned to the issue of performance royalties for 'traditional sessions' to further justify their opposition. This issue provided the Vintners' Federation with a justification, albeit a dubious one, for the reduction of tariffs for blanket licensing agreements, leading Hugh Duffy to claim that "the VFI are using the traditional music

issue to lobby support for their reluctance to pay any writers' royalties at all" (cited in Valley unpubl. 1996:8). This was very likely the case.

The "Session"

'Sessions' can be adequately or inadequately described, but never adequately defined, for the term 'session' can now be used as a label for any context in which two or more musicians or singers are gathered in social activity. In The Companion to Irish Traditional Music, Colin Hamilton describes a session as: "A loose association of musicians who meet, generally, but not always, in a pub to play an unpredetermined selection, mainly of dance music, but sometimes with solo pieces such as slow airs or songs. There will be one or more 'core' musicians, and others who are less regular" (1999:345). Scholars such as Hamilton (1977), and Vaysse (1996), have noted that the character of each 'session' ultimately arises from the personalities and social interaction of those engaged in the activity. In this sense, the meaning of the 'term' session can only really be adequately accounted for by looking to the particular circumstances implied by those who use the term. Some would look to the metaphor of casual conversation to characterise the musical activity taking place in what they would term a 'session': "Going to the pub, it's just like going for a drink and telling stories, or telling jokes or whatever. We're just telling tunes" (J. McCarthy quoted in Vaysse 1996:165). This view would be consistent with the view of Foy who, half-jokingly, describes a 'session' as:

... a gathering of Irish traditional musicians for the purpose of celebrating their common interest in the music by playing it together in a relaxed, informal setting, while in the process generally beefing up the mystical cultural mantra that hums along uninterruptedly beneath all manifestations of Irishness worldwide ... an elaborate excuse for getting out of the house and spending an evening with friends over a few pints of beer (1999: 12-13).

Perhaps the most important word in this description, for our purposes, is "beer". A detailed examination of relatively recent manifestations of the relationship between public houses and the "traditional session" is beyond the scope of this thesis, but this has already been explored in the works of Laurence Vaysse (1996), Colin Hamilton

(1977), Hazel Fairbairn (1993), and Moya Kneafsey (2002).³ To date, however, Reg Hall (1995) is the only person to undertake a detailed historical investigation of this type of music-making in pubs before this date.⁴ Interestingly, Hall's study focuses on an English context. In a complex overview, Hall shows that among Irish immigrants in London such music-making was to be found in the local Irish pubs by the 1940s. Landlords who tolerated musicians carefully negotiated licensing laws that allowed only two musicians at a time, and, "As musicians became confident in their new surroundings and as publicans realised their music-making attracted custom, the one-off, risky session became institutionalised as a regular weekly event, expected and looked forward to by musicians, landlord and customers alike" (1995:5). As sessions became a regular occurrence in London pubs during the early 1950s a shift occurred: "it became common for landlords to pay two or three musicians for a session. The established practice of other musicians joining in was unchanged, and there was no embarrassment about some being paid and others not" (1995:7). Vaysse records that in Ireland payment for the 'anchoring' of sessions has really only become frequent since the 1970s (1996:86). As Hamilton notes:

As the session became a standard aspect of Irish musical life, publicans, keen to have their bars known as centres of good music, began, from around the middle of the 1970s, to pay one or two musicians to turn up on a regular night, to ensure that a session would happen. If this 'seeding' worked, the publican was guaranteed a regular core of perhaps half a dozen musicians at a small cost. Almost all the current regular sessions are based on this principle, but at festivals and other like events, sessions are still normally impromptu and non-commercial (1999:345).

As Fairbairn has found, however, payment is not always an issue, and often a more informal arrangement between musicians and publican "allows them an elevated status of desirable clients, rather than that of employees. This means that the landlord is beholden to the musicians, he knows that the music attracts custom, but has no contractual security. In this way the musicians ensure good treatment" (1993:159). There are certainly some publicans with a personal fondness for particular musicians, and, indeed, with an interest and investment in what they consider 'traditional music'. These 'landlords' are often well-known and well-loved, and are often musicians or

³ For less formal approaches see Carson (1986, 1996), Wilson (1995), and Foy (1999).

⁴ In the quest "to give a precise date of birth for the pub session" (Hamilton 1999:345) the historical confusion is often quite startling. Fairbairn, for example, in the same work attributes the 'birth' of the session to the 1940s, 1950s, and the 1960s (1993:25, 120, 122).

singers themselves. Often the relationship with a publican is nondescript, but functional. Hamilton notes that “Even in cases where the host provides no encouragement to the players in the way of money or free drink, he at least provides a place for them to play” (1977:49). Many publicans, however, maintain a relationship with musicians that is at best business-like, and at worst testy and volatile. One city publican, for example, barred so many musicians from entering his pub during the 1990s that those nominated for prohibition gained a certain credibility among fellow musicians. That particular publican now runs a disco bar.

The “Session Issue”

But why was the issue of ‘traditional sessions’ brought into the dispute at all? Ultimately, as we saw in the last chapter, the aim of the Vintner Federation’s negotiations with the Irish Music Rights Organisation was to reduce the level of tariffs for performing royalty blanket licences. Many publicans felt that the issue of ‘traditional sessions’ could lead to a reduction in payments for licences. It was assumed that the ‘use’ of ‘traditional music’ or the hosting of ‘traditional sessions’ were qualitatively different from other ‘uses’ of music. Two claims were made by publicans. The first was that they shouldn’t have to pay performance royalties for ‘traditional sessions’ at all. The second was that ‘traditional sessions’ shouldn’t be charged as much as other musical events.

The first claim made by publicans stemmed from the assumption that music that was considered ‘traditional’ was automatically ‘non-copyright’. This ran along the same lines as the question referred to earlier in this thesis: “But there *is* no copyright in traditional music?” The answer that the representatives of the Irish Music Rights Organisation would offer to this argument was the line that intrigued me in that bar in Galway, referred to at the opening of the thesis:

I wish to explain that our interest lies in the public performance of copyright music and as traditional does not automatically mean non-copyright we are therefore pursuing royalties with you for these performances (pp. i-ii).

There are two ways in which this line from the IMRO letter may be interpreted. One is to assume that the word 'traditional' refers to anything that for all intents and purposes 'sounds traditional', that is, sonic forms which seem to conform to the genre-limitations of what, in the opinion of the IMRO representative or the publican, is commonly considered to be 'traditional music'. The other is to assume that the representative of the Irish Music Rights Organisation is equating 'traditional' with 'anonymous' and, hence, with 'public domain'. In this scenario the IMRO representative would be referring to the practice in which some musicians engage in copyrighting 'arrangements' of 'traditional', understood as 'public domain', tunes or songs. They thereby secure a 100% performance royalty for any performance of the arrangement which they have recorded in some form, and, importantly, which they have registered with IMRO or some other performing right organisation. Every time they or someone else plays that 'arrangement', they are due a royalty. By contracting with IMRO for a blanket licence, the publican gains permission for the 'use' of the worldwide repertoire of copyrighted material. The onus, then, was on each publican to prove that not one copyrighted work or copyrighted arrangement of a 'public domain' work was 'used' on whichever night might be in question. This was an impossible task for publicans. They had no way of predicting or prescribing what might be played or sung after they had paid for the blanket licence in advance. Also, it was unlikely that they would bother to record and classify each incidence of music or song on the nights in question in order eventually to show that no copyrighted material was 'used'. It was easier to pay the few extra pounds for the tariff.

The second claim, that 'traditional sessions' shouldn't be charged as much as other musical events, stemmed from the understanding that the majority of tunes played or songs sung at 'traditional sessions' were 'traditional', implying that they were therefore 'anonymous', therefore 'public domain', and that therefore a reduction in the amount paid could be justified. It was also argued that a standard tariff for 'sessions' did not discriminate between different premises and the vast range of social contexts to be found in pubs. Valley quotes the then Vintners' Federation Chairman, Tadhg O'Sullivan, as saying:

The pub session is not full-blooded, public entertainment, and players' *arrangements* are not new tunes ... and anyway, the way that IMRO levies charges, why should a Kerry pub that has only a handful of customers at a session for the whole winter be obliged to pay the same as a similar premises in Dublin that is packed the year round? (quoted in Valley 1997).

Again, with both blanket licences and the practice of copyrighting 'arrangements', there was no need for IMRO to concede a reduction in tariffs on this account, at least not on the basis of the publicans' reasoning. It was interesting that an issue was made of 'traditional music' at all, or that the representatives of the Irish Music Rights Organisation were drawn into a discussion concerning it. If one were to follow the logic dictated by copyright there should have been no distinction drawn between one type of music and another on the basis of genre (see WIPO 1997b). Within the logic of copyright discourse a 'work' has either been copyrighted or it has not, is either in copyright or is not. If the status of a 'work' is in question, genre should not enter into the issue, in the same way that aesthetic worth should not be taken into consideration for a work's originality requirement (Sherman 1995). Concessions, however, were granted to publicans, on a number of occasions.⁵ According to letters received by one publican, representatives of IMRO decided as early as 1993 that as there was considerable use of 'non-copyright material' during sessions, publicans would be charged a lower public house tariff for sessions than the previous featured music rate. This tariff was termed the "amusement music" rate. At most it was based on a distinction between music that was amplified and music that was not. It seems to have been more a move to appease the financial concerns of publicans than any recognition of an alternative or newly-considered copyright status for 'traditional sessions'. This was formally recognised in an agreement with the Dublin-area Licensed Vintners' Association (LVA) in November 1993. As part of the negotiated contracts, classified as PLVA within the IMRO tariff system⁶, a rebate of 50% was allowed "where music performed during a session

⁵ It must be remembered that tariffs for performance royalty licences are arbitrarily constructed, often on the basis of comparative analysis of customary practice among other performing right organisations, and on the basis of self-referential economic analysis. There is no indisputable yardstick for determining the commercial value of music-as-sound, or of 'works', and there is ultimately no basis for the specific sums of tariffs other than the claim that they should be paid.

