

Chapter 6

Questioning the Authoritative Word

Introduction

Through the use of Galbraith's 'Planning System' model it has become clear that the expansion of the Irish Music Rights Organisation is fundamentally rooted in a general and pervasive tendency towards the achievement of total predictability and control, otherwise understood as a general tendency towards the elimination of uncertainty. We also saw that getting people to accept the authority of the organisation is the primary way in which this predictability is achieved within IMRO's working environment. This is because claims to authority are really all that the representatives of the organisation have to fall back on.¹ In Chapter 5 we also noted the authoritarian character of collegial decision-making within the Planning System. We now go further, and suggest that the general character of authority within the Planning System, and within the Irish Music Rights Organisation, relies on the principle of certitude. Certitude, in this sense, refers to an absence of doubt, a condition in which eliminated uncertainty is presumed. In this chapter we challenge IMRO's certitudes and thereby challenge the very existence of the organisation itself.

Authority and Certitude

Among those few who have inquired into what the term might mean, 'authority' would seem to be most commonly understood as the provision of certitude:

The state of certitude, alone, excludes all prudent fear of error. When the judgment connects two simple, abstract concepts, whose comprehension is perfectly clear, the relation of subject to predicate is seen to be *absolutely necessary* and *immutable*, so that the object of our thought could not possibly be otherwise without a contradiction in thought. With regard to such self-evident judgments - "*per se nota non solum in se sed quoad nos et omnes*" - there can be *no possibility* of error. Our assent is *compelled* (Coffey 1912:212).

¹ Challenges to the authority of the organisation are, then, hardly likely to be greeted warmly: "It goes without saying that any attack on existing belief and the associated virtue will not be welcomed by those who reflect the attitudes and needs of the Planning System. Nor will it necessarily be welcomed by those who are chained by existing belief to the purposes of the Planning System" (Galbraith 1973:244).

Thus, G. C. Lewis suggests that the 'principle' of authority lies in "adopting the belief of others, on a matter of opinion, without reference to the particular grounds on which that belief may rest" (1849:7).² This is also consistent with Weldon's observations that "when people possess authority they seem to possess the capacity to produce reasons, if challenged, or at any rate are believed to have this capacity. At the same time 'People do what he (who possesses authority tells them without asking questions'" (1964:43). Similarly, de Jouvenel understands authority as "the faculty of gaining another man's assent" (1957:29).

This type of authority, then, can be either accepted or rejected. This is authority that must be claimed, acknowledged, and unquestioned for it to retain its status as authority. It follows then that this type of "authority is strongest when subordinates anticipate the commands of superiors even before they are voiced" (Peabody 1968:474). To question the certitude of this authority is to remove this authority as the provision of certitude. There is no middle ground.

The Authoritative Word

Mikhail Bakhtin characterises the exercise of such authority as "authoritative discourse" or "monologic utterance". Authoritative discourse gains its power from its presumed incontrovertibility, in the face of which is expected unconditional allegiance:

The authoritative word demands that we acknowledge it, that we make it our own; it binds us, quite independent of any power it might have to persuade us internally; we encounter it with its authority already fused to it. The authoritative word is located in a distanced zone, organically connected with a past that is felt to be hierarchically higher. It is, so to speak, the word of the fathers. Its authority was already *acknowledged* in the past. It is a *prior* discourse. It is therefore not a question of choosing it from among other possible discourses that are its equal. It is given (it sounds) in lofty spheres, not those of familiar contact. Its language is a special (as it were, hieratic) language. It can be profaned. It is akin to taboo, i.e., a name that must not be taken in vain (Bakhtin 1981:342).

Most significantly for our purposes, Bakhtin notes that such authoritative utterance "is dissolubly fused with its authority - with political power, an institution, a person - and it stands and falls together with that authority" (1981:343-344). To question the authority

² Cited in Friedrich (1964:43).

of the Irish Music Rights Organisation is to question its very existence. Mary Douglas remarks that: “[I]nstitutions survive by harnessing all information processes to the task of establishing themselves. The instituted community blocks personal curiosity, organizes public memory, and heroically imposes certainty on uncertainty” (1986:102). Little wonder, then, that the authority of IMRO, with support of law and government, is often expressed in the imperative from within copyright’s “circle of certainty” (Freire 1997:21). Critical legal scholars such as Rosemary Coombe (1998) note a strong correlation between the dominant discourses of law and intellectual property and Bakhtin’s analysis of “monologic” relations. A crucial factor in any such analysis is a recognition that unquestionable or at least unquestioned monologic authority serves to stifle dialogue, end debate, and freeze meaning in the name of doctrine, leading Coombe to comment: “If what is quintessentially human is the capacity to make meaning, challenge meaning, and transform meaning, then we strip ourselves of our humanity through overzealous application and continuous expansion of intellectual property protections” (1998:84-85).

We have already critiqued the authority that the representatives of the Irish Music Rights Organisation derive from the twin mandate of membership and neo-classical economics. Perhaps the most powerful legitimating forces in the authoritative discourse of the organisation, however, are the established, orthodox discourses of law, copyright, and performing rights. These provide for the ‘prior discourses’, the ‘distanced zone’, the privileged hierarchies of activity. We might see this, then, as a clear example of what Weber refers to as the ideal type of “legal domination”, that is, the acceptance of actions as legitimate insofar as they derive their authority from a legal order made up of an abstract system of rules (Weber 1968:Ch. 3). Weber regarded this as the dominant mode of organisation within modern industrial societies, and especially characteristic of bureaucratic organisations, such as IMRO. It is noted in passing that Weber’s critique of bureaucracy, efficiency, and rationalisation is broadly consistent with the identification of the tendency towards the elimination of uncertainty within Galbraith’s Planning System. Also referred to as “rational-legal authority”, legal domination involves acceptance of rules because they are rules. The systematic logical structures of the law provide for its

legitimacy: “Thus, the autonomy of law takes on a sinister aspect. Law frees itself from the sources which could challenge its legitimacy” (Cotterrell 1984:166). Rational-legal authority, then, attaches to the clearly-defined bureaucratic positions or offices of IMRO’s technostructure and the associated formal powers within the collegial decision-making process rather than to the office-holders themselves. Emerging out of deference for the ‘rule of law’, power is thereby exercised within the legitimacy of a legal framework.

