

## Chapter 9

### The Politics of Enclosure

#### Introduction

Chapters 7 and 8 provide us with a set of basic assumptions, built around the notion of negotiation. These assumptions move us towards the retheorising aims of this thesis. They provide us with basic parameters with which to assess the relational implications of negotiations in and through social interaction. Our experience of negotiation is our experience of power. In this chapter we go further. We look at the expansion of the Irish Music Rights Organisation as an example of a particular modality of negotiation, a particular modality of power relations. In this chapter we move towards an understanding of the expansion of the Irish Music Rights Organisation from 1995-2000 as an example of negotiations of enclosure.

It is perhaps helpful at this juncture to return to some of the central issues. How did it happen that a resistant wave of fear, confusion, anger, and loathing against the Irish Music Rights Organisation was effectively transformed in the space of less than five years into what seemed like consensual silence? How is it that IMRO's authority is often taken to be value-free, politically-neutral, natural, inevitable, and necessary? What principles and forces underlie the extension and consolidation of the organisation's authority? How can we understand the expansionary activities of the Irish Music Rights Organisation as a particular character of social and political relations? How can we explore the implications of acquiescence to IMRO's authority for personal negotiations of meaning, power, and expectation? What, in short, are the specific *relational implications* of this expansion? In analysing the expansion of the Irish Music Rights Organisation as an example of the process and practices of enclosure we address these questions, remembering that "The person who would challenge the logic or justice of any one aspect of the chain must eventually confront the logic and justice of the entire system" (Goldsmith et al. 1992:144). Here we undertake a re-examination of

IMRO's expansion, then, as an example of the process and practices of enclosure, without taking recourse to the concept of the commons.

This chapter is presented in four sections:

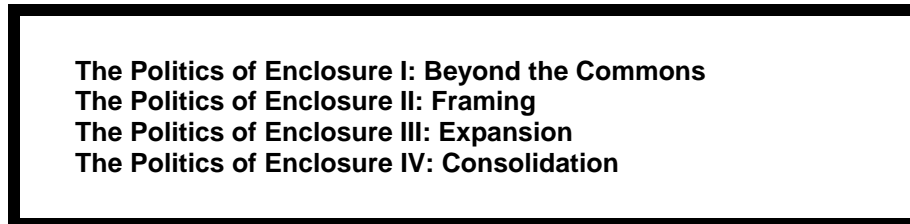


Figure 5. The Structure of Chapter 9

### **The Politics of Enclosure I: Beyond the Commons**

In this, the first section, dominant understandings of the politics of enclosure are briefly outlined. Most commonly, the term 'enclosure' refers to either 'land, property, and the commons', or 'resources, intellectual property, and the commons'. Thus, we might say that enclosure is most often understood as 'enclosure *of*'. Here, however, we move towards an understanding of enclosure without taking recourse to the notion of the commons.

The basic meaning of the verb 'to enclose' is to surround on all sides and confine in a limited area. Hence, it may be associated with the verbal synonyms 'cage', 'fence', 'wall', or 'frame'. As a noun, 'enclosure' allows for synonyms such as 'perimeter', 'frame', 'claim', 'territory', 'defences', 'trap', 'cell', 'box', 'cage', or 'prison'. This is to take a very literal approach to the term 'enclosure'. It is perhaps more useful for our purposes to turn to usages which open up wider connotations of a social and political nature. Although the term 'enclosure' is "an arena for the criss-crossing of disputed and competing values and orientations" (Siemon 1994:23), we can generally differentiate

two ways in which the term has been used. We can perhaps broadly refer to these usages as the “first enclosure movement” and the “second enclosure movement”.<sup>1</sup>

In simple terms, we can safely say that study of the “first enclosure movement” concerns land, property, and the commons (see Thirsk 1958; Mingay 1968; Yelling 1977; M. Turner 1984; Allen 1992). ‘Enclosure’, in this sense, refers primarily to a series of changes to the English landscape from the 15th to the 19th century. It entailed the changing of agricultural practices from communally administered landholdings, usually in fields without physically defined territorial boundaries, to agricultural holdings which were non-communal. Common lands were ‘enclosed’ by man-made boundaries that separated one farm from another. Slater identifies three generic features of ‘enclosure’ in this regard:

(1) the laying together of scattered properties and consequent abolition of intermixture of properties and holdings; (2) the abolition of common rights; (3) the hedging and ditching of the separate properties. The third process is the actual “enclosing” which gives its name to a series of processes which it completes (1907:85).<sup>2</sup>

For many people, this “enclosure” is undoubtedly negative. William Carroll (1994) has noted that during the Tudor-Stuart period (1485-1714) the term “enclosure” is unstable, to the point where it is used as “an all-purpose signifier for virtually every negative socioagricultural development” (1994:36). Those who oppose the encroachment of enclosure as a negative almost invariably move in defence of ‘the commons’, ‘common rights’ as positives. This can primarily be characterised as a people-centred approach to the commons, whereby the commons is understood in terms of a particular character of *social relations* that are constituted, at least in part, by an ethic of interdependence and cooperation (see E. P. Thompson 1968, 1993; Neeson 1993).

There are others, however, for whom the “first enclosure movement” carries positive connotations. Allen notes that “Few ideas have commanded as much assent amongst historians as the claim that enclosures and large farms were responsible for the growth in productivity” (1992:2). Thirsk, for example, defines enclosure as “a method of

---

<sup>1</sup> I take this bipartite structural approach from Boyle (2001).

<sup>2</sup> This is cited in Yelling (1977:5).

increasing the productivity or profitability of land. This definition would apply accurately to all forms of enclosure” (Thirsk 1958:4). In a more recent commentary, Boyle agrees: “The big point about the enclosure movement was that it *worked*; this innovation in property systems allowed an unparalleled expansion of productive possibilities” (2001:3). Apologists of enclosure almost invariably criticise ‘the commons’, ‘common rights’ or ‘common property’ as negatives. This can be characterised as a resource-centred approach to the commons. The term ‘commons’, in this sense, refers to *resources* which are ‘held in common’ or managed in such a way as to allow unproductive common access. As this approach is resource-centred, the privileged criterion is often the maximisation of utility, such that “[Enclosers] deplored the insubordination of commoners, the unimprovability of their pastures, and the brake on production represented by shared property” (Neeson 1993:7).