⁶ There are 26 main tariff headings and 350 minor tariff headings within IMRO's internal operations. Among the main tariffs are: Aircraft (AC), Cinemas (C), Heritage and Cultural Centres (H), Jukeboxes (JB), Classical and Light Classical Music (LC), and Shopping Centres (SC). The two tariffs that are of

contains in excess of 75% of public domain music, though it is noted that many old songs and airs have been rearranged [sic.] and, as such, are controlled by IMRO” (Lyons 1999:12-13).

The ‘session issue’ was arguably, then, only brought into negotiations by the Vintners’ Federation of Ireland (VFI) in order to seek further reductions on the blanket licensing tariffs which they were contesting with the Irish Music Rights Organisation. It is important to understand that this was primarily an economic consideration. Although the justifications offered by the VFI were largely insubstantiable, IMRO nevertheless conceded reductions in this regard as part of the deal secured. In retrospect, these concessions amounted to skilful negotiation and savvy public relations. What became clear during the course of these negotiations, however, was that for the people who played in the ‘sessions’ concerned, the issues extended beyond the merely economic. As the Irish Music Rights Organisation was to find out, the co-optation of ‘traditional music’ and the ‘session’ issue into the Vintners’ negotiations had a sting in its tail.

Musicians Take Note

A number of factors contributed to the growing visibility of copyright as an issue within ‘traditional’ contexts.⁷ The growing popularity of what was labelled ‘Irish traditional’ or ‘Celtic’ music in music industry markets during the eighties and nineties created a climate in which PRS, PRS-IMRO, and then IMRO were called upon to meet the rising expectations of financial rewards from royalties. In turn, the growing recognition of financial reward for new compositions led to an increase in both the number of tunes being composed and registered, and in the number of arrangements being claimed as

most concern in this thesis are those for Dublin Area Public Houses (PLVA), and for Public Houses Outside the Dublin Area (PVFI).

⁷ It’s really only in the last ten years that the issue of copyright has become familiar to people in ‘traditional’ social circles. Before then it was of interest mainly to collectors and archivists, and to the commercially-viable performers who always seemed to learn more about copyright in the aftermath of a shady deal than they ever knew going into one. But even then, it wasn’t of any major concern to most people. As Nicholas Carolan, Director of the Irish Traditional Music Archive in Dublin, remembers it: “One had heard various stories, say, about how *Planxty* were ripped off, and they weren’t making any money from their own records and that kind of thing, but that was so far removed from the experience of most people involved in traditional music. It was interesting but that was all it was. It wasn’t personally pertinent” (Personal interview, Dublin, 2000).

original and copyrighted. Until the mid-nineties, however, knowledge or awareness of copyright remained the preserve of those for whom financial considerations remained central to their experience of musical practice. For those who did not give much thought to commercial incentive, the issue of copyright remained irrelevant so long as it did not impinge on their lives. The tariff negotiations between the Vintners' Federation and the Irish Music Rights Organisation made a difference. It still remained something of an esoteric issue, but copyright had begun to impinge.

The growing awareness of copyright and performing rights among musicians started to influence the choice of tunes in sessions at least by 1996. Working from understandings that were nothing if not confused, some musicians would refuse to play certain tunes suggested by other players at 'traditional sessions'. This was because these tunes were considered 'copyright'. It was thought that 'copyright' tunes couldn't be played at a 'traditional session':

There was definitely that. I noticed that, that people were more aware of what they were playing and sort of said, 'Look we're not going to play any composed music, y'know, so we won't be playing any Paddy O'Brien or Hammy Hamilton or ...' cause a lot of them would know the music. Yeah, I suppose it shows you that the musicians didn't know anything about it if they thought that, like (Personal interview, Cork, 2001).

Other musicians refused to play their own tunes until such time as they had been released on a commercial recording, for fear they would lose their copyright. This was very practically an issue of self-censorship in a new awareness of a dichotomy between 'traditional' and 'copyrighted': "the absurdity of that scenario for the musicians would be the equivalent of censoring pub conversation to exclude mention of ideas in contemporary Irish literature" (Vallely, unpublished, 1996:6). Whether these concerns were based on correct interpretations of the law or on complete misunderstandings was of little matter. On the whole they contributed further to an atmosphere of confusion.

Incredulity

The initial reaction to the licensing of 'sessions' among many people was simple incredulity. They couldn't see how the ideas of 'copyright', 'intellectual property' or

'property' of any sort could be applied to 'traditional' contexts, and specifically the 'session'. There was a clear perception of a radical disconnect. This generally ran along the lines of: "But there *is* no copyright in traditional music?" It simply wasn't considered to have anything to do with what 'traditional music' was all about. As Martin Hayes, one of the most respected Irish musicians on the commercial scene, commented in Seattle: "I mean, like, nobody owns the stuff. You can't own this stuff" (Personal interview, 1998). Another musician in Philadelphia phrased it similarly: "The music doesn't belong to anybody, so if somebody's trying to learn it and you can help them, it's not yours, so it's not like you can hold back because it's not yours anyway" (Personal interview, 1998). That the idea of copyright and performance royalties could be so far removed from musicians' understandings of 'traditional' ways of thinking was exemplified by the colourful reaction of a commercially-successful and highly regarded Irish-American musician and composer to the news during an interview that 'sessions' in Ireland were deemed to be liable for performing rights licensing:

Get out of town! I can't believe that. ... Man that's so sticky. Holy cow, though, I can't even imagine them trying to pursue that. ... Oh no no no. Wait a second, from a session? ... So who pays? The pub or the musicians? So there would be somebody sitting there and marking down every tune that went by to see who it goes to? ... How do they divvy it up? How can they decide? It's bizarre. It's really bizarre (Personal interview, Chicago, 2000).

Many people who play music and also compose tunes find it hard to reconcile the logic of copyright with the fact that they would be quite delighted if their tunes were played at 'sessions', even if no-one knew that they had composed them. The attitude of Maighr ad N  Mhaonaigh, fiddler with successful music group Alt n, is typical: "The best thing is to compose tunes and not have people recognise them as newly-composed, that they slip back into the tradition. For me that's the biggest thrill of all" (Personal interview, Galway, 1995). Vallely (1997a) quotes fiddler M ire Breathnach, another commercially-active performer, as saying: "That kind of recognition is superior to any payment", and elsewhere notes that many musicians and composers who welcome IMRO royalty cheques for their own work in overtly commercial contexts, are adamant that 'sessions' should not be liable (unpubl. 1996:8). As one musician said to me rather bluntly: "You're not entitled to a copyright if it's being played in the session, because

that's alien to the whole culture to do something like that" (Personal interview, Cork, 2001).

Another Dance Halls Act?

The incredulity was tinged with real concern for some. It was widely believed that the 1935 Public Dance Halls Act had wreaked havoc on similar customary practices years before. The mythic status of this precedent of legislative enclosure was an important element in many's reaction to IMRO's pursuit of royalties for 'sessions' (e.g., Vallely unpubl. 1996; Ó hAllmhuráin 2000). Many were under the impression that the Public Dance Halls Act had inflicted untold damage on customary practices in rural areas, and had been a major contributing factor in what is often referred to as the separation of dancing from music (Austin 1993).⁸ Colin Hamilton (1996) warns that it is difficult to assess the Public Dance Halls Act in such broad terms, and that "Conditions and the conclusions to be drawn from them vary wildly" (151). While there have been reports of priests who were very active in their disapproval of dancing, some even resorting to physical intervention (for example, allegedly beating people out of houses with a big stick or whip), Larry Lynch (1989) and Hamilton note that the Public Dance Halls Act was apparently applied very unevenly, some house dancing continuing unmolested up to the 1950s. Even if, as some would suggest (e.g., R. Hall 1999), the negative impact

⁸ The 1920s and 1930s had seen a rise in commercial dance halls as the foxtrot, two-step and shimmy-shake became popular. These dances were regarded by some clergy as a moral threat to the integrity of Ireland's youth, and the Catholic church in Ireland waged a campaign against the evils of dance, of whatever type. The clergy lobbied for the Dance Halls bill as what Austin calls "a sort of moral prophylactic". Fianna Fáil, the ruling political party, looked favourably on the Church's position, but was also interested in pushing through the bill as a response to largely unsubstantiated rumours that the proceeds from private dances were going to support organisations such as the Irish Republican Army, membership of which was subsequently deemed illegal from 1936. This was coupled with concerns about overcrowding in unregulated spaces. As Austin notes: "A further incentive was that a percentage of ticket receipts would go to the church and government" (1993:11). Once the bill was enacted, obtaining a dance hall licence was a privilege usually reserved for the parish priest, who thereupon would often construct a parish hall and enlist the help of the local Gardaí to quash any other dances that might be taking place. With the Public Dance Halls Act, dancing took place only in licensed halls under licensed supervision and strict fire and safety regulations. This limited the hosting of dancing to those of adequate financial means. The 'traditional' contexts of music and dancing, for example house-dances or dancing at the crossroads, were put under severe pressure, and those musicians who were unable to make the transition to dance halls "suffered loss of income as well as diminishing status within the community" (14).

of the Public Dance Halls Act has been greatly exaggerated,⁹ this did not prevent the 1935 Act casting a large shadow over understandings of IMRO's activities.