Weber identifies two other ideal types of what he terms ‘legitimate authority’: ‘traditional’ authority; and ‘charismatic’ authority. Comprehensive discussions of these various ideal types of authority have been undertaken elsewhere and need not be repeated here (e.g., Friedrich, ed. 1958; Giddens 1971; Cotterrell 1984). What is of interest here, however, is that in each case, ‘legitimate authority’ is still understood as the provision of certitude. Thus, for Weber: “The authority of the leader is legitimate if, and only if, the *follower* believes that it is legitimate, and if he voluntarily obeys commands because of a belief that he has a moral duty to do so” (Duke 1976:49).³

One of the most significant aspects of the expansion of the Irish Music Rights Organisation is that IMRO representatives assume the authority of the organisation is unquestionable because it is based on the natural, inevitable, universal, and unchallengeable principles of copyright law. Hence, one of IMRO’s purposes for expansion and the cultivation of useful belief (see pp. 134-136) is to rid the world of

³ This understanding of authority is also co-extensive Foucault’s ‘juridico-discursive’ authority, in which “power acts by laying down the rule”: “Power’s hold ... is maintained through language, or rather, through the act of discourse that creates, from the very fact that it is articulated, a rule of law. It speaks, and that is the rule” (1990:83). It is also sympathetic with Edward Said’s reflections on authority: “*Authority* suggests to me a constellation of linked meanings: not only, as the OED tells us, ‘a power to enforce obedience,’ or ‘a derived or delegated power,’ or ‘a power to influence action,’ or ‘a power to inspire belief,’ or ‘a person whose opinion is accepted’; not only those, but a connection as well with *author* - that is, a person who originates or gives existence to something, a begetter, beginner, father, or ancestor, a person also who sets forth written statements. There is still another cluster of meanings: *author* is tied to the past participle *auctus* of the verb *augere*; therefore *auctor*, according to Eric Partridge, is literally an increaser and thus a founder. *Auctoritas* is production, invention, cause, in addition to meaning a right of possession. Finally, it means continuance, or a causing to continue. Taken together these meanings are all grounded in the following notions: (1) that of the power of an individual to initiate, institute, establish - in short, to begin; (2) that this power and its product are an increase over what had been there previously; (3) that the individual wielding this power controls its issue and what is derived therefrom; (4) that authority maintains the continuity of its course” (cited in Gilbert and Gubar 1995:151-152).

error, to rid the world of copyright infringement: “Don't bother to claim the status of an innocent infringer: there are no innocent infringers. With or without notice, the work is fully protected by copyright” (Samuels 1993:158). As Galbraith notes, however: “Papal infallibility was powerfully served by the fact that the Holy Father defined error” (1973:178-179). Copyright is right, and the Irish Music Rights Organisation successfully conducts its affairs on that basis, therefore copyright is right. The presumed ubiquity and universality of copyright calls forth the ubiquity and universality of performing rights administration. All that is really required for the existence and successful expansion of the organisation is that other people believe that, in principle:

Any institution that is going to keep its shape needs to gain legitimacy by distinctive grounding in nature and in reason: then it affords to its members a set of analogies with which to explore the world and with which to justify the naturalness and reasonableness of the instituted rules, and it can keep its identifiable continuing form (Douglas 1986:112).

In this chapter, the claims to authority made by representatives of the Irish Music Rights Organisation in the cause of law, intellectual property, copyright, and performing rights will be undermined, and the authoritative word questioned. This is done in recognition that “law is one of the more voluble discourses which claims not only to reveal the truth but to authorise and consecrate it. The truth of law is not to be taken for granted but seen as a problem to be investigated” (Hunt and Wickham 1994:12). Appealing primarily to literature drawn from the fields of critical legal theory and the sociology of law, two points will be argued:

- First, the workings of law are not separated from social life, and are neither value-free nor politically neutral.
- Second, the thinking and practices that go along with ‘law’, ‘intellectual property’, ‘copyright’, and ‘performing rights’ are neither natural, inevitable, nor necessary.

By drawing attention to these issues we render visible the claims of the representatives of the Irish Music Rights Organisation as *claims*, rather than as “proposition-free, natural and spontaneous affirmations about “reality”” (S. Hall 1998:1057). In acknowledging these points it will also be recognised, however, that the workings of law play a vital role in the production and generation of meaning, power, and knowledge in the social interactions of our everyday lives. By structuring our expectations they guide and shape our lives.

Neither Value-free nor Politically Neutral

In this section the phenomenon of “legal closure” is briefly examined. As will be shown, legal closure, a term referring to the orthodox position in legal practice, describes the way in which law and the practices of law are often understood to constitute an autonomous sphere of value-free and politically-neutral doctrine and activity. Following the work of Roberto Mangabeiro Unger, we can see legal closure as issuing primarily from the factors of objectivism and formalism. Legal closure finds a sympathetic environment within IMRO on account of an underlying workaday philosophy of logical positivism. As a result of this closure, the workings of law and the activities of the Irish Music Rights Organisation are increasingly perceived as arcane, esoteric, and largely irrelevant to the social interactions of our lives, while at the same time they increasingly play a part in those interactions. Thus, legal closure contributes further to the “cultivation of useful belief” and reinforces the protective purposes of IMRO’s technostructure. Scholars working in the field of critical legal theory, however, have shown that the basic premises of legal closure are untenable. Arguing that closure effectively serves to shut off the possibility of critical inquiry and dialogue, critical legal theorists call for the recognition that there are no positions of theoretical innocence or value neutrality. Law, copyright, performing rights, and the authority of the Irish Music Rights Organisation should therefore be subject to critical analysis.

Legal Closure

For many people, law, the doctrines of law, the workings of law, the institutions of law, the concepts of law, seem to be separate from, and only tangentially relevant to, the everyday interactions of their lives. The apparent separation of law and, in particular, legal doctrine from the contingencies of social and political life is, in fact, one of the prime assertions of orthodox legal theory and one of the most influential foundations of legal practice (Hutchinson, ed. 1989; Fitzpatrick and Hunt, eds. 1987). We have already seen how, through enactment of the protective purposes of the Irish Music Rights

Organisation, the technostructure of the organisation engages in practices that might be characterised as tending towards *organisational* “closure”. Now, in a move encompassed by the term “legal closure”, law, and practices legitimated by law, are characterised as autonomous, self-sufficient, value-free and politically-neutral (Blomley 1994). This is achieved, Unger has argued (1989:323-343), through the dominance of formalism and objectivism in legal practice. Formalism, in the sense that Unger identifies it, holds that legal reasoning is fundamentally composed of impersonal purposes, policies, and principles, indeed it is “only through such a restrained, relatively apolitical method of analysis” that legal doctrine is deemed possible (323). Analysis and practice remain internally referential, working within a circle of institutionally defined and closely guarded “canon of inference and argument” (ibid.) conceived as a collective tradition. Objectivism, presupposed in many ways by formalism, “is the belief that the authoritative legal materials - the system of statutes, cases, and accepted legal ideas - embody and sustain a defensible scheme of human association” (324). Legal materials, then, are presumed to suggest, at least, the normative force of an intelligible moral and practical order. The effect of formalism and objectivism within legal reasoning is “the presentation of legal knowledge and legal practice as divorced from quotidian human experience and political life ... uncontroversial and beyond individual control” (Blomley 1994:13).