Study of the “second enclosure movement”, simplistically characterised, concerns resources, intellectual property, and the commons (see Lange 1982; Goldsmith et al. 1992; Brush 1996; Gudeman 1996; Shiva et al. 1997; Frow 1997; C. May 2000; Boyle 2001). The term “enclosure”, in this second general sense, refers to more recent developments concerning the expansion of intellectual property rights into more and more domains of life, and, in particular, the appropriation of genetic resources and scientific or indigenous knowledge by opportunistic researchers. This new understanding of the term “enclosure” speaks to major ethical issues that have arisen in the last twenty or thirty years, as advances in scientific research and development have ushered in a situation where “more and more, the traditional lifestyles, knowledge, and biogenetic resources of indigenous, traditional, and local peoples have been deemed by governments, corporations, and others to be of some commercial value, and, therefore, to be property that can be bought and sold” (Posey and Dutfield 1996:1).

Parallels with the “first enclosure movement” are typically emphasised by critics of this contemporary “enclosure”.<sup>3</sup> In addition, just as the “first enclosure movement” is predominantly understood in its relation to the phenomenon of the ‘commons’, so too, in a sense, is the “second enclosure movement”. It is somewhat ironic, however, that critical responses to the impact of the enclosure of intellectual property expansion is often framed in terms of protection of a *resource-centred* commons, despite intentions to implement “alternative, people-centred conservation models” (Posey and Dutfield 1996:3). This is perhaps most clearly illustrated by the anti-enclosure efforts of the Global Coalition for Bio-Cultural Diversity, which links indigenous peoples, scientific organizations, and environmental groups in a common cause. Although the Global Coalition’s working group is loath to use the term “property”, nonetheless the group’s title reflects a general resource-centred bias, calling itself the Working Group for Traditional Resource Rights:

“resource” is used in its broadest sense to mean all knowledge and technology, esthetic and spiritual qualities, tangible and intangible sources that, together, are deemed by local communities to be necessary to ensure healthy and fulfilling lifestyles for present and future generations (Posey and Dutfield 1996:3).

The “second enclosure movement” is primarily understood to refer, then, to enclosure of common resources.

Whether referring to the ‘land, property, and the commons’, or ‘resources, intellectual property, and the commons’, understandings of the term ‘enclosure’ can most often be characterised, therefore, by the configuration ‘enclosure *of*’, and then most often within the binary of ‘enclosure of the commons’. The relationship between ‘enclosure’ and the ‘commons’ is, then, often unquestioningly presented as a dichotomous one. If nothing else, this is an invitation to take sides. Depending on which side you take, the term ‘enclosure’ can have either negative or positive connotations. For some, enclosure is undoubtedly a synonym for increased productivity or profitability (Thirsk 1958:4), for others enclosure refers starkly to “expropriation, exclusion, denial and dispossession”

---

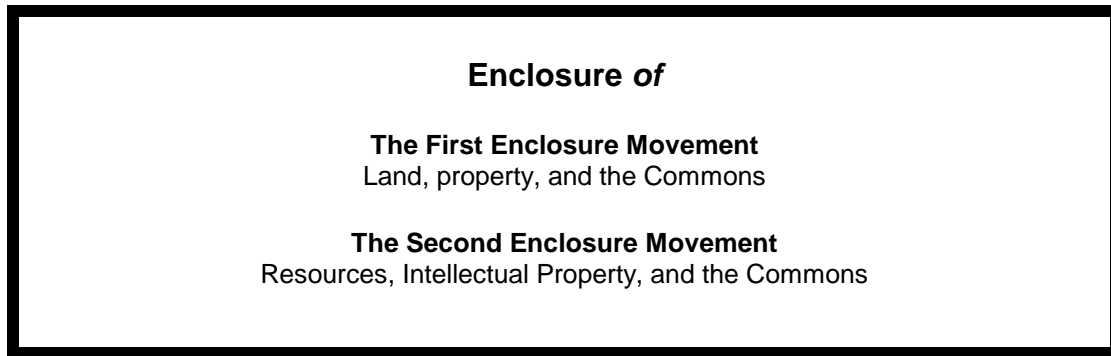
<sup>3</sup> This is reflected in book titles such as The Enclosure and Recovery of the Commons: Biodiversity, Indigenous Knowledge and Intellectual Property Rights (Shiva et al. 1997), or A Global Political Economy of Intellectual Property Rights: the new enclosures? (C. May 2000).

(Goldsmith et al. 1992:131). As noted in Chapter 1, if we stay within this binary logic we can only ever understand 'enclosure' in relation to a 'commons' and only ever understand a 'commons' in relation to 'enclosure' (see pp. 25-30). This leaves us bound by what rhetorician Kenneth Burke calls contextual or dialectical definition. In this formulation, something is defined in terms of something else, that which is not itself. As Burke notes, this is at the heart of the very idea of definition (1969:24). There is a clear temptation to reduce 'the commons' to a set of features that are understood to express its essence, but only insofar as it stands in contrast to enclosure, for "It is arguably only in reaction to invasion, dispossession or other threats to accustomed security of access that the concept of common rights emerges" (Goldsmith et al. 1992:126).<sup>4</sup>

In this thesis, however, we are seeking to break away from the binary structures implicated in the study of 'enclosure *of*' in order to come to a better understanding of enclosure itself. Enclosure, it will be argued, is a social process that cannot simply be identified with specific historical periods or associated solely with identifiable "movements". Enclosure is better understood, not as one side of a binary opposition, but, rather, as a character or mode of power relations in negotiation. There is not, then, an *a priori* assessment of enclosure as positive or negative, with associated tendencies to judgment and blame. Rather, in a Foucauldian move, the focus is on enclosure as a particular modality of *negotiation*, a particular modality of the *exercise of power*. The aim of this chapter, then, is both to identify the features of enclosure as a process through an examination of the expansion of the Irish Music Rights Organisation, and also to move towards an assessment of the effects or *relational implications* of enclosure for negotiations of social interaction. In this chapter we move beyond the commons towards an understanding of the process and practices of enclosure.

---

<sup>4</sup> The power of contextual or dialectical definition is explored in Occidentalism: Images of the West (Carrier, ed. 1995).



**Figure 6. Dominant Understandings of Enclosure**

*The Process and Practices of Enclosure*

For Christopher May (2000), the relationship between property and intellectual property is a metaphorical one, and, hence, enclosure which concerns 'land, property, and the commons' is used as the basic referent from which to draw metaphorical analogies for issues of 'resources, intellectual property, and the commons'. However, following this examination of the expansion of the Irish Music Rights Organisation from 1995-2000, I am more inclined to view enclosure as a single process, or, rather, a characteristic modality of power, with undoubtedly infinite manifestations in social interaction. Any such analysis of enclosure as a characteristic set of power relations is faced with the challenge of achieving what Yelling refers to as "an appropriate set of generalisations", the derivation of which "is the crux of the matter, and it is on the solution of this problem that any general work on enclosure must depend" (1977:4).