Copyright Nearly Killed the Radio Star

One of the first things I would do in the morning was switch on the radio. This particular morning, Tuesday, February the fourth, 1997, I wasn't all that happy with the music that was being played on the pop station, 2FM, or on the local station Galway Bay FM. As usual, outside it was raining. Stretching my arm out as I lay in bed, I twiddled the dial. I hit upon RTE Radio 1. Today With Pat Kenny. This was a daily national news and discussion programme, and this particular morning I recognised the voices of those in discussion. Both parties were being broadcast via a phone-in. And the conversation was very lively, if not hostile. Pat Kenny was doing his best to mediate. Good radio, I'm sure the producers were thinking.¹⁰

Fintan Vallely was one voice. I knew Fintan as a leading traditional flute player, as a parodic songwriter, and as a part-time ethnomusicologist. He is also probably the most thought-provoking journalist writing about traditional music in Ireland. At that time he was working for the Irish Times, now with the Sunday Tribune. He was also one of the primary organisers of Crosbhealach an Cheoil - The Crossroads Conference. Though he lives in Dublin, Fintan has a recognisably Northern voice, and many would put his heightened political awareness down to his Northern Irish upbringing. The other voice was Hugh Duffy, Chief Executive Officer of the Irish Music Rights Organisation. A Southern voice. I had met Mr. Duffy on many occasions through my involvement with the National Federation of Music Collectives, and the Galway Songwriters Collective, Songcraft. I had seen him engage in heated debate over the traditional music issue at the Crossroads Conference the year previously.

I realised what it was that they were arguing about and listened intently. I caught it while Fintan was in full flow, speaking rapidly.

"You have the same in the Spailpín Fánach in Cork. Initially they had paid but now they're challenging. You had the same in the Lobby Bar in Cork and you took them to Court and eventually you settled with them, now that they've some other agreement worked out with you. So, I mean, you are challenging the bigger pubs, and what I'm saying is, then, that the organisation, then, maybe it's not your problem, but I mean, you can't distinguish between where casual music is being played ... and there is a difference, even if, I would argue, even if people are being paid a few quid to be anchor musicians in the session, and there are, despite your absence of information on this, there are scores of these, and during the summer there are hundreds of these sessions around the country, it doesn't make any difference," Hugh Duffy attempted to interrupt. Fintan kept going, "They are playing non-copyright music!" Hugh Duffy appealed to Pat Kenny, "Could I ...?" but Fintan persisted,

"... Full stop! And your assessors are obviously not capable of assessing that." Hugh Duffy tried again,
"Could I ...?"

⁹ Some, like Austin suggest that: "the application, or misapplication of the Dance Halls Act was a primary cause of the disappearance of traditional music and dance in Ireland during the 1930s" (1993:7).

¹⁰ This extract was recorded in a bleary-eyed state and transcribed at a later date. There are undoubtedly those who would suspect this to be a breach of copyright. I, however, do not believe this action to be unethical. Neither do I consider it illegal ('ethical' and 'illegal' are not necessarily synonyms). This recording and transcription of a public broadcast was for the purposes of academic research, criticism, and analysis. As such, it should be covered by the 'fair dealing' clauses of the Copyright and Related Rights Act, 2000 (50-51), which state: "... 'fair dealing' means the making use of a literary, dramatic, musical or artistic work, film, sound recording, broadcast, cable programme, non-electronic original database or typographical arrangement of a published edition which has already been lawfully made available to the public, for a purpose and to an extent which will not unreasonably prejudice the interests of the owner of the copyright" (50.4). I would never knowingly do anything in breach of copyright law.

Pat Kenny stepped in. "Okay, let's hear from Hugh."

"There's no point in rubbishing my knowledge of music, 'cause I don't claim to have a knowledge of music. Now just to take a few points, and we have written about this to the Vintner's Federation. If there are any pubs who believe that they are only playing sessions, we will respect that. But what we will not respect is people putting signs outside the door and a sign up saying 'traditional music'

...

"Why not," Fintan interjected.

"... and you go into the pub then and you go into the pub then and there is nothing but modern copyright repertoire."

Fintan Vallely pushed into the space for a breath, incensed, "You don't know the difference, Hugh, this is the whole problem. You just said that you don't know anything about music. How can you now say that you know when you say that you don't know?"

The volume rose. "Just a second. I don't do the work. I'm not out on the circuit, going round to the pubs. There are people who do know the work ..."

Pat Kenny interrupted. "Can I clarify something? This MRBI¹¹ where they go around taping people. Most musicians do not allow themselves to be taped without prior permission or without maybe some payment being made, because you never know where a tape's going to end up, in somebody's car entertaining someone for instance."

"We have got permission from the Mechanical Copyright Society," Duffy replied, "and have got a license to tape copyright music."

"You can't tape performers without their permission," Kenny stated forcefully. "You know that."

"I know that," Duffy replied. Vallely mumbled something which I was unable to hear. It ended with the word "... permission." "Just a second," Duffy contested, "My people always identify themselves when they go in."

"To a session?" asked Vallely

"Yes, and if people object we just move off. That's a fact."

"I don't believe you," remarked Vallely, laughing briefly and sarcastically.

"You needn't believe me if you don't like, but are you suggesting that the MRBI go in with their things under their coat?"

"I don't know. What I am saying is that I don't know who the assessors are, and can you name ...?"

"We're not asking them to assess, we're just asking them to tape."

"Just to tape?" says Vallely, "But who assesses the tapes afterwards?"

"Just a second," said Duffy, "I was asked the question, 'How do you distribute the money?' and I explained how you distribute the money. We don't use MRBI or anyone else to decide what is traditional music or what isn't traditional music. People who register their songs with us and ... Who owns the tune is a matter of fact! It's property rights. It's nothing to do with us."

"That's fair enough," interrupted Kenny. "That's fair enough. If you decide that a place is playing copyright commercial music you collect the money and you distribute it and that's terrific. But it would strike me that in the case of any business you would actually look at the question of cost effectiveness. Now, what you've told me about sending the MRBI around, taping people, then getting experts in to decide whether it's copyright or not, in terms of the amount of money you're talking about for the seisiún, you're actually wasting the composers money by doing foolish things like this?"

"No, we're not doing anything foolish. Because ... for ... The simple reason is that the amount of the kind of pubs that we're talking about ... One of the pubs that was mentioned, and I don't like mentioning our customers, was the Lobby Bar. The Lobby Bar had tra-, a seisiún one night a week, but it had other music five nights a week, and we were entitled to collect for the five nights."

"Of course," says Vallely, obviously not meaning to interrupt.

"If people would explain to us when they are having seisiúns and when they are using traditional music only, we will respect that. We're not in the business of ... the only time we ever investigate is when people tell us that it's traditional music only."

¹¹ The MRBI is the Market Research Bureau of Ireland Ltd. Further details may be found on the Internet at <http://www.esomar.nl/directory/110222.html>.

“Okay, Fintan,” says Kenny, “can I turn this around a bit? Off and on over the years I’ve heard people saying ‘So and so robbed me tune’. If IMRO does their job right that will never happen again ...?”

“This has nothing to do with robbing tunes at all,” replied Fintan. “Robbing tunes comes about where people are playing commercial gigs or making commercial recordings of somebody else’s music and not paying, and IMRO collects for them, and I don’t know any musician, casual or professional who has any problem with that at all. Nobody has any problem with that. What we are talking about here is an entirely different thing. We’re talking about a mechanism where tunes are played and where people get together. What people are doing in session situations is probably the same as people playing darts or pool, or having a conversation about current literature in the pubs. There’s no difference. What Hugh is saying is that they don’t mind people playing sessions in pubs as long as they’re not playing copyright tunes, but he also says that if there’s a sign up saying ‘Traditional Music Tonight’ then they’re going to move in there. A lot of session pubs around the country, in fact, advertise that there’s a traditional session on on a certain night and that signals a couple of things. It signals a quiet night in the pub, that there’s normally nothing else commercially viable happening. It also signals that people can go there and be guaranteed to hear music. It’s also kind of a welcome.”

Pat Kenny interrupts at this point. “Fintan, I have to take a commercial break. I’ll give the last word to Hugh after this break.” I paused the tape recorder and waited till the advertisements had gone their merry way. “... Alright we had to take a break there and we have one more to go before the end of the programme. Hugh, last comment from you.”

“Well, the simple answer is that we do not pay for traditional sessio- ... we do not charge for traditional session music, we charge for the use of copyright music, and that’s all we charge for, and if there are publicans around the country having traditional sessions we honour that. But we will not have a situation where people set up a sign outside and say ‘Traditional Music Every Night’ and we go in and we find it isn’t traditional music.”

“We’ll leave it there,” says Kenny, and thanks to Fintan Vallely, and you can read his article in the Irish Times today, and thanks to Hugh Duffy, CEO of IMRO.”

It wasn’t long before I was out of bed, thanking Providence for the happenstance of the morning’s radio offering, and rushing out to buy a copy of Fintan’s article in the Irish Times. He had already sent me an unedited copy of a longer version, about thirteen pages, and I was sure that whatever ended up in the newspaper was bound to cause a stir.

The next Saturday, at my regular ‘session’, the topic was referred to often. Down at the office of the magazine where I worked part-time they were enthusiastic about doing a follow-up piece. They could see a juicy story in this conflict.

Personally, I wasn’t particularly interested in doing a follow-up story. The radio debate had frustrated me no end. Every debate I came across in relation to the issue of IMRO and ‘sessions’ seemed to flounder again and again on the basis of cross-purposes, ill-defined terms, disparate terms of reference, and misunderstandings. I could think of nothing more infuriating than a protracted and open debate about copyright and traditional music when no one group or person had agreed with any other on definitions, context, or motivations. I could see how the end result might simply be a lot of hot air expended, a lot of angry musicians, a lot of angry IMRO representatives, and nothing resolved at the end of the day. A lot of loose and ill-informed comment was nourishing flagrant scare-mongering across the country. The issues were serious, yes, but I couldn’t see any way towards clarifying them as the structure of arguments stood at that time. The smell of a fight seemed to be of more interest to most than the need to clear the air.