Largely as a result of the processes of legal closure, law, for the most part, then, “appears as an arcane world of professionalism centred on a body of esoteric knowledge which is intimidating to the uninitiated in its bulk and obscurity” (Cotterrell 1984:17). This is perhaps especially the case for copyright. This is ironic, for as law increases in technical complexity, and is deemed by many people to be more and more irrelevant to everyday concerns, it intrudes more and more into our lives as “its increasingly detailed regulations relate it more and more concretely to particular narrowly defined situations and relationships” (186). This is one of the interesting things about the expanding role, activities, and authority of the Irish Music Rights Organisation. As copyright and intellectual property become more and more familiar aspects of the discursive landscape in Ireland through increasingly technological, standardised,

specialist, and expansionary organisational practices, those same practices are increasingly regarded as legitimate, or, at least, unremarkable.⁴ It has been suggested that the “convoluted and archaic style” of judge-made common law systems, such as is found in Ireland⁵, may contribute even more to the mystification and self-legitimation of the legal system than in the more “visible” legal principles of civil codes.

Legal closure is, thus, another significant factor in the “cultivation of useful belief” for the Irish Music Rights Organisation (see pp. 134-136). Work by Sarat, reported in Cotterell (182), suggests that most people have an idealised and unrealistic conception of the way the legal system operates, and, while this persists, support for it will probably remain widespread. As Cotterrell notes: “One of the strengths of law's legitimacy is that few people acquire ... detailed knowledge of legal doctrine and practice and most of those who do have specific personal or professional commitments to the legal system”

⁴ At the apparent height of conflict between IMRO and “traditional” lobbyists, two articles were published independently in relevant magazines making pleas for written responses to the issues involved, one written by William Hammond for Irish Music Magazine (1996), the other by myself for Treoir (1998). Together, the circulation of the articles ran into the tens of thousands. William received no responses. I received one, about 100 words in length. It didn't seem to really matter all that much to a lot of people.

⁵ A detailed exposition of the development of common law in Ireland can be found in Grimes and Horgan's An Introduction to Law in the Republic of Ireland (1981). For more general discussions of the development of common law see Hogue (1986) and Blomley (1994). Common law is the system currently in use within Ireland and within the Anglo-American tradition of law. The common law system is often contrasted with the civil law traditions of continental Europe. As a system of law it is practised almost exclusively within the context of the English language and “its continuity through almost eight centuries is unique in the history of European legal systems” (Hogue 1986:241-242). Founded in England by Henry II (1133-1189), common law had become a system of some complexity before the end of the 13th century, requiring, like the Brehon laws, professional specialisation. Up to this point in English history the sources of law were custom, the dictates of King and council, and, morally, the dictates of the church (Grimes and Horgan 1981). Common law in its medieval origins was principally land law, land being the principal source of wealth at that time, and, with the commercial and industrial revolutions, common law continued to provide the rule of law for the protection of wealth and personal property (Hogue 1986). Common law worked on the basis of a centralised administration, emphasising legalised uniformity and providing a consolidation of political power. The Norman imposition of feudalism, the rule of lord and serf, had heralded the “arrival of basic real property principles of rights, obligations and duties appertaining to the ownership and possession of land” (Grimes and Horgan 1981:22).

In 1155 Pope Adrian IV granted Henry II feudal lordship of Ireland. In 1171 Henry II arrived in Ireland. The late twelfth and early thirteenth centuries were a time of population explosion across Europe, with resultant land-hunger, migration, high food prices and low labour costs. The attraction of large areas of underpopulated agricultural land in Ireland at such a time provided extra impetus to colonization as individuals took the initiative, acquiring feudal grants of land within a military system (Simms 1989). The Norman invasion resulted in the co-existence of two distinct and irreconcilable legal systems: common law within Dublin and the Pale, which essentially served to promote the interests of the feudal lords and their vassals, and brehon law which still prevailed beyond the Pale. By 1331, however, common law had, in principle at least, been extended to the whole of Ireland, although even as late as 1558 the brehon laws were still referred to as applying to certain litigants (Grimes and Horgan 1981:27).

(184). This, for example, is particularly the case when professional musicians work to achieve a high degree of knowledge and competency in relation to copyright legislation, royalty collection, and the workings of the Irish Music Rights Organisation. It is in their interests that the system remain as it is, as long as they continue to benefit from, or have hopes of benefiting from, participation in the technostucture of the organisation. For those not personally committed in some way to the legal system, personal experience of the law often only arises when the law is felt to impact directly, positively or negatively, on the individual's personal conditions of life (ibid.).

Critical Legal Theory

Scholars in the field of critical legal studies⁶ (CLS) have argued persuasively that the presumptions of value-neutrality and apoliticality that accompany legal closure are quite simply untenable. In fact, claims to interpretative authority and political representation that are presented as fixed, natural, prepolitical, necessary, and inevitable categorizations of legal culture, can often be shown to be highly contentious (Peller 1985). Portraying such claims as beyond doubt and indisputable effectively serves to close down critical inquiry and, often, to incapacitate those who might otherwise challenge the hegemonic order. Proponents of critical legal theory assume a general anti-positivist stance, reject the basis of dominant contemporary legal retheorising, and insist that “it is both possible and necessary to think differently about law” (Hunt 1987:6). It is asserted that there can be no positions of theoretical innocence or political neutrality, and that the silences and exclusions generated by assuming such positions must be overcome:

⁶ Useful introductions to critical legal theory can be found in Fitzpatrick and Hunt (eds. 1987), and Hutchinson (ed. 1989). A largely U.S. movement, critical legal studies (CLS) was officially established in 1977 at a conference held at the University of Wisconsin-Madison. It initially drew heavily on radical political culture, many of its founding members having participated in social activism since the 1960s. Advocates of CLS continue to draw theoretical inspiration from social theory, political philosophy, economics, and literary theory. The movement owes a considerable debt to legal realism, a school of legal thought prevalent in the 1920s and 1930s which drew attention to the social context of the law, and in particular the imperfect humanity behind the common-law foundations of precedent and judicial decision-making. For a substantial critique of the foundations of both legal realism and critical legal theory see Boyle (1985). There are also growing movements of critical legal theory in Germany, France, and Britain, where the Critical Legal Conference was established in 1984 (Gaines 1991).