This chapter, then, presents a preliminary analysis of the features of enclosure. In particular, it is argued that enclosure can be understood as having three features: framing, expansion, and consolidation. Each of these features is analysed in the context of the expansion of the Irish Music Rights Organisation 1995-2000. In and through this analysis, it is shown that the features of enclosure can be further subdivided. Framing is understood to be constituted by three operations of power: monologic generalisation, closure, and separation. The analysis of the expansion of enclosure is divided into two elements: representation and resistance. The feature of consolidation is seen to involve

three elements of displacement, legitimation, and hegemony. By analysing IMRO's expansion in this way, two things are achieved. First, we can come to a deeper understanding of the political dynamics and relational implications of that expansion. Second, we can come to an understanding of the process and practices of enclosure without taking recourse to the notion of the commons.

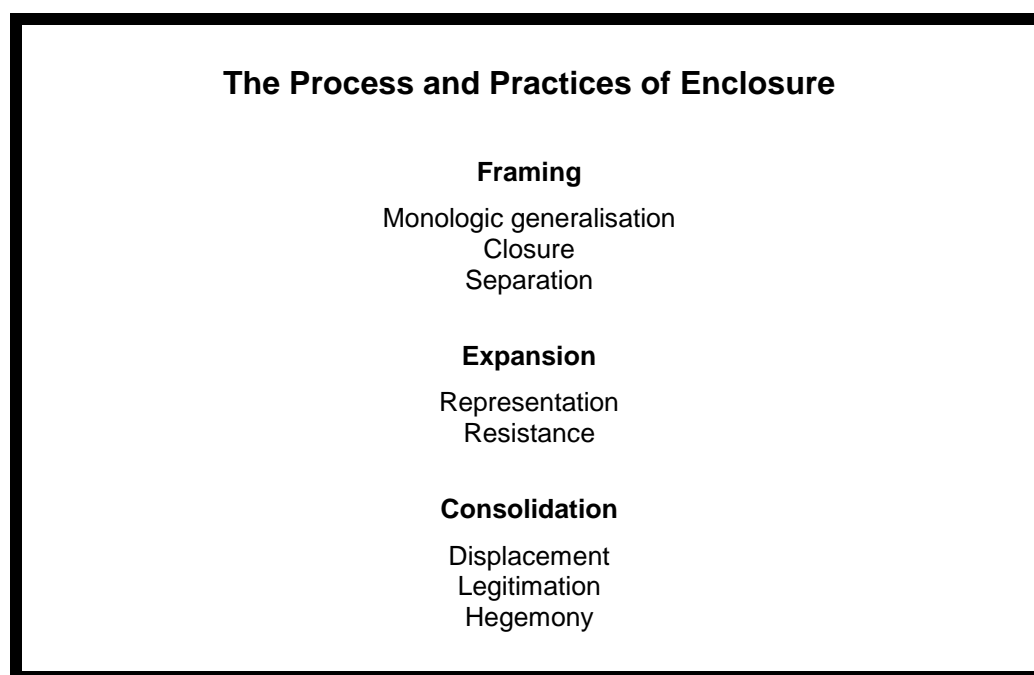


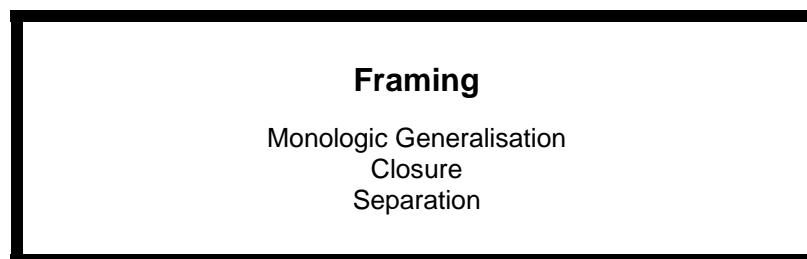
Figure 7. The Process and Practices of Enclosure

## The Politics of Enclosure II: Framing

Framing is the first feature of the process and practices of enclosure. In this section we examine the role of framing in the expansion of the Irish Music Rights Organisation from 1995-2000. We first examine the dominant meanings of the term 'frame'. The most obvious association is with picture frames. It is interesting that 'frame' in this sense has frequently been explained in terms of enclosure, understood as a dual process of inclusion and exclusive separation. There are now wider connotations of the term, however. Scholars identify two related categories. The first is derived from the work of

Gregory Bateson. Here, the role of ‘frames’ as organisational principles for communication in social interaction is emphasised. The second stems from the work of Frederick Bartlett, and focuses on ‘frames’ as cognitive ‘knowledge structures’. Both are frequently explained using the metaphor of enclosure. Specifically, frames are presented as both enclosure *of*, or inclusion (that which is included within the frame), and enclosure *from* or exclusive separation (that which remains outside the frame). There is a tendency to view frames as static and unchanging.

It has been argued, however, that, as organisational or cognitive structures, frames are associative, cumulative, adaptive, and individually-negotiated. Deborah Tannen, indeed, allows the term ‘frame’ to be incorporated within the broader rubric of structures of expectation. Here, however, the term ‘frame’ is not understood to be synonymous with ‘structure of expectation’. Rather, frames are understood to be structures of expectation with a low uncertainty index, which often leads them to be experienced as stable or even unchanging. Frames, then, are highly directive structures of expectation. In line with a general dynamic approach to social theory in this thesis, the emphasis is shifted from ‘frames’ to ‘framing’ by understanding frames *as framing*. The process of framing is here understood to be constituted by three interdependent techniques of power: monologic generalisation, closure, and separation. Following a brief outline of the character of each of these techniques, examples are provided which demonstrate that framing suffuses the activities and expectations of the Irish Music Rights Organisation.



**Figure 8. The Operations of Framing**

## *'Frames' and 'Framing'*

The notion of a frame is most obviously associated with picture frames, devices with which we surround a picture in order to mark it off as special, to mark it off as worthy of our interest. Bateson saw picture frames as a message that serves to organize the perception of the viewer, saying "Attend to what is within and do not attend to what is outside" (1973:187). Frequently, such frames are explained by using the metaphor of enclosure. Simplistically, frames are often understood to encompass processes of both enclosure *of* and enclosure *from*: "Framing a painting can be seen as an act of enclosure that serves to demarcate a semiotic field, separating it from the rest of the plane against which it is viewed and thereby telling us how to regard it" (MacLachlan and Reid 1994:12). As MacLachlan and Reid remind us: "frames function both as part of the structure of what they enclose (at their inner edge) and (at the outer edge or rim of the frame) part of the 'outside' world against which the enclosed text or activity is framed" (55). Frames in general, then, are also understood to be result from a process of 'enclosure', a "process of demarcating phenomena in a double-edged way that is simultaneously inclusive and exclusive" (16).