What we seemed to be dealing with were worlds of competing meanings and conflicting interpretations, largely revolving around misunderstandings of what was or wasn’t ‘traditional’. ‘Traditional’ even seemed at times to be put forward as intrinsic, essential characteristics of a particular tune or song. It was clear that many musicians and singers were using the word ‘traditional’ in ways that were not at all consistent with the understanding of IMRO representatives. Nevertheless, many times in the arguments it was assumed by both parties that the word ‘traditional’ was mutually intelligible, when the course of the discussion would suggest, rather, that the respective uses of the word ‘traditional’ were mutually incompatible. Little wonder, then, that fear and confusion did abound.

Save the Session

Some of the fears that 'traditional' supporters felt paralleled the concerns of the defenders of primary schools. There was concern, for example, that IMRO's demands might discourage publicans from allowing 'sessions' on their premises at all. Some, like William Hammond, felt that IMRO's actions were directly threatening the existence of 'the practice room' of 'traditional music' (1996:4). On the fourth of February, 1997, Fintan Vallely published a feature article in The Irish Times sensationally entitled "Save the Session". It was the first nationally published statement on the matter, and the effect it had on conversations around the country, and, indeed, around the world, was swift. The issue of copyright briefly achieved celebrity status among musicians. The Irish traditional music mailing list on the internet, IRTRAD-L¹², with about 600 members at any time, was informed of the article on the day of its release. A list-member posted the article in its entirety for those without world wide web access. For the next two days the list engaged in passionate discussion of the issues. "Save the Session" undoubtedly provided the clearest commentary on the issue to date. The main concern seemed to be clear, and echoed the concerns that had been voiced previously. IMRO was approaching publicans regarding licensing for performance royalties due to their members. Where 'traditional' music was concerned, 'arrangements' of tunes whose copyright had expired, played by IMRO members, were deemed to accrue royalties. Three things seemed to justify IMRO's jurisdiction in this matter: these 'arrangements', the presence of newly-composed, copyrighted tunes at 'sessions', and the authority of legislation and international agreements. Many musicians expressed concern that this was inappropriate, and an intrusion, if not actually indirectly threatening the continuance of many sessions in pubs.

As late as June 1998, the Vintners' Federation would turn these fears to their own advantage, sending the following letter to members of the Irish Seanad (Senate) in an attempt to influence the course of debates concerning the Copyright and Related Rights bill, against IMRO's stated position:

¹² You can find IRTRAD-L at <http://listserv.heanet.ie>

In essence, this Bill sets out to enshrine in law that if any of the copyright collection agencies state that they own the copyright in a particular piece of music, then they own the copyright in that particular music until the contrary can be proven. This means that they could take any piece of music, traditional, ethnic, classical etc., which is long out of copyright, and simply declare it to be in copyright, or rearrange it and then declare it to be in copyright, and place the onus on the musician, proprietor etc., to prove that they do not own the copyright. I think you will agree that this would turn law, logic, justice and fairness totally on their respective heads. It has the potential to have extremely serious consequences for music users and for music players throughout the country. It will certainly spell the end of the "session" as we have come to know it in Ireland and in Irish pubs. We cannot enshrine into Irish law a provision which confers ownership of "a property" on someone who does not own that property. We cannot and must not take away the rights of all of our citizens to enjoy music which is theirs to enjoy, simply to boost the commercial profits of those who have no claim or right to its ownership. This issue is about rights. The rights of our citizens must not be subverted to pander to the greed of a vociferous minority.¹³

Rumours abounded that sessions were being shut down on account of pressure placed on publicans by representatives of IMRO. It is clear from the passage above that the Vintners' Federation in no way sought to diminish these rumours.¹⁴ A number of publicans did not consider a 'session' a financial venture, but merely a favour to some local musicians. Were they obliged to think about it as a financial endeavour requiring a licence, they might well decide that not having a 'session' at all might be less hassle. But this would really only be an issue if no other music, of any sort, was 'used' on the premises. Any other 'music use' at all would require a blanket licence, rendering the 'session issue' largely irrelevant. All in all, the perceived threat to sessions was greatly exaggerated and largely erroneous.¹⁵ It remained, though, a highly emotive and charged concern in the atmosphere of the Vintners' opposition to the Irish Music Rights

¹³ This was read out by Senator Coghlan during the proceedings of the Copyright (Amendment) Bill, Second Stage on 18 June, 1998. The full transcripts of all Irish parliamentary debates are available on the Internet at <http://www.oireachtas-debates.gov.ie/>.

¹⁴ The reasons that a publican might have for closing down a session are many and varied, and musicians would be as likely to find as many reasons to move on to another venue. Regular reasons include personalty clashes, changes to new ownership less appreciative of 'traditional music', or changes in the personality of an upwardly-mobile 'local' that gets transformed into a spacious and trendy 'superpub' in a bid to maximize income. Hosting a session might simply not be financially viable. A restaurant proprietor in Galway once expressed surprise to me, not that musicians were paid so little for a session, but that they were paid so much. Apparently, she felt, to offset the expense of musicians a publican would have to sell three times as much in value of alcohol to make it worth their while. For smaller pubs this is unlikely to happen. This would suggest either that musicians in these smaller venues would be unlikely to be paid. It might also suggest that any 'traditional' musical activity in these pubs at all is an indication that neither musicians or publican are particularly interested in framing the 'session' in terms of financial potential.

¹⁵ According to one musician, the only direct knock-on effect of IMRO's licensing demands on sessions was that many publicans placed a moratorium on new sessions. Even this attitude lasted for only a short period, however, and, following the VFI agreement, things pretty much returned to normal (Personal interview, Cork, 2001).

Organisation. Furthermore, it created a dubious cause and effect scenario which helped to justify negative impressions of IMRO's role.

Charging Musicians

Ryan (1985) reports that in the period following the establishment of ASCAP, musicians believed that they would be charged for the use of music.¹⁶ Although this was not actually the case, it took until 1918 for the resultant rift between ASCAP and the musicians' union to heal. It is interesting, then, that the same reaction should be seen among those people who played music and sang in 'traditional' contexts. Such fears were exacerbated by inaccurate reporting resulting from a confusion of categories. Hammond wrote, for example: "Local sessions over the last 18 months or so have been approached by an organisation called IMRO for royalties for those sessions" (1996:4). This was not strictly true. Publicans, not 'sessions' or the people in sessions, had been approached by IMRO to take out blanket licences for performance royalties, which in many cases covered what were considered 'traditional sessions'.

This confusion, however, struck at the heart of one of the shakiest pillars of performing rights thinking - how is it that the publican is charged for commercial 'use' of music, when the musician is not? Surely musicians who are 'using' works as a dominant element of their commercial endeavour, should be charged at least as much as the publican who is merely using music, at most, to attract customers and have them feel comfortable on their premises? Musicians, indeed, going by the internal logic of performing rights, should in fact be charged *more* than publicans for the use of works in commercial contexts. Furthermore, that musicians are engaging in the 'performance' of 'works' is not as hard to fathom as the idea that the mechanical broadcasting of sounds over radios and televisions constitutes a 'performance'. The charging of musicians for the commercial performance of copyrighted works would, however, simply highlight the implausibility of the whole arrangement, and has never been pursued. If nothing else, it would provide performing rights organisations with a public relations nightmare.

¹⁶ For a brief summary of Ryan (1985) see p. 14 of this thesis.

None of their Business

Although there was undoubtedly exaggerated demonisation of the role and activities of the Irish Music Rights Organisation, and a considerable amount of panic, rumour-mongering, and misinformation as to the damage that might be inflicted on ‘the tradition’, there were a number of more measured concerns. Among these were accusations that representatives of IMRO were speaking about ‘traditional music’, and applying the letter of the law to ‘traditional music’, without really knowing what they were talking about.¹⁷ It was felt that the term ‘traditional music’ was being used by representatives of the organisation to communicate positions which many of those who played music and sang in these contexts felt were simply misrepresentative. It must be said, though, that it was easier for people to identify misrepresentation than it was to provide an alternative, articulated representation. The perception that IMRO representatives simply didn’t know what they were talking about was reinforced by the understanding that they had been acting without consultation. During 1996, Hugh Duffy of IMRO allegedly pledged to institute regional public hearings on the issue of traditional music and copyright (Vallely 1999). These never occurred. In 1996 Vallely was able to write:

IMRO is not obliged to have, has never had, and does not believe it should have, consultations on actual tune ownership with any of the bodies involved in Traditional music, least of all the Irish Traditional Music Archive at Merrion Square, Dublin, the only state-funded reference point in the music (unpubl. 9).

Vallely suggested that relevant expertise and consultation was required before either IMRO or the VFI would be able to “comment or legislate aesthetically on Traditional music”.¹⁸ By acting without consultation in their bid to secure royalty payments for

¹⁷ Nicholas Carolan was somewhat bemused by early IMRO advances to the Irish Traditional Music Archive: “In my own experience in the early years of their involvement, with their targeting of traditional music, they didn’t know what they were talking about. Even their own documentation doesn’t make much sense, frankly. When they try to define their relationship to traditional music, it’s gobbledeegook” (Personal interview, Dublin, 2000).

¹⁸ Curiously, Vallely at the same time suggests that “the interests of Traditional musicians coincide with both IMRO and the Vintners’ Federation” (unpubl. 1996:8). It is never made clear, however, specifically what interests these might be, or how in particular they might coincide. The widespread discontent clearly indicated that the interests of the parties concerned were anything but compatible.