[The social life of law] must be seen ... in terms of "counterfactuals," the missing, the hidden, the repressed, the silenced, the misrecognized, and the traces of practices and persons underrepresented or unacknowledged in its legitimations. ... The law's impact may be felt where it is least evident and where those affected may have few resources to recognize or pursue their rights in institutional forums (Coombe 1998:9).

This thesis, then, joins critical legal theory in seeking to maintain an openness of critical inquiry, in recognition that law and legal consciousness are constitutive features of social life and change, "neither separate nor separable from disputes about the kind of world we want to live in" (Hutchinson 1989:4). Insofar as the representatives of the Irish Music Rights Organisation take recourse to legal authority, that authority must be subjected to critical social inquiry.

Through the expansion of the Irish Music Rights Organisation, "law can be seen as both the *expression* of power relations and an important mechanism for *formalising* and *regularising* such relations. It protects and legitimises power, for example, by guaranteeing economic power through the development of concepts of property and maintenance of rules to protect property" (Cotterrell 1984:119). It has been clearly shown that one of the roles of law has been to preserve the operation of a free market economy (Dror 1969), and that, within an Anglo-American common-law system, "The formal rules that judges are supposed to follow in reaching decisions in particular areas of litigation are biased toward the protection of the capitalist economic system" (Bettig 1996:154). In very practical ways, the workings of law and the authoritative claims and practices of the Irish Music Rights Organisation are not 'neutral'. Unger would argue that the great power of law is that "it enforces, reflects, constitutes, and legitimizes dominant social and power relations without a need for or the appearance of control from outside and by means of social actors who largely believe in their own neutrality and the myth of legal reasoning" (1986:5). The representatives of the Irish Music Rights Organisation have this "power of law" at their disposal insofar as they claim it and that claim is accepted as valid.

Neither 'Natural', Inevitable, Universal, nor Necessary

The challenges of critical legal theory have been brought to the field of copyright research. Scholars have highlighted the need, for example, to question the mythical status of the traditional narratives of copyright history in which the development of copyright is portrayed as the inevitable outcome of a linear progress narrative. What is needed, they say, are new narratives, new ways of speaking about copyright. A number of scholars dealing with intellectual property, and in particular copyright, have taken up the challenges of critical legal theory: "[T]here has been a movement away from the attempt to explain or rationalize copyright law according to one or two unified and coherent principles or themes, and towards seeing copyright as a much more complex cultural phenomenon" (Sherman 1994:4).⁷ The authority of the Irish Music Rights Organisation rests on the necessary authority of orthodox copyright narratives. However, in this section it is argued that *our understandings of law, copyright, and performing rights are neither 'natural', inevitable, nor necessary*. Rather, by drawing attention to the social construction of legal and copyright discourses, scholars have argued for recognition of the "otherwise" and the importance of contingency in our analysis of history. In this section contingent currents of history are emphasised, and the orthodoxies of copyright and performing rights are challenged. By looking in particular at key moments in the history of performing rights, we can trace the fault-lines in the rhetoric of necessity, and, hence, fault-lines in the authority of the Irish Music Rights Organisation.

Mark Rose (1993), Michael Chanan (1994), Ronald Bettig (1996), Debora Halbert (1999), and Brad Sherman and Lionel Bently (1999) reveal the history of copyright to be not a natural and inevitable evolution narrative⁸, but a series of struggles that open us

⁷ It is interesting to see, in the same year, the following comment: "Law is not and never has been a unitary phenomenon, even though the assumption that it is has played a central role in most legal discourses and theories of law. We adhere to the view that law is a complex of practices, discourses and institutions" (Hunt and Wickham 1994:39).

⁸ Bettig (1996) has noted that "Traditional histories of copyright provide adequate descriptions of the origins and evolution of copyright but lack any real explanation for its emergence and functions. These histories are also teleological; they treat the "evolution" of the concept of literary property as a reflection of the natural progressiveness of human beings" (1996:9). In this regard, Bettig particularly notes the

up to the possibility that the history of what we now understand as copyright could easily have been a very different one. Sherman and Bently argue, for example, “that, at least up until the 1850s, there was no law of copyright, patents, designs or trade marks, and certainly no intellectual property law” (1999:3). Intellectual property law as we know it, then, was only one of a number of ways in which the law could have been organised. Whether what Halbert refers to as the “traditional story of copyright” achieves dominance or more critical approaches prevail is, in fact, a very important issue. Copyright, says Halbert, “is a socially constructed discourse that has become a powerful social myth. This myth, constructed over the past 200 years, has taken on the power of truth in which its assumptions and history are ignored” (1999:2). By portraying the history of copyright as timeless, natural, and inevitable, Sherman and Bently remind us, we move away from the changes and power struggles that have occurred, we fail to recognise the particular narratives that dominate the operations of the law, we restrict the questions we might ask about them, and we limit the possibilities of bringing in new narratives to structure our lives. As Halbert writes: “... if new ways of thinking about what we call intellectual property are to be found, we must move outside the law and into other modes of speaking” (1999:156).

Challenging Orthodoxy

The circle of logic runs something like this: If the law is right then copyright is right, and if copyright is right then performing rights are right, and if performing rights are right then we can collect royalties for them, and since we can collect royalties for them with the support of governments, legislation, and performing right organisation members worldwide, then it is taken to be proven that performing rights are right, copyright is right, and the law is right. This circle of logic is supported by a rhetoric of necessity that presents ‘works’, ‘performing rights’, and “music use” as natural, inevitable, universal categories, with narrowly-defined meanings. This, despite the fact that none of these terms are defined in anything other than a descriptive or tautologous manner in either

histories of Bugbee (1967), Patterson (1968), and Putnam (1896). The most blatant and succinct example of the evolutionist narrative of copyright I have come across is in Stewart and Sandison (1993:26), in which copyright is seen to grow through history to reach its rightful place as a philosophically-justified ‘truth’, a unitary, totalized phenomenon.

copyright legislation or IMRO documentation, if at all. This is another achievement of the process of “legal closure” in which “The rule of law ... appears rational, benign, and necessary” (Blomley 1994:9). As Peter Jazsi has commented: “The whole structure ... is grounded on an uncritical belief in the existence of a distinct and privileged category of activity, that generates products of special social value, entitling the practitioners (the “authors”) to unique rewards” (1991:466). The solid status of copyright and the justifications for all practices relating to copyright, such as those of the Irish Music Rights Organisation, are taken for granted by many people not only as the way things are and the ways things ought to be, but as the way things *must* be.