This apparently straightforward understanding of 'frame' has been extended to encompass wider associations. Deborah Tannen subsequently distinguishes two categories of 'frame' in relevant literature (1993:59-61). The first category is that of interactive 'frames of interpretation'. MacLachlan and Reid refer to this as the 'psychological' or 'social' approach to frames. This is generally the usage of the term in anthropology and sociology, and it stems from the work of Gregory Bateson (1973). Bateson introduced the notion of 'frame' in 1955 in order to convey that "individuals exchange signals that allow them to agree upon the level of abstraction at which any message is intended" (Tannen 1993:18). For Erving Goffman (1974), for example, following Bateson, the term 'frame' denotes the basic elements, principles, or premises of organisation that govern social events or situations, and interaction within them. Individuals, Goffman suggested, fit their actions to their understanding of a frame of

activity, such that: “a strip of activity will be perceived by its participants in terms of the rules or premises of a primary framework” (Goffman 1997:158).

The second category Tannen identifies is that of ‘knowledge structures’ or ‘schemas’. MacLachlan and Reid refer to this as the ‘cognitive’ approach to frames. This theoretical affiliation derives largely from the work of cognitive psychologist Frederick Bartlett. Bartlett emphasised that what we understand as acts of perception are really acts of recall. Subsequently, he was particularly interested in the socio-cognitive points of reference which interact with contextualising cues thereby guiding our interpretation of messages (see MacLachlan and Reid 1994:Ch. 4; Tannen 1993). Cognitive frames, then, are regarded as the organising basis for cognitively-processed experiential knowledge.<sup>5</sup>

Tannen emphasises the need to always keep in mind that interpretive framing is both interactional and dynamic, continually checked against experience and revised, however minutely. MacLachlan and Reid argue that one of the central aspects in Bateson’s understanding of frames is “their dynamic potential for, or vulnerability to, change” (1994:46). Similarly, they point to Goffman’s understanding of the provisional, interpretive character of frames:

for [Goffman], like Bateson, frames are not stable structures which unambiguously demarcate strips of experience. ... Experience is always subject to (re)organisation or (re)framing according to different interests and points of view, and this makes possible various disturbances to our perception of ‘what it is that’s going on’ (47).

It would not be going too far to state that the term ‘frames’, whether social or cognitive, is used to refer to structures which are associative, cumulative, adaptive, and individually-negotiated. Tannen stresses that frames are constantly implicated in negotiations of power, involving “constantly evolving lines of interpretation, constantly negotiated footings” (1979:78). For Tannen, as we saw in Chapter 8 (see p. 208), the term ‘frames’ is coterminous with the term ‘structures of expectation’, referring to the process whereby “on the basis of one’s experience of the world ... one organizes

---

<sup>5</sup> Tannen notes that such ‘cognitive’ understandings of frames are dominant in the fields of artificial intelligence, cognitive psychology, and linguistic semantics (1993:59).

knowledge about the world and uses this knowledge to predict interpretations and relationships regarding new information, events, and experiences” (1993:16). In this thesis, frames are understood slightly differently; as structures of expectation, yes, but as structures of expectation with a low uncertainty index. Frames, then, are experienced as structures of expectation that are stable or even unchanging.<sup>6</sup> They become “boundary markers, often naturalised to the point of invisibility” (McLachlan and Reid 1994:55). This is consistent with Tannen’s remark that there is a general tendency to regard ‘frames’ as static, and to prioritise ‘frames’ over the process of framing (61).<sup>7</sup> Following on from earlier discussion, frames are, then, those structures of expectation which we experience as most stable, most unchanging, and, importantly, *most directive* in our negotiation of social interaction.

Understanding ‘frames’ as structures of expectation in this way leads us to question the distinction between *literal* frames and *metaphorical* frames. Instead of this distinction, we are drawn to understand frames *as framing* that occurs in the negotiation of social interaction. In this spirit, MacLachlan and Reid translate Derrida’s “*Il y a du cadre mais le cadre n’existe pas*” as “Framing occurs but there is no frame” (1994:6). They continue: “There is no frame, first because framing is an *act* rather than a stable given, and second because even solid, material frames tend to be naturalised by the viewer into near oblivion” (ibid.). Here, also, we want to draw the emphasis away from ‘frames’ and shift it to the process of ‘framing’. ‘Frames’, structures of expectation with a low uncertainty index, encountered in negotiation, implicate people in ‘framing’. Framing is here understood to be constituted by three interdependent techniques of power<sup>8</sup>: monologic generalisation, closure, and separation.

---

<sup>6</sup> What I understand by ‘frames’ would seem to correlate somewhat with what David Harvey refers to as concrete abstractions. For Harvey, ‘concrete abstractions’ are taken-for-granted, ‘embedded’ concepts that are available to us in everyday speech and which we draw upon in the conduct of everyday life (see Gregory 1994:361).

<sup>7</sup> It follows, then, that the model of enclosure most often used to convey the sense of ‘frame’ (enclosure *of* and enclosure *from*) is dominated by static referents.

<sup>8</sup> Power, it will be remembered, is understood here as the ability to increase or decrease the experience of uncertainty or certainty in one’s own life or that of another.

## *Monologic Generalisation*

The first technique of framing is monologic generalisation. Within the process of framing there is a tendency for people to work from the general to the particular, to start from sweeping generalisations or 'grand labels', which offer the solace of resolution, keeping the dogs of uncertainty from the heels of reflection. As Primo Levi has written: "To give a name to a thing is as gratifying as giving a name to an island, but it is also dangerous: the danger consists in one's becoming convinced that all is taken care of and that once named the phenomenon has also been explained" (1991:127). Simplistically, the labelling, naming, or statements of monologic generalisation can be understood to encompass the following types of statement: 'We're all the same', 'They're all the same', 'It's the same all the way through', or 'It's always the same'.

Monologic generalisation not only proceeds on the assumption that a general label is useful or convenient, as many labels often are, but also on the assumption that the general label is an unchanging fulcrum of certitude around which all discussion of particular circumstances rotates. Such generalisation is monologic insofar as the expectation is that the generalisation will remain unquestioned and authoritative. Monologic generalisation in effect closes off the possibility of further discourse. What becomes important where monologic generalisation is concerned is the issue of which meanings and expectations are privileged at this 'end of discourse', when such terms are used in particular circumstances, and, more importantly still, which are hidden beneath an unquestioned veil of generalised abstraction *in extremis*. This technique of framing allows for the *assumption* of consensus, which, while unchallenged, provides powerful legitimation for some voices and not others. One subsequent characteristic of monologic generalisation is a high level of abstraction, given that the peopled particularism of specificity and difference is always a challenge to generalised assumptions of homogeneity, and is therefore avoided.