'sessions', he offered, IMRO had shown that independent monitoring of their activities was necessary.

Blanketing the Issues

As we have seen before, however, it wasn't necessary that IMRO consider the views of a disparate 'traditional' lobby at all. IMRO's dispute with the Vintners' Federation was purely a contractual and financial one, based on disagreements over the level of tariffs. To argue that IMRO had no jurisdiction in these contexts was hardly likely to faze an organisation that claimed absolute jurisdiction in all places outside of the family circle where there might be the possibility of even one copyright work being played. Sinacore-Guinn (1993:29) reminds us that the licensing process is fundamentally adversarial - users and collectives ultimately wanting different things. There is no room to contribute to this equation unless one is either a licensor or a licensee. Furthermore, to argue that certain contexts were non-commercial was hardly likely to succeed in the face of an organisation whose representatives claimed that all contexts were commercial, and that the primary motivation of human life was economic.

Three binary oppositions were central to musicians' confusion about the inclusion of 'sessions' within the regulatory authority of the Irish Music Rights Organisation: 'traditional' or 'non-traditional'; 'commercial' or 'non-commercial'; and, 'for profit' and 'not for profit'. Each opposition was based on an assessment of the social and contextual elements of what may have been considered 'sessions'. Elements which might have been considered by someone seeking to make a judgement of a 'session' on the basis of such oppositions might have included whether or not any of the musicians were paid, whether or not the 'session' was amplified, or whether or not the pub-owner was seen to benefit commercially from the 'session'.

Ultimately, however, none of these concerns were really an issue for the representatives of the Irish Music Rights Organisation. The issuing of blanket licences, as well as the all-embracing logic of performance royalty collection, ensured that

anything judged by IMRO to be a 'performance' of a copyrighted work outside of the family circle was to be adjudged a 'public performance'. Any 'public performance' was a commercial concern, and therefore subject to a royalty payment. This was the case regardless of the musical genre. With the law on their side, it didn't really matter what anyone else thought. From the point of view of the representatives of the Irish Music Rights Organisation there is no such thing as a non-commercial, not-for-profit 'session', because musical activity implies 'works', which implies 'commercial interest'. Moreover, with blanket licences the onus was on the licensed premises to show that only non-copyright music was being played. If this were not shown to be the case, IMRO could claim complete and absolute jurisdiction without needing to consider the nature of the social conditions, or the genre of the musical activity. For 'traditional sessions', the representatives of the organisation could indeed claim complete jurisdiction, given that the presence of even one performance of a copyrighted 'arrangement', of a tune or song not itself considered to be in copyright, constituted a justification for licensing. Again, the burden of proof demanded disproof.

Don't Mourn, Don't Organise

One of the peculiarities that rendered much of the 'traditional' opposition to the Irish Music Rights Organisation ineffective was a general unwillingness to form organised lobby groups. For many people, the power and prescription of organisational structure is as anathema to the spirit of what they do as copyright is. One musician was very explicit about the quandary:

We tend to be laissez-faire, like, look whatever it is, it is and ... I agree with that. A number of years ago, in set-dancing, during the revival all the teachers got together and there was this big meeting that we should have this big organisation but then people sort of said, hold on a minute now, why not have no organisation whatsoever and just let it be as it is. Let's not analyse it, let's not go too much into it, let it just be there for everybody, and let's not have bosses and stuff like this, which always gets into power trips. I suppose music is a bit like that but there certainly needs to be ... When you see something like IMRO coming along and assuming control, ownership, total ownership of something that's not belonging to them at all, in any sense - Jesus, you'd nearly have to be organised in order to counter something like that. That's the paradox. If you're laissez-faire with the music then people are happy with that, they don't want organisation, they don't want bosses and they don't want people controlling it. But there are people out there who see a niche and they sort of say, look there's nobody controlling that there now, that's out there, that's free, like the soil, to be pumped dry. It's off the coast, it's ours, we claim ownership to this. Nobody else

needs to claim ownership to it. I think that seems to be the attitude of these collection agencies (Personal interview, Cork, 2001).

For many this presented a real difficulty, offering a fundamental challenge to the legendary anti-verbal stoicism of “shut up and play”, held as a bottom-line mantra by many musicians.

A related factor also militated against an organised lobby. There was much concern, confusion, and anger among those who felt that IMRO’s activities impinged upon their personal space, as it were. Furthermore, as could be seen at the Crossroads Conference in April 1996, some were certainly eager to look on if there was any fighting to be done. However, those who were interested enough to engage with the issues at length were few and far between. A major contributing factor to this lack of interest might be that law and legal doctrine are often perceived as esoteric, complex, and somehow distant from everyday life. One example provides clear evidence of this. In October 1997 a forum was convened in a large hotel function room in Letterkenny, County Donegal, to discuss the issue of traditional music and copyright. Three of the four scheduled speakers turned up, and one person arrived to hear what they had to say.

The Marsh

In October of 1997, Fintan Vallely, Hugh Duffy, and myself presented papers as invited speakers at a specially convened ‘copyright forum’, held at the Mount Errigal Hotel in Letterkenny as part of the Colmcille 1400 celebrations. Apart from the Chairperson and organiser, Conal Gillespie, and the speakers, only one other person was in attendance. This was John Moulden, a song scholar from Coleraine, and someone to whom I have looked from the start of my studies in this area for an approach that is balanced and reasonable. The sparse attendance, to say the least, was due to a number of factors. Despite the low attendance, there was a long and difficult discussion. The purpose of the forum was to clear the air of many misunderstandings that were starting to congeal in lengthy disputes.

The forum was convened around a table in a large room whose emptiness spoke volumes about the unrealistic expectations of the organisers. Copyright issues are too esoteric to be of interest to most people, never mind musicians. The official speakers read their papers informally, and the ensuing conversation was allowed to drift freely. It was yet another chance for me to hear the positions, and another opportunity to see whether any more progress could be made towards identifying the positions at stake.

Once again the debate came down to cross-purposes, ill-defined terminology, defensive declarations, and paradoxes. The talk was dominated by Hugh Duffy. He took an understandably defensive pose following Fintan Vallely’s paper. This was a development of Fintan’s Irish Times article. My own paper undoubtedly added to Duffy’s defensiveness. Ultimately, it had made a case against the increasing dominance of an economic world view in our lives.

"We have never, ever said that we will charge for sessions," Hugh Duffy declared at one point, "We don't claim to be arbiters of what is traditional and what isn't traditional," at another. At a later stage Hugh Duffy made the point that, "... as far as we are concerned if music is traditional, and I mean 'traditional', if it is non-arranged, then we have no right to collect for it, and we don't collect for it." He was also heard to say that, "Our blanket license covers the use of copyright music and that's all we're interested in. If some pub or session is a 'pure' session in the accepted sense of the word, we're not interested in that". Explaining some of the intricacies of the issue, Hugh Duffy offered:

"If the Chieftains are playing music in a pub, and they might regard it as traditional, it's copyright. If Frankie Gavin is playing in a pub, he's a member, so it's copyright music. It's his copyright. If you're playing music in a pub and you're a member, therefore you turn it into copyright music."

The Rule of Law for Hugh Duffy, and in his role as representative of IMRO, seemed to be the final arbiter for the issues, the ultimate arena for the verification of 'fact', "If the guy says it's traditional then it becomes a matter of fact whether it is or isn't. It has to be a matter of fact. Everything at the end of the day is a matter of fact." "Whatever we feel about it," he explained, "Whatever we feel is right or wrong or better or worse, it all gets down to the end of the day to whatever legislation, open to interpretation or misinterpretation, and the courts will determine what is or isn't." It remained necessary, he explained, for the Irish Music Rights Organisation to retain the reputation of unassailability in the face of legal challenges:

"The real test is that we have to go to court, and we're not going to go to court if we think we're likely to lose. We've never lost a case. We never bring a case if there is doubt."

Not only unassailability, but, indeed, total self-assuredness that, despite all of the contention and confusion, IMRO remained in a position which was fully and wholly correct, and therefore open to contest only in so far as their position was uncontestable:

"I have no objection, I welcome guys looking at this whole area, but from where I'm standing I have a very clear vision of what we're about. I know that at the edges there may be some crossover, some confusion at the edges, but there isn't any confusion about 90% of what we have done. And the 10% where there is confusion you'll find that it's vested, that it's not the issue ... from guys who don't want to pay."

IMRO's position was presented as uncontestable, but also as the only alternative:

"We don't have a monopoly ... I mean we have a monopoly here in this country. We have been cleared by the competition authority as being legitimate, as being the only way ..."

That 'way' was declared as the way of economics: "Our job is to collect the royalties. I think that we are in an economic world and I don't think there's any way around it." It was revealed during the discussion that IMRO had finally agreed on a deal with the Vintners' Federation concerning blanket licenses. It was Hugh Duffy's opinion that such a deal would soon take all of the heat out of arguments, and that the traditional music question was all but over, seeing that the legal and economic issues had been resolved.

Fintan Vallely was to exclaim in frustration at one point, "I feel as if I'm walking on a marsh. There's something moving and I can't really figure out what's going on!"

"What I want to say," said Fintan, "is that you make me appear kind of hysterical. What I'm saying, is that after the conference you clearly stated that it was IMRO's intention that when copyrighted music is being played that people were entitled to their copyright dues, regardless if it was in a session or not. If there's a crowd of people in a pub at a wedding singing "The Fields of Athenry", that the composer of the song is entitled to the royalties."

"Yeah, but we never get that," replied Hugh. "It's never reported to us."

"Let's say a session happens regularly. You said that you were encouraging all musicians to register all their versions of tunes." Fintan was doing his best to sound perfectly reasonable.