The working assembly of concepts that make up the discourses of law, intellectual property, copyright, and performing rights is culturally, politically, economically, and socially negotiated, however. These understandings have been, and continue to be shaped by people, social events, forces, and narratives that could have been (and could always be) different. They suffuse a broad network of social relations. Had different personalities been involved, for example, things could have turned out very differently. The work of Mark Rose (1993) and Woodmansee and Jazsi (1994) is interesting in this regard. They show the degree to which discourses of authorship, literary property, and copyright were, at key historical moments, influenced by politically-engaged, high-profile literary and legal figures, such as William Wordsworth, William Murray, or William Warburton, who lobbied forcefully on behalf of the extension of commercial interests. Had other people been as persuasive in opposition, history may well have been very different. Likewise, Rose shows that the dominance of particular themes and metaphors in copyright history often came down to the delicate contingencies of individual court cases.⁹ He argues that far from copyright being “a transcendent moral idea”, it could instead be seen as the meeting point of a series of social and historical factors: printing technology, marketplace economics, and possessive individualism. Rose also contends that it is “an institution built on intellectual quicksand: the essentially religious concept of

⁹ The movements of Legal Realism and critical legal theory make the contingency of personality and humanity in the precedents of common law judicial decisions a very important additional consideration (see Boyle 1985).

originality, the notion that certain extraordinary beings called authors conjure works out of thin air” (1993:142).

The orthodoxies of copyright do not simply reflect the ‘nature of things’. Martha Woodmansee (1984), Peter Jazsi (1991), Jane Gaines (1991), Mark Rose (1993), and James Boyle (1996) are among those who have highlighted the socially-situated nature of concepts of “authorship”, “genius”, and “originality”.¹⁰ Jazsi (1991) argues that the “authorship” construct bridged a contradictory tension between control and access, which thereby rendered it unstable. Jazsi contends that this weakness was one of the factors that led to the emergence of the “work” concept “as a new source of guidance and constraint in copyright”. The commercialization and commodification of print culture throughout the eighteenth century were also major contributing factors. Lydia Goehr (1992) is one of those who has challenged the ‘natural’ status and “conceptual imperialism” of the work-concept in musical practice, showing that: “speaking about music in terms of works is neither an obvious nor a necessary mode of speech, despite the lack of ability we presently seem to have to speak about music in any other way” (243). These ways of organizing our meanings and our world are not inevitable, and there are many other ways. These tensions have been played out on the ‘international stage’. Robert Burrell (1998) highlights the intense pressure placed by the United States government upon the government of China during the 1980s to deploy universalizing models of intellectual property across the national jurisdiction. Burrell argues that the method of persuasion adopted was an ‘aggressive unilateralism’ which “fails to respect other voices and other traditions and instead posits the moral superiority of a value system which is far more recent than the tradition it seeks to condemn” (198). Similarly, Tôru Mitsui pointedly highlights the incompatibility of universalizing copyright legislation with local meanings in Japan:

¹⁰ More famous, perhaps, is the work of Foucault in this regard. See Burke ed. (1995) for this and other key contributions to discussions on “authorship”, and Burke (1998) for an extended discussion of the work of Foucault, Barthes, and Derrida in this regard. A collection of essays more focused on the relationship between authorship and copyright can be found in Woodmansee and Jazsi, eds. (1994). A useful summary of various approaches to authorship and copyright can be found in Halbert (1999). For an interesting discussion of “originality” in relation to copyright see Sherman (1995). For a discussion of authorship, ownership, and intellectual property law see the doctoral dissertation by McLeod (2000).

Significantly, before Westernisation there didn't exist any concept in Japan that equated with 'right' or 'droit'. The word *kenri* or its abridgement, *ken*, as is used as a part of *chosakuken* (copyright), was coined as a term to translate 'right' into Japanese in the late nineteenth century (it was one of many Western words for which no fitting equivalents existed, such as 'society', 'individual', 'modern', and 'liberty' - such words as 'privacy' are used as loan words without being translated). And *kenri* (right), which was forged with much difficulty . . . was a combination of *ken* (power, in the sense of control over others, authority, etc.) and *ri* (profit, advantage), giving unfavourable and more or less avaricious connotations to itself even in the present day, when it is used as a part of everyday language (1993:142).

The Contingencies of Performing Rights

Looked at as a series of contingent possibilities, the history of performing rights¹¹ is transformed from the inevitable unfolding of a progress narrative into the multiple spaces of personal articulations. As detailed in Korman and Koenigsberg (1986) and Ryan (1985), the first case decision in the United States¹² concerning the performing right came in 1917. The case centred on the "for profit" requirement. Shanley's Restaurant had been sued by the composer Victor Herbert for unauthorized performances of songs from his own "Sweethearts". In another case, which was ultimately consolidated with the Herbert suit, the music publisher in charge of John Philip Sousa's works sued the Vanderbilt hotel for similar alleged infringement. The performances in both cases were admitted to be "public" performances, but a defence

¹¹ Descriptive overviews of the historical development of performing rights can be found in Peacock and Weir (1975), Ehrlich (1989), Thomas (1967), Korman and Koenigsberg (1986), Besen and Kirby (1989), Jehoram (1991), Sinacore-Guinn (1993), Stewart and Sandison (1993), and Laing (1993).

¹² The rise in popularity of the musical stage in the United States at the end of the nineteenth century led to increased economic value being placed on dramatic performances of music. This was especially true of light operas and operettas. This popularity also, however, led to an awareness of unauthorized performances, by which is meant performances from which the copyright owner received no financial return. In response, the US Congress extended the right of public performance to musical works in 1897 via an amendment to the Copyright Law. This amendment provided that anyone found performing a copyrighted dramatic or musical composition without the consent of 'the proprietor of said dramatic or musical composition, or his heirs or assigns' would be liable for damages of not less than one hundred dollars for the first and fifty dollars for every subsequent performance. If the unlawful performance were to be judged 'willful and for profit', the offender could face a jail sentence of up to a year (Korman and Koenigsberg 1986:336).