## *Closure and Separation*

The second technique of framing is closure. Facilitated by monologic generalisation, closure is here understood as the assumed elimination of variables in the cause of unity. Stuart Hall explains closure as "the establishment of an *achieved* system of *equivalence* between language and reality" (1998:1060). In effect, the technique of closure signals that no more need be said, that the quest for meaning is already satisfied, that what Gramsci referred to as "the struggle over meaning" is irrelevant because it is superfluous. Rhetorically, closure is characterised by assumptions of unquestionable truth-value, whereby statements are taken to be "proposition-free, natural and spontaneous affirmations about "reality"" (1056), thereby rendering the foundational logic and power operations of framing invisible.

As noted above, framing, understood as a form of 'enclosure', refers to both enclosure *of* and enclosure *from*. The former refers to what we understand here as closure<sup>9</sup>. The latter refers to the third technique of framing that we identify here - separation. Closure and separation go hand in hand, in something of a symbiotic relationship. For closure to occur successfully, it must be closure *as distinct from* something else. Chandler and Van de Vijver (2000) note, for example, that: "In the act of defining the specific closure of concern, one purposely includes objects of one class and excludes other objects or classes. Thus, the act of defining a closure leads naturally to a separation, a distinction, a placing of value on what is important and what is not important" (ix). Similarly, Stephen P. Dunn identifies both intrinsic and extrinsic forms of closure which coincide with what we identify here as closure and separation:

The intrinsic condition of closure refers to the immutability of the phenomena in question and can loosely be described as suggesting that a cause always produces the same effect. The extrinsic condition requires that the phenomenon in question be isolated from external influences and refers to the condition that an effect has the same cause. Together these two conditions of closure permit a determinate account of event regularities (2000:347).

---

<sup>9</sup> David Hult draws a direct connection between closure and 'enclosure': "As a spatial description, "closure" initially encompasses all the coordinates appertaining to a circumscribed territory: the "enclosed place" itself; "that which encloses"; "the act of enclosing"; and "the fact of being enclosed." A metaphorical transfer makes the term operate at an abstract level, as applied to logical or perpetual enclosures, a "bringing to a conclusion"" (Hult 1984:iv).

When deployed together, these three techniques of framing result in a variety of 'frames', each of which is imbued with, at the very least, a tinge of certitude. Those who are guided by the techniques of framing would tend to negotiate social interaction with an experience of abstract, depeopled, binary oppositions, strict polarities, rigid, essentialist classifications, and canonical hierarchies, among many other forms. This will become more clear in following section, in which we briefly explore the deployment of these techniques in and through the structures of expectation promulgated by the representatives of the Irish Music Rights Organisation.

### *Framing and the Irish Music Rights Organisation*

Copyright provides for a composite and exemplary confluence of framing strategies in that the discourses of copyright emerge from a proliferation of monologic generalisations, closures, and separations. Delving through the histories and narratives of law, intellectual property, and copyright at great length is not a luxury that is afforded to us at this point in the thesis. Detailed research has been undertaken by others and need not be replicated here. Of particular note is the work of Martha Woodmansee (1984), Peter Jaszi (1991), Mark Rose (1993, 1994), Brad Sherman (1994, 1995), Brad Sherman and Alain Strowel, eds. (1994), Martha Woodmansee and Peter Jaszi, eds. (1994), Ronald Bettig (1996), Debora Halbert (1999), and Brad Sherman and Lionel Bently (1999). What is of interest are some of the framing operations that occur on a regular basis within the activities of the Irish Music Rights Organisation. We will concentrate on three interrelated 'frames' that feature strongly in the working assembly of IMRO's structures of expectation. We will briefly examine framing of the 'work', the discourse of economics, and of the organisation itself. The techniques of framing (monologic generalisation, closure, and separation) will thus be shown to suffuse the expansion of the organisation.

## *Monologic Generalisation and the Work*

The notion of the artistic or musical ‘work’<sup>10</sup> is one of the most significant elements in the activities of the Irish Music Rights Organisation. As is stated on the organisation’s website: “IMRO’s function is to collect and distribute royalties arising from the public performance of copyright works”.<sup>11</sup> The notion of the work and its plural together provide an excellent example of how monologic generalisation operates. As far as the licensing operations of the Irish Music Rights Organisation are concerned, works are ‘all the same’. When viewed from the perspective of the particular, each work may indeed be understood to issue from the life of a different person, each in different circumstances, and each may also be given a separate title for purposes of registration. Nevertheless, all are referred to as works. This is the dominant ‘grand label’, inasmuch as it constitutes the unchanging fulcrum of certitude around which all discussion of particular circumstances of the organisation’s activities rotates.

Through monologic generalisation, works function as a homogeneous multitude, as a paradoxically singular unity in infinite diversity. This is most forcefully conveyed by the deployment of blanket licensing. Practices of blanket licensing within the market of ‘music rights’ ensure that works continue to operate as quintessential commodities: “The concept of a market assumes that the various units of commodity demanded and supplied are considered identical by the various economic actors, both buyers and sellers” (Shanahan 1978:20). As market commodities, then, works are most useful at the highest level of abstraction, in order to facilitate the smoothest (that is, depeopled) transactions within the frictionless (that is, arelational) space of the capitalist market.

As noted earlier, however, the term ‘work’ or ‘musical work’ is never defined, either in legislation or in documentation provided by the Irish Music Rights Organisation. The

---

<sup>10</sup> It would be my inclination to place the word ‘work’ in inverted commas at all times. This is, however, more than a little awkward. The use of the inverted comma shall be used, therefore, to refer only to the term ‘work’.

<sup>11</sup> [http://www.imro.ie/about/what\\_we\\_do.shtml](http://www.imro.ie/about/what_we_do.shtml)

Copyright and Related Rights Act, 2000, provides two tautologous non-definitions that do not at all define what a musical work or work are:

“musical work” means a work consisting of music, but does not include any words, or action, intended to be sung, spoken, or performed with the music (2.1)

“work” means a literary, dramatic, musical or artistic work, sound recording, film, broadcast, cable programme, typographical arrangement of a published edition or an original database and includes a computer program (2.1).