"If they want to. If they don't want to they don't want to."

"But you also said," continued Fintan, "that people can log their tunes and send them into IMRO at the end of the year. On the one hand, I would argue that you weren't aware of what a session was, or that you weren't aware of how many sessions there are in the country. But what I also have to say, and despite what you say, I do know of places of which money is being demanded for sessions. One particular pub, for instance, and there are several, and I'm not going to mention the name of the place, this happened just the week after that article I wrote in the Irish Times, where the IMRO inspector came in. He was disputing with this particular fella the size of the performance space, and there were a number of rock gigs on the Saturday night, and the inspector said he wanted to increase the fee they were charging ..."

"We've changed that now," defended Hugh.

"... but your man was disputing that," continued Fintan, "and the IMRO guy said "I believe you've a session here on a Sunday night. We're going to charge you for that as well." And the inspector left, and he was very aggressive with your man, and that particular case is just one."

"The point is," said Hugh, "that we have twenty thousand licenses in the country and we have 30 or 40 of these guys going around and they're all reputable guys; they're all ex-tax inspectors, ex-civil servants, ex-county council officials, ex-policemen, and at the end of the day they say that there's a session here, and it's a real session, and when it's looked at it's not a case that you can fight. And we've never lost a case, as I've said, and the reason we've never lost a case is because we always produce the evidence, and the evidence which, by and large, we produce, in fact, all the time we produce, is newspaper advertising about who's playing, and if it's a session, we're not crazy, we're not going to bring these guys to court."

"Half the pubs with sessions advertise," Fintan pointed out.

"But if they advertise sessions ..."

"They do."

"Ah, no they don't. Unless you had a particular case or I had a particular case, we could look at it. But there's an awful lot of hype about what we're charging and what we aren't charging. The reality is that we have to go to court if guys don't pay, and we certainly aren't going to go to court on a wing and a prayer, because if we got beaten in one court case there would be an avalanche of the bloody things, so we are more than careful."

I managed to get a lift from John Moulden as far as Galway. It was a long drive, and we managed to cover many concerns in the copyright debate on the way home, from the general rise of commercialism and the implications of new technologies, to social codes and etiquettes at sessions. I lamented out loud at one point that I had packed away my tape-recorder in the back of the car after leaving the forum. I felt that many of John's insights were valuable and sure to increase my understanding. I didn't trust my memory.

"Don't worry," said John wisely, "The thoughts will come round again."

Comhaltas Ceoltóirí Éireann's Opposition to IMRO

No organised 'traditional' lobby group grew out of the diffuse resistance to the Irish Music Rights Organisation. However, the major Irish traditional music organisation already in existence, *Comhaltas Ceoltóirí Éireann* (CCÉ) ('Association of Musicians of Ireland'), provided somewhat more structured opposition.¹⁹ At the time that 'traditional music' became a focus of the VFI-IMRO dispute the official position of *Comhaltas Ceoltóirí Éireann* as an organisation was one of unequivocal non-communication with regard to the Irish Music Rights Organisation. The full-time *Ard-Stiúrthóir* or Director-General of the organisation, Labhrás Ó Murchú, insisted to the members of his organisation that to talk to IMRO was to acknowledge their role and authority. In 1996, the members of *Comhaltas Ceoltóirí Éireann* overwhelmingly passed a motion at their

¹⁹ An overview of *Comhaltas Ceoltóirí Éireann* has already been provided by Henry (1989) and Valley (1999a). A number of key points will be here drawn from these accounts, and from examination of the CCÉ Constitution (CCÉ 1996). The constitution of *Comhaltas Ceoltóirí Éireann* lays claim to nondenominational and nonpolitical status. The constitution indicates that membership is open to all who sympathise with the aims and objectives of the organisation, and who undertake to abide by its Constitution and Rules. Those whose actions are interpreted as being in opposition to the aims of the organisation are liable to suffer expulsion. The specific goals of the organisation, set forth in the constitution, are as follows:

1. To promote Irish Traditional Music in all its forms;
2. To restore the playing of the Harp and Uilleann Pipes in the National life of Ireland;
3. To promote Irish Traditional Dancing;
4. To foster and promote the Irish language at all times;
5. To create a closer bond among all lovers of Irish music;
6. To cooperate with all bodies working for the restoration of Irish Culture;
7. To establish Branches throughout the country and abroad to achieve the foregoing aims and objects (CCÉ 1996:3-5).

There are reportedly over 400 branches of the organisation in Ireland and internationally. The primary roles of these branches are the recruitment of new members and the teaching of Irish traditional music and dance. A series of competitions are held every year on a pyramidal county, provincial and national basis. The final competition is an annual festival called *Fleadh Cheoil na hÉireann*, or All-Ireland Fleadh, which draws competitors from an international catchment who have qualified from earlier rounds.

Administrative levels of the organisation include the branches, the county boards, and the provincial councils, all of which are overseen by a central executive council (CEC), based in Dublin. The CEC has a president, general secretary, five vice-chairpersons, a national treasurer, a national registrar, a competitions officer, a music officer, a public relations officer, and two delegates from each provincial council. Permanent trustees are appointed by the CEC. They are responsible for instituting any criminal or civil proceedings on the organisation's behalf. The property of the organisation is vested in the trustees. The Central Executive council meets three times a year to direct the policy of the organisation and to decide on the venue for the All-Ireland Fleadh. Once a year a congress is held, which is attended by the members of the central executive council, two delegates from each branch, and two delegates from each county board.

national congress pledging non-involvement with the Irish Music Rights Organisation under any conditions. In the same year a representative of CCÉ's subsidiary trade union, the Association of Irish Traditional Musicians, dismissed IMRO as "an English import", while Ó Murchú himself could not even be drawn to make a comment on the matter (Vallely unpubl. 1996:9).

Labhrás Ó Murchú has been in charge of the operations of *Comhaltas Ceoltóirí Éireann* since 1968. The position he holds is a lifetime appointment, and one not included in the organisation's constitution. Recently appointed as a trustee of the organisation, he also holds the positions of main spokesperson for Comhaltas, and is the editor of the organisation's journal, *Treoir*. In 1997 Ó Murchú was nominated and elected to the Culture and Education Panel of *Seanad Éireann*, the Irish Senate. He is a member of Oireachtas (government) committees on education, heritage and Irish language, and is the deputy government spokesperson on these matters within the *Seanad*.

The Copyright and Related Rights Bill

What particularly focused Ó Murchú's attention on the Irish Music Rights Organisation, and what caused him to break his public silence, was the passage of the Copyright and Related Rights bill through the Irish parliament. Said to be the largest piece of legislation ever to have passed through parliament, it was the first time that the issue of copyright had been specifically addressed in Irish legislation since the Copyright Act, 1963. The new legislation was to be a significant revision and expansion of the 1963 Act in line with advances in technology, international obligations, and the laws of the European Union. A draft of the proposed bill for the new Copyright and Related Rights Acts was published in early 1998, whereupon lobbying interests began to make their case known through the voices of Senators in the Irish Seanad.

In his role as Senator, Ó Murchú lobbied against the Copyright bill, which inconveniently placed him in opposition to the official line of the Chief Whip of his political party, Fianna Fáil. At this point it is clear that Ó Murchú's role as Senator and his role as *Ard-Stiúrthóir*

of *Comhaltas Ceoltóirí Éireann* were not clearly distinguished from each other insofar as his representative capacity was concerned. In March, 1998, Ó Murchú attended a UNESCO conference in Stockholm, “The Power of Culture”, as a member of a delegation from the Oireachtas. Quite by accident, he found himself at a session which discussed issues concerning the encroachment of intellectual property rights upon traditional cultures. The concerns expressed at this session, and the widely-expressed need that certain protective measures needed to be enacted, provided him with internationally-sanctioned conceptual support for the anti-copyright stance of his organisation and his lobbying efforts.²⁰

Reasons for Opposition

Ó Murchú’s, and hence Comhaltas’, position against IMRO very much reflected the concerns generally expressed around the country. They had, he felt, no expertise or appropriate understanding of what might be considered ‘traditional music’. Furthermore, as far as the mandate of the Irish Music Rights Organisation was concerned, Ó Murchú claimed that the number of people in traditional music for whom copyright was an issue, whether they were commercially active or not, was negligible. He gave the clear impression that the vast majority of musicians involved in the commercial world would never even consider the issue of copyright, seeing traditional music as a free music, in the sense that everybody could play it, without restriction, without consideration of ownership.²¹ The other side of that argument, which Ó Murchú was very clear about, was that the copyright ethic of claiming ownership on tunes and songs that IMRO was promoting was anathema to the spirit of generosity which had sustained the types of “traditional” musical activity which *Comhaltas Ceoltóirí Éireann* represented.²² While for

²⁰ In the editorial of the second issue of *Treoir*, 1998, it was stated: “At the Stockholm conference there was widespread concern at the possibility of a nation’s store of traditional music falling into private commercial hands as has already happened in some countries. This has obvious connotations for Ireland” (Ó Murchú 1998). What those connotations might be was not stated.

²¹ “Now there’d be a very small section of musicians, and I’d say it would be very small, and particularly in more recent times, may see some advantage in a copyright-type situation but it raises huge questions, then, for the whole body of Irish traditional musicians” (Labhrás Ó Murchú, personal interview, Dublin, 1998).

²² “Now obviously a newly composed song could be copyrighted, if that is the wish of the author. Our hope would be that they wouldn’t do that, that they would contribute that song to the corpus of traditional

representatives of the Irish Music Rights Organisation “traditional” primarily means “anonymous” and therefore in the “public domain”, Ó Murchú was adamant that this position was not one his organisation could go along with:

That would be a very serious thing from our point of view. Many of the tunes are not anonymous at all. The composers are well known, or at least would have been well known. We know the names etc. And they would have been very proud, even the relations of those people would be glad that the tune bearing the name of the relation or whatever was still being played, so no, it's not a question of anonymity (Personal interview, Dublin, 1998).