In the US Copyright Act of 1909 three general limitations were placed in the nondramatic performing right, which was the performing right under which musical works were considered. The stipulations were that in order to qualify for a performing right the rendition should be a "performance", "public", and "for profit". Two exemptions at this time were granted, to coin-operated machines and for certain educational and religious uses (Korman and Koenigsberg 1986:337). With the advent of radio it was determined that radio, and later television "performed" music, rather than 'copying' or 'duplicating' it. Radio, then, coupled with the performing right, proceeded to provide copyright holders with a source of income to replace the dwindling revenue of sheet music (ibid.).

was raised that they were not “for profit” as no direct charge had been made for the music. The lower courts found in favour of the “music users”, and against the assertions of lobbyists for performing rights. In what has become one of the most important reversals in musical copyright history, the Supreme Court unanimously found in favour of the plaintiffs. The presiding judge, Justice Oliver Wendell Holmes, wrote that a direct charge at the door of the premises for the music was not necessary. This is important, because it shows that, ultimately, the legitimation of performing rights and the role and activities of royalty collection agencies rests on a single case precedent that was only won on appeal. It is hardly ‘inevitable’ that performing rights received official sanction, but when they did, it legitimated their application in the United States, and, by precedent, in other common law jurisdictions such as Britain or Ireland.

It was clear that Justice Holmes was operating on the ideal of full and perfect protection for copyrighted works, which was seen at its maximum reach to extend to as many circumstances as possible: "If the rights under the copyright are infringed only by a performance where money is taken at the door they are very imperfectly protected". The law, he argued, intended music copyright holders to have a successful monopoly, and the use of works in performances such as those of the defendants was deemed to potentially “compete with and even destroy” the success of that monopoly. The performances were deemed “part of a total for which the public pays”:

It is true that the music is not the sole object, but neither is the food, which probably could be got cheaper elsewhere. The object is a repast in surroundings that to people having limited powers of conversation or disliking the rival noise give a luxurious pleasure not to be had from eating a silent meal. If music did not pay it would be given up. If it pays it pays out of the public's pocket. Whether it pays or not the purpose of employing it is profit and that is enough (cited in Korman and Koenigsberg 1986:338-9).

Later US court decisions made on the basis of the 1909 Copyright Act were also to prove influential in reinforcing the status of the performing right. In 1929 radio broadcasters were deemed to perform “for profit”, despite listeners not being charged. In 1944 a ruling determined that this would be the case even if the radio station were operated by a nonprofit foundation. Radio broadcasters had already been judged as performing “publicly” in 1925, even though the radio listenership was dispersed geographically and unable to communicate with one another. In judgements in 1958

and 1959 the suppliers of background music services and their subscribers were deemed to be jointly and severally liable for unauthorized renditions of music. Judgements were also passed which adjudged performances to have occurred by an extra step of mediation by mechanical means in the absence of live musicians; In 1931 radio broadcasts over loudspeaker systems were included, and, in 1964, the playing of records or tapes (Korman and Koenigsberg 1986:339).

The structure of logic that had been erected by musical copyright within an economic framework, the immeasurable number of contexts in which music was performed, and the inability of anyone to keep track of “music uses” on their own, all made it a practical impossibility for a single copyright owner to determine where and how their works might be being performed. This, then, made the individual licensing of works a practical impossibility. It also made it virtually impossible to pursue alleged infringement on an individual basis. In many countries, this problem led to the formation of collective licensing organisations, otherwise known as performing rights societies. Once the logic of licensing and performing rights achieved the official sanction of the courts, it could be claimed that such measures were indeed ‘necessary’. Indeed, the absolute necessity of performing rights organisations is achieved by an intricate piece of circular reasoning:

Performing rights are valuable so we need an organisation to uphold them, and performing rights are only valuable if we have an organisation to uphold them, therefore we need an organisation to uphold them (adapted from Sinacore-Guinn 1993).

Within the logic of this syllogism, acceptance of the performing right necessarily entails the acceptance of collective rights administration. Where the argument makes its persuasive leap, however is in the leap from statutory recognition to organisational imperative. Performing rights are actually to be recognised only insofar as the statutes of copyright law allow them to be. This condition is dropped halfway through. Within the syllogism, the Irish Music Rights Organisation obviously has no value without performing rights, but neither do individual performing rights have any value without the Irish Music Rights Organisation. The circle of necessity is complete.

Had the initial *Church vs. Hilliard* and *Herbert vs. Shanley* court ruling of 1917 stood, however, the performing right and associated royalty collection may well have been replaced by some other way to garner income from 'music'. There is little doubt that neighbouring rights have arisen as a result of technological development, whereby the apparent fixity of performance in recorded media follows the logic of copyright, authorship, and intellectual property to cover every angle in a drive to maximise protection and wealth-creating potential for creative achievements. Peacock and Weir (1975) provide interesting windows into the contingencies of copyright history in England and Britain, making clear, for example, that performing rights and mechanical rights provided convenient ways for publishers to fill an income gap left by a decline in sales of sheet music and concert hall attendances. It is something of a revelation to find that before the 1911 Copyright Act and the development of gramophone technology, many music publishers were incredibly hostile to the collection of fees for performing rights:

As William Boosey himself frankly admitted, 'I consider that the payment of a fee for the performance of new music, and even established music, was calculated to injure seriously the sales of established favourites, and was very detrimental to the popularizing of new works ...'. With the appearance of mechanical music Boosey had begun to change his opinion of the value of performing right fees by the early 1900s (45-46).

Had these rights not been seized upon, and subsequently given official legal sanction, the income gap would undoubtedly have been filled by some other strategy. It was in no way inevitable that the performing right would achieve such prominence. Difficulties accompany such concepts when claims are made which assert their natural, absolute, and universal validity, and when, as a consequence, actions are undertaken as 'necessary' on the basis of such claims. But, as we saw in the last chapter, the necessity of necessity is all that really sustains the role, activities, expansion, and authority of the Irish Music Rights Organisation, hence the necessity of the necessity of necessity.

Law Shapes Meaning and Expectations

It has been argued, in opposition to the orthodoxies of legal closure, that the domain of law does not constitute a value-free, politically-neutral, autonomous sphere of activity.

Furthermore, it has been argued that the discourses of law, copyright, and performing rights are in no way “natural”, inevitable, or necessary ways of making sense of the world. Nevertheless, the workings of law continue to play a vital role in the production and generation of meaning, power, and knowledge in the social interactions of our lives, not least of all through the expansion and authority of the Irish Music Rights Organisation. *By accepting the meanings that structure the organisation, we also allow those same meanings to structure our expectations and our social relationships.* Our lives can also be structured by our misunderstandings of the law, misunderstandings which often arise as an indirect consequence of legal closure. By acknowledging the ways in which law can guide and shape our lives, we can also recognise IMRO’s practices of expansion as *interpretive* practices, with relational implications for our negotiations of meaning and power in social interaction.