These types of tautologous non-definition assume the existence of the work as an *a priori* and a ‘given’ within copyright discourse. The absence of definition, combined with the extensive use of the term within IMRO’s operations, contributes to mystification, heightened abstraction, and the unquestioned assumption of consensus that everyone must know what is being referred to when the term ‘works’ is used. The lack of definition also suggests that to privilege particularism over generalisation in this instance is to run into the problem of having nothing in particular that satisfies a definition in the first place.

A similar technique is employed in relation to the terms ‘music’ and ‘performance’, both of which are significant frames within the working assembly of frames that cradles the certitude of the generalised work. Like the work, neither ‘music’ nor ‘performance’ is ever adequately defined. There is simply a pervasive assumption that the deployment of these terms refers to conditions that provide solid justification for the activities of the Irish Music Rights Organisation. IMRO’s ‘product’ is located somewhere in the nebulous nexus of ‘work’, ‘music’, and ‘performance’. All are assumed to refer to central, abstract, universal phenomena or ‘things’. This is, however, rhetorical sleight-of-hand, supporting discourses and practices that require a commodity to justify their continuance. All three terms, ‘work’, ‘music’, and ‘performance’ are generally self-referential, that is, each term refers, most often implicitly, to the other two terms. In fact, it could be argued that the abstracted generalisation of these terms allows them to function co-extensively, thereby facilitating a further undefined, monologic generalisation, that of ‘music use’. The expectation that the monologically generalised ‘product-nexus’ of the Irish Music Rights Organisation does indeed yield a tradeable commodity is supported by the second technique of framing - closure.

### *Closure and the Work*

Closure, discussed above, is here understood to refer to the assumed elimination of variables in the cause of unity. In the following section we briefly discuss how the closure of the work within copyright discourse can be organised thematically, whereby the work can be understood as a point of intersection for a series of spatial and temporal closures that coalesce in particular around discourses of ‘the work-as-property’ and ‘the work-as-original’. Moreover, the deployment of spatial and temporal closures of the work facilitate what we can understand as social closure, both in the celebration of atomistic and self-interested individualism, and in the work as a focus of operations of prescription and control. Together these contribute to the composite effect and function of the work as a “reified aesthetic object, unitary, closed, and caught up in relations of ownership” (M. Rose 1994:33).

### *The Spatial Closure of the Work*

Performing rights in a work are understood to be analogous to the literary property of copyright, which has developed within the general schemes of intellectual property law: “The notion of intellectual property at its simplest suggests that ideas and knowledge can be parcelled into separable and transferable knowledge objects which enjoy similar characteristics to material property” (C. May 2000:47). As an object of property, the work must be “capable of distinct and separation possession” (M. Rose 1994:34). Hence, the history of the work within the discourses of law, intellectual property, copyright, and performing rights discloses an ever-decreasing circle of objectification, which we might otherwise understand as spatial closure. This is encapsulated in what is now often referred to as the ‘fixity’ requirement.

For our purposes, the crucial shift in conceptions of literary property occurred in mid-to-late eighteenth century England. Champions of exclusive and perpetual rights for authors began to emphasize a new understanding of the literary work which was no longer characterised by the ideas it embodied but by its *form*. A work, it was argued was

“recognizable by the specificity of its expression ... by the particular way in which an author produces, assembles, expresses and presents concepts” (Chartier 1994:15). It is important to note that this move occurred concurrently with the emergence of what Abrams calls the “objective orientation” within aesthetic discourses of the English literary scene in the late eighteenth and early nineteenth centuries: “which on principle regards the work of art in isolation from all ... external points of reference, analyzes it as a self-sufficient entity constituted by its parts in their internal relations, and sets out to judge it solely by criteria intrinsic to its own mode of being” (1953:26). The emphasis on form and expression was also validated by the philosophical writings of people like Kant, Fichte, and Herder. A burgeoning print culture further consolidated the spatial closure of the work:

“[T]he proponents of literary property were forced to develop ... techniques that would enable them both to identify the protected subject matter and at the same time to draw boundaries around literary property. The initial strategy adopted to achieve this end was to focus upon the physical manifestation of the mental labour as it was captured or represented in the printed word. ... [I]t enabled the proponents of literary property to argue that it could be identified, distinguished and appropriated and that, as such, it exhibited the requisite characteristics for it to be treated as a form of property” (Sherman and Bently 1999:27).

In securing the role of literary property in the concept of the autonomous work, then, recourse was taken to “the “fixity” which printing and print lend to discourse” (Leed 1990:55). Print, as a technology, facilitated the purveyance of certitude required for the work-as-property. As Mark Rose (1993) details, the emphasis on form and expression in the move towards proprietary authorship was consolidated following the *Donaldson v. Becket* court case in 1774, which also in many ways signalled the beginning of the end of the literary property debate. Where before texts had been widely considered as actions, now texts, as an author’s property, became transformed into ‘things’, or, more particularly, ‘works’, replaying the classic and abstract legal distinction between *persona* and *res*:

[I]t was not until after the literary property debate that the modern notion of the intangible as a property right existing in a ‘thing’, with no direct connection to the realm of the physical, came to be accepted, with few questions or doubts (Sherman and Bently 1999:41).

Since the end of the nineteenth century, then, the spatial closure of the work has been unquestionably encapsulated and reinforced in what is often referred to as the “fixity

requirement". This is reproduced unequivocally in the Copyright and Related Rights Act, 2000, which states that "Copyright shall not subsist in a literary, dramatic or musical work or an original database until that work is recorded in writing or otherwise by or with the consent of the author" (18.1). Similarly, in the IMRO Members' Handbook, we find that "Copyright in an original work does not arise until it is fixed in writing or by some other material form. Writing includes a form of notation, whether by hand or by printing, typewritten or similar process" (1995a:B10).

### *Temporal Closure and the Work*

If 'fixity' is one key requirement for the recognition of a work of intellectual property, then 'originality'<sup>12</sup> is another. The copyright doctrine of originality provides for *temporal* closure of the work. In separating the author (*persona*) from the work (*res*), and in instituting the spatial closure of the work in the 'fixity' of 'expression', lobbyists on behalf of literary property were left with something of a gap to fill. The author had been radically separated from the protected work in the cause of property. What was required, however, was a way in which to reconnect the author with the work while retaining the radical separation or alienability that a property right requires. Rose (1994) argues that many inconsistencies in English copyright law were satisfied by the influence of German Romantic theory at the start of the nineteenth century:

Indeed, the Romantic elaboration of such notions as originality, organic form, and the work of art as the expression of the unique personality of the artist was in a sense the necessary completion of the legal and economic transformation that occurred during the copyright struggle. Why should an author have a property right in his work? What does that work consist of? How is a literary composition different from a mechanical invention? It was precisely the theoretical problems raised by the copyright struggle that Romantic theory resolved (M. Rose 1994:52-53).