This clash of approaches to music or musical activity was fundamental. Because of it, the development and expansion of copyright as an issue, and the expansion of IMRO as an organisation, would lead, he felt, to certain behavioural changes and the self-imposition of restrictions among traditional musicians.²³ He considered it the duty of his organisation to contribute to the debate in the Senate “before it's too late”. He believed that once the debate was opened up, and IMRO's intentions made clear, that it would have a considerable effect on musicians and the ways in which they thought about what they were doing. “Their intent,” he stated, “whatever about their mandate, is to expand and expand”. Ó Murchú was also somewhat concerned that the public relations efforts of the Irish Music Rights Organisation in this regard were contributing to a veil of positivity which made it difficult to focus on the issues of conflict which remained to be debated. The Irish Music Rights Organisation had been increasing the level of sponsorship for ‘traditional music’ events in a bid to increase levels of support for their project:

IMRO are trying to win support for their concept. They'll give a thousand pound to a festival here and they'll give £500 and they have their name, IMRO, on it, as the Arts Council would do, and therefore they are becoming user-friendly, and the people who get the £500 or £1000 say, “But we got money out of IMRO”. That to some extent dulls the debate, because you can't get onto the broader issues of the dangers that exist. So there is a PR exercise going on there on IMRO's part (Personal interview, Dublin, 1998).

music like they themselves had got their songs from previous generations. We'd be looking for a degree of generosity there” (Labhrás Ó Murchú, personal interview, Dublin, 1998).

²³ “But once it becomes widely known through debate as to what the intention is, then I think yes there will be alarm bells set off in the minds of a lot of musicians each time they go to play a tune, whether they're playing in a pub, or in a concert, or in a session, I think they're going to say, ‘we can play the first two reels, but we can't play the third reel’. Now you can see what that will do to music making” (Labhrás Ó Murchú, personal interview, Dublin, 1998).

Ó Murchú's stated aim at this stage was to try to ensure that the 'corpus' of music that was already there could be protected by legislation. He expressed a need to sit down with the Irish Music Rights Organisation to work out some of the problems, rather than "doing this across tables and across headlines" (Ó Murchú 1998).²⁴

It is questionable whether Ó Murchú would have been interested in the idea of copyright at all had it not been for the aggressive manoeuvres of the Irish Music Rights Organisation towards venues and events which ran under the auspices of his organisation. The *Fleadh Cheoil na hÉireann* committee in Clonmel was, in 1996, billed by IMRO for the 'use' of copyrighted music during the course of the festival. At around the same time a Comhaltas centre in County Clare, *Cois na hAbhna*, and another in County Westmeath, *Dún na Sí*, also received bills for the 'use' of copyrighted music:

It was good in a way that it happened as it gave me ammunition subsequently. Luckily enough each of those three contacted me. There could always be the danger that one of them could have written a cheque and sent it to IMRO, but they all contacted me, and I rang IMRO and I said, "Look, back off." They weren't specifying any tunes played ... They backed off a little, not a hundred percent, but we paid no money, and then IMRO were invited in to come before the Oireachtas Committee on Heritage, of which I'm a member, and I presume they prompted the invitation for themselves, but they didn't come in to talk about traditional music. They came in to talk about the reason for copyright, etc., and luckily enough I availed of the opportunity and I was lauded for this by the chairman, and I raised this whole question of traditional music which changed the tone of the meeting entirely. First of all they responded by saying that it wasn't at all their intention to interfere with the ordinary session of music, and then I threw at them the three demands and said that was a mistake that shouldn't have happened. Now, the thing was it showed their intention. What it really said was, "We can't specify any copyrighted tune which was played at the Fleadh Cheoil in Clonmel, but we assume that somewhere, some place in Clonmel, in some pub, somebody played a copyrighted tune." That would mean they could go anywhere on that basis, on that principle. I've used that with the Minister in my meetings and I've used it in the Senate as well that that shows the type of power that IMRO want in legislation (Personal interview, Dublin, 1998).

It was of great concern to Ó Murchú that the Copyright and Related Rights_bill not allow for some legislative possibility that would severely impede the musical practices of those in his organisation and allow the expansion of the Irish Music Rights Organisation to continue unimpeded: "If anything gets into that which is going to create a loophole for IMRO or any collecting agencies we've a problem" (Personal interview, Dublin, 1998).

²⁴ "I think it's still vital that the individual musician feels free to hear a tune or tape it and replay it and not be wondering whether somebody is policing them and whether there's a royalty involved. I think IMRO have to alter the equation. They tell us they have, IMRO are telling us there's no danger to traditional music" (Labhrás Ó Murchú, personal interview, Dublin, 1998).

Assurance had apparently been given in writing by Minister Tom Kitt, however, that “under no circumstances would the corpus of traditional music be interfered with” (ibid.).

Treoir magazine published an article entitled “Irish Traditional Music must not be licensed” in the second issue of 1998. The article was an almost verbatim report of Ó Murchú’s spoken contributions to a Joint Oireachtas Committee on Heritage to which IMRO representatives had been invited to speak. No other contributions were registered in this article. Stating that it was imperative that IMRO did not “stifle or inhibit the natural momentum of Irish traditional music”, Ó Murchú championed his organisation for having “ploughed a lonely furrow to save our music from extinction”. “To ask our musicians to take out a licence to play their music,” he added, “would be the equivalent of asking a young lad to pay for the privilege of hurling a sliothar [sic.]²⁵”. What was particularly interesting, and most definitely a sign of things to come, was the final line of the article: “The IMRO representatives gave an assurance that Irish traditional music, as outlined by Senator Ó Murchú, would not be restricted or hampered by IMRO.”²⁶

The Agreement

Following a series of private meetings, Shay Hennessy, then Chairman of the Irish Music Rights Organisation, and Labhrás Ó Murchú, *Ard-Stiúrthóir* (Director-General) of *Comhaltas Ceoltóirí Éireann*, signed a ‘Letter of Agreement’ on the 21st December 1998. In this “wide-ranging agreement” CCÉ and IMRO agree to cooperate in the promotion of traditional Irish music, song, and dance, to the mutual benefit of members of both organisations. IMRO stated that they accepted that the provisions of copyright law “should not deprive Irish people of the right to make free use of music from their folk/heritage tradition in its original form”. According to this agreement, *Comhaltas Ceoltóirí Éireann* contracted with the Irish Music Rights Organisation for a blanket

²⁵ A *sliotar* is a leather ball, approximately the size of a tennis ball, which is used in the game of hurling, one of Ireland’s ‘national’ sports. A sliotar can also be referred to as a “hurley ball”. To “hurl a *sliotar*” is to hit the ball with a hurling stick (*camán*), which stands waist-high and is normally made of ash.

²⁶ This apparently did not stem the flow of opposition, however. In a representation to the Irish Senate in June 1998, Labhrás Ó Murchú likened the “inherent dangers in copyright law” to the decree by “a Queen of England” which called for all pipers and harpists to be hanged. This refers to a request made by Elizabeth I to Lord Barrymore to “hang the harpers wherever found” (see Thuente 1994).

licence to cover all official Comhaltas functions and centres, excluding broadcasts, for the sum of £1,000 per annum. In return for the blanket licence, and allegedly in recognition of the cultural work that Comhaltas undertake, IMRO agrees to make a “financial subvention” to Comhaltas for the sum of £50,000 per year, commencing in January 1999. This sum is to be reviewed at the end of a five-year term. As part of the agreement, IMRO also agrees to refer all requests for support for Traditional music to CCÉ. An additional sum of money, a “financial subvention” of £25,000 per year, was also included, going to Brú Ború, a cultural centre affiliated to *Comhaltas Ceoltóirí Éireann* in order to assist a “millenium project to encourage the creativity and development of composers and arrangers writing in the traditional idiom”. CCÉ, in return, agreed to support IMRO’s submission to the Irish Department of Enterprise, Trade and Employment in relation to the proposed Copyright bill.

The Agreement was announced in the first 1999 issue of Treoir magazine, under the heading: “IMRO and Comhaltas Sign Agreement” (6), and in the June, 1999 issue of the IMRO Members Newsletter, in an article entitled, “IMRO and Comhaltas Céoltóirí [sic] Éireann Sign Agreement to Benefit Traditional Irish Music”. Although mention is made in both articles of both the blanket licence and the financial contribution to Comhaltas, no mention is made of the sums involved or of any other details. The IMRO Newsletter simply states that: “In recognition of the work being done by Comhaltas, IMRO will provide financial support to help encourage and foster the creativity and development of composers and arrangers writing in their traditional idiom”.²⁷ It continues:

Speaking on behalf of Comhaltas, Senator Labhrás Ó’Murchú [sic] said that the agreement will result in very significant benefits to both organisations. He also stressed the importance of a copyright-friendly environment as the digital age develops and pledged his organisations [sic] backing to the submissions made by IMRO to the Department of Enterprise, Trade & Employment in relation to the proposed Copyright Bill (1999:6).

The article in Treoir further reported that: “Senator Labhrás Ó Murchú, Ardstiúrthóir, *Comhaltas Ceoltóirí Éireann*, said that the agreement will result in very significant

²⁷ By October of 1999 the IMRO Members Newsletter extended the remit of the agreement in paradoxically more vague and more specific terms: “Under the agreement IMRO will provide sponsorship for various events and will make available its experts for lectures and curriculum design. CCE [sic.], in return, will support IMRO and its activities both nationally and internationally” (IMRO 1999a).

benefits to both organisations. ‘Traditional Irish music is winning new audiences all over the world and this agreement will contribute further to its development in all its forms’.” Although this was offered as having been said by the Senator, these were also the exact words found in the text of IMRO’s 1998 Annual Report and Accounts (15). The two representative voices of the organisation had truly become one.