It is one thing to acknowledge that law, copyright, and performing rights do not constitute natural, inevitable, necessary, value-free, or politically-neutral ways of making sense of the world. It is perhaps more important to recognise that *the workings of law nevertheless play a vital role in the production and generation of meaning, power, and knowledge in the social interactions of our lives.* The sociology of law (see Cotterrell 1984; Aubert, ed. 1969) and critical legal theory (see Hutchinson 1989; Fitzpatrick and Hunt, eds. 1987) draw attention to the ways in which law, legal doctrine, legal practice, and, by association, the role, activities, and expansion of an organisation such as IMRO, are implicated in our everyday interactions and social relationships. Legislation consists of a set of prescriptions which specify the way in which legal subjects ought to behave. But law also “exists in the sense that it is embodied as a set of expectations or understandings about behaviour” (Cotterrell 1984:155), and it “only ‘exists’ if the prescriptions of conduct actually have some effect on the way people think or behave” (9). The legal consciousness promulgated by the representatives and members of the Irish Music Rights Organisation structures daily life through a social and interpretative politics of interaction, authority, representation, and legitimation: “The transformation of interpretation into legal meaning begins when someone accepts the demands of interpretation and, through the personal act of commitment, affirms the position taken”

(Cover 1983:45). Legal forms are not just to be found in legislation and the workaday rhetoric of lawyers. For Rosemary Coombe, law operates hegemonically as it shapes and guides worlds of meaning. This happens not only in obvious institutional encounters such as those precipitated by the expansion of the Irish Music Rights Organisation, but also in and through processes of recognised and unrecognised apprehension:

Hegemonic power is operative when threats of legal action are made as well as when they are actually acted upon. People's imagination of what "the law says" may be a shaping force in those expressive activities that potentially violate it and in those practices that might be considered protected acts of "speech," constitutionally defined. People's anticipations of law (however reasonable, ill informed, mythical, or even paranoid) may actually shape law and the property rights it protects (Coombe 1998:9).

The narratives of law, intellectual property, copyright, and performing rights, suffuse the practices of the Irish Music Rights Organisation, and structure expectations of what music or musical practice is, and more importantly, what our expectations of music, musical practice, or social relationships *should be*.¹³ As Robert Cover has written: "Once understood in the context of the narratives that give it meaning, law becomes not merely a system of rules to be observed, but a world in which we live" (1983:4-5). Coombe notes that what people imagine "the law says" may be a shaping force in the practices of their lives, and even more: "People's anticipations of law (however reasonable, ill informed, mythical, or even paranoid) may actually shape law and the property rights it protects" (1998:9). This is abundantly clear, for example, in the behaviour of musicians who effectively self-censor repertoire choices during a session in order to satisfy the imagined prescriptions of copyright law (see pp. 79-81). In such

¹³ This thesis could conceivably, then, take its place among what have come to be known as 'legal impact studies' (see Cotterrell 1984). For the most part, legal impact studies have sought to assess "the effects or lack of effects of particular legislation or juridical decisions on behaviour or attitudes" (Cotterrell 1984:37). One failing of legal impact studies has been the over-reliance on primarily quantitative data, to the detriment of theoretical concerns, leading to their being used mainly as short-term policy guides. The qualitative approach of this thesis aims to partially redress this balance. As Cotterrell (1984) makes clear, while legal impact studies have provided important evidence of the effects or otherwise of laws, it is necessary to examine the impact of law within a much wider context. This has led Cotterrell to champion the 'sociological study of law' (see also Aubert, ed. 1969). For Cotterrell this entails a central focus on the influence of ideas on action, on the "sociological significance of the cognitive and evaluative ideas expressed in legal doctrine or presupposed by it" (1984:120). What is crucial in such an approach is the need to challenge those ideas which are accepted as 'given', self-evident, 'common sense', ideas that are "so obvious that the question of their origin may seem unreal because to not accept them seems unthinkable" (1984:121). It is precisely because ideas associated with law are largely unquestioned that they must be examined as having developed in and through particular social formations and social practices.

ways, the law becomes a palpable presence in people's lives, even though the standards and sanctions involved may be self-imposed or misinformed. Often what is most important is not so much the letter of the law as people's understanding of it, and their reactions to legal meanings based on that understanding.

Law, then, is understood as "a ... diffuse and pervasive force shaping social consciousness and behavior" (Coombe 1998:12). The work of the Irish Music Rights Organisation is implicated within a system of law and the work of law is implicated in the practices of the Irish Music Rights Organisation. Neither just a collection of rules, nor a collection of social effects, law should be understood, then, as "a complex interpretive activity, a practice of encoding and decoding social meaning that merges imperceptibly with rhetoric, ideology, "common sense," economic argument (of both a highly theoretical and a seat-of-the-pants kind), with social stereotype, narrative cliché and political theory of every level from high abstraction to civics class chant" (Boyle 1996:14). These interpretive practices must be deconstructed and revealed as interpretive practices.

Summary

It is helpful at this point to summarise the arguments presented in volume 1 of this thesis. It was noted in Chapter 1 that the early stages of this research focused on 'Irish traditional music' as a commons under threat from the enclosing practices of the Irish Music Rights Organisation. The research initially reflected a sponsorial approach that sought to identify the features of this 'commons' as being essentially incompatible with current copyright legislation and the enclosing practices of the Irish Music Rights Organisation. Yet, it was argued, *sui generis* intellectual property legislation should still be sought with which to protect the 'commons' of 'Irish traditional music' (McCann 2001). A gradual shift led to the adoption of a revisionist approach in which 'Irish traditional music' was championed as the *absolute* other of copyright legislation. The practices of IMRO were understood to be inherently different from practices in the 'musical commons' of the 'Irish tradition'. Attempts to essentialise this commons proved

inadequate to the complexities of the issues under research. My focus on the 'commons' often led to simplistic, static, and essentialising binary oppositions, that directed me further and further away from the people-centred emphasis I sought. My initial research had been driven by a desire to understand the expansion of the Irish Music Rights Organisation as something that had specific and particular effects, that made a difference to the way people experienced their lives, and to the way I experienced my own. This desire was increasingly frustrated by my focus on a generalized and abstracted 'commons'.

In a counterinductive move, then, I turned the thesis around. I decided to focus not on the concept of the commons, but on the concept of enclosure. In the absence of a coherent theoretical perspective on enclosure I reconfigured my research approach, undertaking this thesis as a project of *retheorising*. This involved two steps. The first was counterinduction, or "the invention and elaboration of hypotheses inconsistent with a point of view that is highly confirmed and generally accepted" (Feyerabend 1978:47). In retrospect, the major counterinductive moves in this thesis have been: the evasion of 'music' as a central focus in an ethnomusicological thesis, with the purpose of exploring wider social and political concerns, as discussed briefly in the introduction; and the break from the binary opposition of enclosure and the commons in order to come to an understanding of enclosure *without the commons*. The second step of the retheorising approach of the research has been an openness to the emergence of a *theory of enclosure* as it arises from an examination of the expansion of the Irish Music Rights Organisation.