Legal notions of originality were refined by Romantic literary and cultural discourses to validate narratives of direct causality and unitary provenance. In other words, a clear relationship could be established between the author and the work. Abrams (1953)

---

<sup>12</sup> For general discussions of creativity, genius, and originality see Abrams (1953), S. Burke, ed. (1995), Connor (1989), Rothenberg and Hausman, eds. (1976), and R. Williams (1976). For discussions on legal aspects of originality see Chused, ed. (1998), Gervais (1998), M. A. Hamilton (1994), G. Lea (1998), Sherman (1995), Sherwood-Edwards (1995), M. Woodmansee (1984), Jaszi (1991), or Woodmansee and Jaszi, eds (1994).

shows clearly that the development of originality narratives in English literary discourse occurred during a key period. The end of the eighteenth and the beginning of the nineteenth centuries was also the same time as the notion of the author's property right achieved full elaboration in the unquestioned notion of the work of intellectual property (Sherman and Bently 1999). The legal designation of 'original' calls forth the identification of the essential features of an 'original' work. The point isn't whether a work is or isn't original, an issue over which many court cases have been fought. The point is that the criterion of originality, as used within legal discourses of copyright and intellectual property, provides a temporal narrative of certitude within which to locate the spatial certitude of an object of property. The identification of the author as 'origin' of the work supported the temporal closure implicit in the rhetoric of creation *ex nihilo*, a perspective which still retains credibility in copyright discourse (see Goldstein 1990).<sup>13</sup> Furthermore, as both Nietzsche and Foucault have pointed out, the pursuit of origins "is an attempt to capture the exact essence of things, their purest possibilities, and their carefully protected identities; ... this search assumes the existence of immobile forms that precede the external world of accident and succession" (Foucault 1991a:78). It might be argued, indeed, that legal notions of originality paradoxically effect two temporal closures simultaneously; the first being the deterministic temporal closure of direct causality,<sup>14</sup> the second being the temporal closure of atemporal transcendence in and through the spontaneous 'creation' of the aesthetic work of genius. Paradoxically, this second temporal closure occurs within a general framework of linear temporality. Both function to confirm the uniqueness of the work, thereby further contributing the unitary 'nature' of the autonomous work.

---

<sup>13</sup> "Copyright, in a word, is about authorship. Copyright is about sustaining the conditions of creativity that enable an individual to craft out of thin air, and intense, devouring labour, an *Appalachian Spring*, a *Sun Also Rises*, a *Citizen Kane*" (Goldstein 1990:110).

<sup>14</sup> The closure of direct causality inferred by the discourses of originality was further strengthened by the popularity of the metaphor of paternity in literary production: "But of course the patriarchal notion that the writer 'fathers' his text just as God fathered the world is and has been all-pervasive in Western literary civilization, so much so that, as Edward Said has shown, the metaphor is built into the very word, *author*, with which writer, deity, and *pater familias* are identified ... Said himself later observes that a convention of most literary texts is 'that the unity or integrity of the text is maintained by a series of genealogical connections: author-text, beginning-middle-end, text-meaning, reader-interpretation, and so on. Underneath all these is the imagery of succession, of paternity, or hierarchy'" (Gilbert and Gubar 1995:151-152; see also Halbert 1999).

## *Social Closure and the Work*

We have seen, then, how the work provides a focus for a series of framing operations. Monologic generalisation ensures universalised abstraction of the work which facilitates the spatial closure of the work-as-property, and the temporal closure of the work-as-original.<sup>15</sup> Now we briefly examine how the work serves as the locus of a series of social closures. Copyright, and performing rights as analogous to copyright, exemplify social closure insofar as they facilitate individual *control*, centralised upon the entity of the work. This is done in two main ways. First, narratives of originality effect the social closure of an isolated possessive individualism around the property of the work. Second, the work provides a focus for the social closure of monopolisation and exclusion, enshrined in copyright legislation. This confluence of closures provides the ideal environment for the work as the quintessential commodity.

We have already seen how the temporal closure of originality sets up a linear narrative of direct cause and effect between the author and the work. This might be understood in another way, that “in order for a work to be protected by copyright law, the creator must be seen as exercising the requisite level of control over the production of the artefact” (Sherman 1994:118). Originality narratives, then, are also narratives of social closure, in that they enshrine the isolationism of possessive individualism in the control of the ‘creation’ of the work: “[T]he romantic vision of authorship plays down the importance of external sources by emphasizing the unique genius of the author and the originality of the work” (Boyle 1996:114-115).<sup>16</sup>

The second social closure located in the work is still about control. However, in this case, it is the continued control permitted in and through the prescriptions of copyright

---

<sup>15</sup> This analysis is necessarily simplistic, given that the primary purpose of this section is not to provide a detailed analysis of ‘the work’ but to outline some of the framing operations at work within the discourse of copyright.

<sup>16</sup> This is further reinforced by the methodological aesthetic individualism of discourses of originality, in which “the realm of the genius was defined as utterly autonomous. Free from determination by any cultural category other than the absolutely free constructions of his creative imagination, the genius broke down the reciprocal relationship between the author and the rest of culture” (Pease in Burke 1995:267).

legislation.<sup>17</sup> It is perhaps useful here to draw on the work of Raymond Murphy. Murphy has followed Weber for his understanding of 'social closure'.<sup>18</sup> For Murphy, the study of 'social closure' involves analysis of "the mechanisms and practices of monopolization and exclusion" (1988:15). Although Murphy largely approaches social closure from the perspective of class analysis and market operations, it is useful here to consider the work of copyright as the focal point for social closure, in Murphy's sense. This is entirely appropriate, given that, as Murphy writes: "the principal form of exclusion in capitalist society consists of the rules guaranteeing the legal title to private property" (Murphy 1988:57). The prescriptive character of copyright legislation epitomises such monopolization, the Copyright and Related Rights Act, 2000, stating that "copyright is a property right whereby ... the owner of the copyright in any work may undertake or authorise other persons in relation to that work to undertake certain acts in the State, being acts which are designated by this Act as acts restricted by copyright in a work of that description" (17.1). The monopoly grant<sup>19</sup> of copyright thus allows for the possible enactment of exclusionary procedures: "Denying the social conditions and cultural influences that shape the author's expressive creativity, we invest him with powers of expropriation and censorship in the name of property" (Coombe 1998:226).