Then Minister for Enterprise, Trade, and Employment, Tom Kitt, published sanctioning remarks in Treoir magazine (Kitt 1999), which gave official legitimisation to the agreement between IMRO and *Comhaltas Ceoltóirí Éireann*. In an article whose title proclaimed “Pure Tradition Copyright Free”, his own remarks clearly placed his understanding of the word “traditional” within cultural nationalist and romantic discourses of “the folk”. His remarks contrasted that which is authentically traditional, communal, non-creative, non-original, and non-copyrightable, with that which is authored, individual, creative, original, and copyrightable.²⁸ Furthermore, his hope was that the agreement which had been signed would go a long way to ensuring the eradication of conflict within “the music community”.

Initially, when no sums were disclosed, some members of Comhaltas inquired officially as to whether a licence-fee had been paid to the Irish Music Rights Organisation. Some were worried that the payment of a licence-fee would constitute recognition that the Irish Music Rights Organisation was a suitable licence-granting authority in contexts of traditional music, setting a significant precedent for similar organisations worldwide. They were assured by official representatives of *Comhaltas Ceoltóirí Éireann* that no licence had been paid for. This assurance was given three months after the agreement with IMRO had been signed, at which time the full sums of money involved had not yet

²⁸ “Clearly, for pure traditional music which is, by definition, without an author, and for which the question of originality cannot arise, there is no reason primary copyright should attach to it at all. Copyright considerations would not affect the right of players to play music which is part of a genuine traditional community resource and over which no primary copyright interest can exist. ... With regards to how disputes in this grey area might be avoided, I believe that interested parties, both in respect of traditional music and of music copyright, have a serious responsibility to behave sensibly and reasonably towards each other in asserting their respective rights. In this context, I welcome the recent demarcation agreement between Comhaltas Ceoltóirí Éireann and the Irish Music Rights Organisation which should go a long way to ensuring that unnecessary and damaging disputes on such issues within the music community are avoided” (Kitt 1999:15).

become public knowledge. When they became public knowledge, it was understood that the licence fee of £1000 obviously constituted little more than a nominal payment. What was important about the licence fee, though, was that it officially granted the Irish Music Rights Organisation full nominal jurisdiction in the contexts of traditional Irish music, insofar as Labhrás Ó Murchú and *Comhaltas Ceoltóirí Éireann* were recognised by IMRO as being the primary authorities in those contexts.

The issue of Brú Ború itself was interesting. Not only is this cultural centre managed by Úna Uí Mhurchú, Labhrás Ó Murchú's wife (and then Chairperson of the Irish Arts Council), but of all cultural centres affiliated to CCÉ, Brú Ború is the one centre that does not have to submit end-of-year financial accounts to the organisation. It later transpired that none of the members of *Comhaltas Ceoltóirí Éireann* had been informed in advance of the *Ard-Stiúrthóir's* intention to sign an agreement with the Irish Music Rights Organisation, and in fact the first cheques were handed over before the official committees of CCÉ were able to approve the agreement as per the proper constitutional conventions of the organisation. As suggested above, neither were high-ranking members of CCÉ informed of the full financial details of the agreement until they had, in fact, become public knowledge following a series of possibly accidental information leaks.

One Year On

By Issue 1, 2000, of Treoir, the 'Letter of Agreement' had become "The Cooperation Agreement", the first birthday of which had been reached by December 1999. In this article, "A Protection for Ethnic Music", it was reaffirmed that 'the Agreement' "underlines the copyright-free status of Irish traditional music in its original form" (CCÉ 2000). This was stated despite any such claim being in the original letter of agreement. Neither had the agreement, or anything else for that matter, managed to arrive at a successful or adequate legal definition of what 'traditional' meant, never mind "Irish traditional music in its original form". That the phrase used in the original agreement was "music from their [Irish people's] folk/heritage tradition in its original form" simply

added to the confusion. In the “Cooperation Agreement” article, more than a year after the agreement, there was still no disclosure of the sums of money involved, although at least now there was an admission that Brú Ború had received an undisclosed “financial subscription”. To mark the anniversary, the article reported, Shay Hennessy, then IMRO Chairman, and Hugh Duffy, then IMRO’s Chief Executive Officer, addressed the CCÉ *Ardchomhairle* (‘Advisory Board’). It was reported that the 27 member *Ardchomhairle* “unanimously²⁹ expressed satisfaction with the relationship to date between Comhaltas and IMRO and endorsed the discussions which are ongoing between both organisations over a range of issues that are important not only to both organisations but to the future of Irish creators of all genres in the next century” (ibid.).³⁰ At this meeting it was repeatedly stated during the IMRO address that the agreement had, indeed, achieved the “copyright-free status of traditional music in its original form”.³¹

Ó Murchú is convinced that ‘the end of debate’ has been reached, that the ‘problem’ of copyright and traditional music has been solved, that the role of *Comhaltas Ceoltóirí Éireann* as representative of Irish traditional music has been vindicated and legitimated, and that all problems have been eliminated: “What we now have is legislation, the Minister on the record, and an agreement with the collecting agency that traditional music in its original form is copyright-free. And the second part of it, that we are not going to be interfered with in our activities” (Ó Murchú 2000). Likewise, the representatives of the Irish Music Rights Organisation are satisfied that it has all worked out to the mutual advantage of both organisations. As the then-chairman of the

²⁹ The claim to unanimity was patently untrue, as some dissension had been voiced at the meeting, and the ‘ongoing discussions’ between the organisations primarily meant that Labhrás Ó Murchú was still communicating with officials from the Irish Music Rights Organisation.

³⁰ An interesting development in the discourse available to Treoir readers in this article was the presence of acronyms, phrases, and taxonomy more familiar to the members of IMRO than the members of Comhaltas. Using the rhetoric of ‘protection’, ‘challenge’ and ‘opportunity’, in the space of three short paragraphs the article managed to shore up the joint activities of CCÉ and IMRO with the legitimating support of the WTO (World Trade Organisation) intellectual property negotiations, the EU (European Union) Rental and Lending Directive, and of Comhaltas members in the US and the UK. “The possibilities,” it reported, “of Comhaltas members in the US and the UK who create new music in these territories joining IMRO is at an advanced stage [sic.]” (CCÉ 2000).

³¹ The fact that this was simply a rhetorical phrase to paper over conceptual cracks and stop people asking questions, was certainly not a point that any of those leading the meeting were willing to dwell on. It remains a catchy phrase that doesn’t really change anything as far as copyright or legislation is concerned.

organisation stated: “Comhaltas has about 37,000 members worldwide, which is a fairly large constituency of people, and certainly there are a potential 27,000 IMRO members in that constituency, or whatever percentage there might be of that 37,000, we’ll certainly be there assisting them and helping them to develop their creativity” (Shay Hennessy, personal interview, Dublin, 2000).

Summary

Once again, in this chapter we have seen the cycle of expansion dynamic at work within the working environment of the Irish Music Rights Organisation. The ‘traditional’ cycle that is detailed here is particularly interesting insofar as it constitutes something of an offshoot of IMRO’s cycle of expansion in relation to the Vintners’ Federation of Ireland (VFI). In some senses it could be argued, in fact, that the Vintners’ Federation’s negotiation strategies provided the Irish Music Rights Organisation with the opportunity and incentive to expand their claims of jurisdiction to cover the ‘traditional’ domain. Subsequently, IMRO’s licensing claims in regard to ‘traditional music’ were met with considerable resistance, not least of all from ‘traditional’ musicians themselves. This was rarely voiced openly. If only for this reason it is difficult to gauge the intensity of general resistance to the organisation’s expansion among ‘traditional’ interests. Nevertheless, occasions when resistance was clear and unequivocal, as detailed in the ‘ethnographic passages’, seemed like veritable flashpoints.

Resistance to the extension of IMRO’s licensing claims was particularly strong from the national ‘traditional music’ body, *Comhaltas Ceoltóirí Éireann* (CCÉ). The shift in the relationship between the representatives of both IMRO and CCÉ allows us to see the cycle of expansion in high relief. The transformation of the official position of Comhaltas from complete opposition to complete alliance was nothing short of spectacular. Now, clearer than ever, we see the expansionary dynamic of expansion, resistance, and legitimisation. More importantly, perhaps, we see that the extension of the Irish Music Rights Organisation’s interests is not merely a question of oppressive imposition, but, rather, a question of negotiation and acquiescence. Ultimately, all resistance was

overcome or rendered ineffective through a series of contractual agreements which legitimated IMRO's claims to jurisdiction. By the signing of the Copyright and Related Rights Act, 2000, the representatives of IMRO had achieved widespread governmental and organisational support for their activities, effectively rendering their role and activities unchallenged. This effectively established a condition of unquestioned hegemony for the organisation and its expansionary dynamic.

The role and activities of the Irish Music Rights Organisation, then, constitute a prime example of a hegemonic order. The counterinductive purposes of retheorising (see pp. 22-25) are clearly suited, then, to the taken-for-granted orthodoxies of IMRO's position. What has been presented thus far, however, is a primarily descriptive examination of the organisation's activities from 1995-2000. This has shown us that licensing is the primary operation of the Irish Music Rights Organisation. Insofar as licensing is necessary for the organisation to exist, expansion of licensing claims is the dominant feature of the organisation's activities in the years following 1995. What is provided in the next chapter, however, are the first steps towards a more explanatory analysis of this expansion.