The Expansion of the Irish Music Rights Organisation

Chapters 2, 3, and 4 began this examination, providing what was primarily a descriptive analysis of the expansion of the Irish Music Rights Organisation during the period 1995-2000. The Irish Music Rights Organisation (IMRO) was shown to be a performing rights organisation. Performing rights licensing constitutes the organisation's primary activity. Indeed, licensing operations provide the financial foundation for IMRO's existence, for

licensing is how the organisation makes its money. This licensing, then, is grounded in a belief in the existence of performing rights, rights that are understood to be analogous to copyright. Performing rights are statutory rights, not 'natural' rights - they exist only insofar as legislation and common law court rulings say they exist. For the Irish Music Rights Organisation to operate at all it is necessary to convince people to accept the validity of performing rights and the necessity of performing rights licensing. Should persuasion fail, representatives of the organisation can threaten litigation, thus appealing to legislation and rulings from the Dublin District Court and the Irish Competition Authority to support their licensing claims.

Since 1995, IMRO has undertaken its licensing operations from a position of officially-sanctioned economic monopoly. Since at least 1998 it could be said that the Irish Music Rights Organisation has operated in a condition of hegemony, that is, unquestioned authority for the monopolistic operations of the organisation, insofar as they have achieved overt governmental and legislative support. With the achievement of economic monopoly, and later hegemony, IMRO's licensing claims were able to proceed in an optimum market environment. Thus, the dominant feature of the organisation's activities from 1995-2000 is expansion. This expansion is rendered visible by resistance to IMRO's licensing claims during this period. The operations of the Irish Music Rights Organisation can, then, be seen at this time to follow a cycle of expansion, resistance, and legitimation, followed by further expansion, backed by legal and governmental support. This cycle was exemplified by the three cases of primary schools, the Vintners' Federation of Ireland (VFI), and Comhaltas Ceoltóirí Éireann (CCÉ). By 1998, IMRO had successfully achieved a number of important legal decisions and strategic alliances that effectively ended disputes and rendered any residual resistance ineffective because irrelevant.

The Elimination of Uncertainty

Chapter 5 moved beyond this descriptive analysis of the Irish Music Rights Organisation to offer a more explanatory approach. From an orthodox economic perspective, the

activities of the Irish Music Rights Organisation can be explained on the basis of what we might term the “twin mandate hypothesis” - the organisational mandate of the organisation is understood to come from the needs of members on one side, and the demands of consumers on the other. The role of IMRO is portrayed, then, as being purely facilitative, in that it performs a ‘conduit’ role between producer-suppliers and consumer-users. Thus, the decision of the consumer becomes the driving force of the market and the foundation of the economic system within which IMRO operates, while the decision of the producer-member becomes the driving force of the organisation’s administrative activity. The organisation itself cannot, then, exercise power, as it merely functions as an instrument in the service of consumer and member choice. This can be broadly characterised as a neo-classical economic perspective.

By turning to the work of John Kenneth Galbraith, however, it was shown that this perspective cannot adequately account for expansion being the dominant tendency of modern firms. Expansion, we had already established, is the dominant organisational dynamic of IMRO’s activities from 1995-2000. Galbraith argues that the expansionary dynamic of modern organisations provides a clear break with neo-classical economic doctrine. Using the explanatory model of the ‘planning system’, contrasted with the ‘market system’ model, Galbraith shows that one of the key features of modern expansionary corporations is that *they do not so much respond to their market environment as achieve control over it*. The explanatory schemes of neo-classical economics do not disclose this feature of modern corporate life. By drawing correlations between the features of Galbraith’s planning system and the organisational dynamics of the Irish Music Rights Organisation it was argued that IMRO’s expansion is driven by a *general and pervasive organisational tendency towards the achievement of total market control and the elimination of uncertainty*. The achievements of monopoly and hegemony, then, satisfy this organisational tendency, and leave the way clear for further expansion. What also becomes clear in this analysis is that the existence of the organisation does not rely on the twin mandate of member-suppliers and consumer-users, but, crucially, on the careful maintenance of widespread acceptance of the organisation’s claims to authority and jurisdiction.

In Chapter 6 the authority of IMRO was questioned. This is a key counterinductive step in the analysis of the organisation's activities, for the success of the Irish Music Rights Organisation is entirely dependent on its claims to incontrovertible authority. In fact, it can be stated, consistent with the analysis presented in Chapter 5, that the authority of the Irish Music Rights Organisation relies on the condition of certitude, the absence of doubt, the elimination of uncertainty. It had already been established that the Irish Music Rights Organisation relies almost entirely on its licensing operations, and that these operations are based upon the statutory existence of performing rights. IMRO's activities, then, rely crucially on the unquestioned authority of the discourses of law and copyright. As a result of historically sedimented processes of what can be termed "legal closure", these discourses, and activities reliant on them, are often deemed to be value-free, politically-neutral, natural, inevitable, and necessary.

By turning to the fields of critical legal studies and the sociology of law, however, it was shown that the authority, and hence the very existence of the organisation can be challenged. Claims based on the discourses and institutions of law, intellectual property, copyright, and performing rights contribute to the formation of highly problematic yet powerful social myths of literary and artistic production. It was argued, then, that the authority of the Irish Music Rights Organisation is best viewed as being based on a sequence of overlapping and interdependent interpretive claims. These claims are largely maintained on the basis of circular, self-referential reasoning. Nevertheless, it was noted that the importance of the success of IMRO's claims is that they do, indeed, make a difference. By accepting the meanings that structure the organisation we also allow those same meanings to contribute to the structuring of our expectations and, hence, to contribute to the character of our social interaction. The expansion of the Irish Music Rights Organisation, it was argued, has *relational implications*. The way we experience law guides and shapes our lives. The Irish Music Rights Organisation, as an enforcer and purveyor of law, also contributes to the guiding and shaping of lives. In order to provide a clearer understanding of what is meant by this, steps will now be taken to situate this study within wider social, theoretical, and political concerns. In the

following two chapters a theoretical foundation is laid, providing a new set of assumptions for the retheorising of 'Beyond the Commons'. These assumptions centre around the notion of 'negotiation', and foreground the exposition of the theory of enclosure in Chapter 9.