The spatial, temporal, and social closure of the work, then, serves to enable and perpetuate the monologically generalised, universalised, and abstracted entity as the

---

<sup>17</sup> It could be argued that both the social closure of originality and the social closure of prescriptive copyright, as well as depending upon the spatial and temporal closures of the 'work', also depend for their effectiveness on the unitary referent of the legal subject: "Only as an author can a legal subject have a right in a work, and only as a legal subject can an author be said to have a "right" to defend or to assign to a third party" (Gaines 1991:26). As Blomley remarks: "The self, in this account, is innate, and is not constituted, even partially, by relationships with the community. Indeed, the individual is to be protected from the potentially oppressive actions of the community" (1994:205). This line of argument is undertaken by Bernard Edelman (1979), influenced heavily by Evgeny Pashukanis. Jane Gaines builds on the work of both Edelman and Pashukanis to propose the term author-subject as a focus for critical legal analysis. See also Cotterrell (1984).

<sup>18</sup> Unfortunately, there is no scope here to provide a detailed summary of Murphy's complex and suggestive work. Further work will explore many of the nuances of Murphy's analysis of theories of social closure in the work of Weber, Collins, Parkin, and Bourdieu. In many ways, Murphy's analysis of 'social closure' complements my own theory of enclosure. I became aware of this work late in the research process, however.

<sup>19</sup> Jane Gaines (1991) provides a detailed examination of the dynamics of intellectual property as a monopoly grant. Ronald Bettig also draws attention to the monopolistic character of intellectual property, and particularly the way in which "Copyright seeks to restrict the use of a work to those willing to pay for it" (1996:8).

quintessential commodity, minimizing “the threat to free exchange posed by the notion of an intimate link between the “author” and her productions” (Jaszi 1991:478). It is precisely *because* of the abstracted status of the universalised work within the frictionless, arelational space of commodity capitalism<sup>20</sup> that spatial, temporal, and social closure, that is, *control* of the work, is so important. This is stated clearly from the heart of orthodoxy:

Creations of the mind, such as an idea for an invention, a piece of music or a trademark, can not, like physical objects, be protected against other persons’ use of them by the mere possession of the object. Once the intellectual creation is made available for the public, its creator can no longer exercise control over the use made of the creation. This basic fact, that is, the inability to protect something by the mere possession of an object, underlies the whole concept of intellectual property law (WIPO 1997b:3).

For the system to work(!), each work must be generalised to absolutist abstraction (as property), while also remaining fully individuated and separated from each and every other ‘work’ (as original). This universalism and particularism *in extremis* cannot be maintained ‘successfully’ without the constant policing and surveillance of blanket monitoring systems and the blanket bureaucracy of total registration.<sup>21</sup> That the focus of registration efforts conveniently emerges from a nebulous and unsubstantiated product-nexus is neither here nor there. Nicholas Blomley writes that “The power of concepts such as “individual” or “space” rest upon their abstraction. Once we try to locate and contextualize these concepts, they rapidly become untenable” (1994:219). This could be said equally well of the work. This is not a problem for organisations whose operation is based upon this abstraction, given that political economy, utilitarianism, and neo-classical economics provide for the primary emphasis of modern intellectual property law: “We are already moving toward a permission-less, remuneration-only system. As

---

<sup>20</sup> The commodity form is a social relationship, and a commodity is anything that is governed by it. In the banal usage of neo-classical economics, however, the social texture of the commodity is erased: the word comes to designate any object produced for use or exchange, or it is given the specialized sense of an unelaborated primary product, or else it is displaced by the unspecific term ‘goods’. A generalized abstraction, it loses all its historicity and its social particularity (Frow 1997:132).

<sup>21</sup> This is perhaps epitomised by developments in the field of digital watermarking (Lai 1999). “Watermarks serve as tools for digital copyright protection. There are various general scenarios to which watermarking may be applied. An example is image copyright protection by means of a visible watermarking algorithm. Such a mark is visually apparent, but does not prevent the image from being used for other purposes. The visibility is intended to make apparent any commercial exploitation of the image, hence assisting enforcement. This watermarking system can also be used, *inter alia*, to indicate the ownership of original works. Typically, watermarks are used to prevent and detect unauthorised reproductions and distributions” (Lai 1999:171).

we do, we move farther and farther away from the notion of the author as a rights-holding genius and closer and closer to the notion of the work as a commodity of challenge” (M. A. Hamilton 1994:126; see also Sherman and Bently 1999).

As more and more elements of life are expressed through the depersonalised and abstract exchange relations of the money economy we find that indifference to distinctive specificity paradoxically leads to a process of separation and partition. In this process, a general trend towards abstract differentiation is reflected in objects which are enclosed as commodities for the sole purpose of exchange: “The contents of life ... are, as it were, split up into so many small parts; their rounded totalities are so shattered by any arbitrary synthesis and formation of them is possible” (Simmel 1990:276). Exchange at its most fundamental can only take place, Simmel proposes, with the formation of differentiated private property concentrated in the individual. From this base, money, “as the absolute representative and embodiment of exchange becomes - by means of private property, with its dependence upon exchange - the vehicle for the expansion of the economy, for the inclusion of innumerable contracting parties through the give-and-take of the exchange process” (349-50). Simmel would argue that the abstraction of money as an exclusively economic value, distanced from the specificity of social relations, grounded in a systematic atomised individualism, and cradled in the formations of private property, “grants the greatest amount of freedom to purely intellectual activity” (314). Following the systematic separation of objects and people, objectified commodity forms (understood as the embodiment of thought, work, and skill) are seen to move independently as objects of exchange: “By their independent, impersonal mobility, objects complete the final stage of their separation from people” (460-461).

### *Separation and the Work*

We have briefly examined, then, the framing operations of monologic generalisation and closure as they apply to the work, perhaps the lynchpin of the operations of the Irish Music Rights Organisation. The third technique of framing is that of separation most

obviously characterised by the discursive presence of binary oppositions and polarised dichotomies. Literature on copyright is replete with such separations, so we will do no more than signal a number of the most relevant.<sup>22</sup> The notion of the work is accompanied by a significant number of 'necessary' separations, without which the closure of the work would have no foundation. We find clear indication of framing in the separation of idea and expression or form.<sup>23</sup> This is paralleled by the discursive separations of mind and matter, intangibility and tangibility.<sup>24</sup> Closure of proprietary control of the work was separated from frictionless access to the work, and criteria were established to maintain this separation.<sup>25</sup> This is paralleled by the separation of private and public.<sup>26</sup> The closure of originality and 'the original' was accompanied by radical separation from imitation and the copy.<sup>27</sup> At the centre of it all we find the separation of *persona* and *res*, the crucial confluence of separations in the dualism of author and work:

To summarize the logic of the literary property debate, then, we might say that there were three principal exchanges between the parties. First, the proponents of perpetual copyright asserted the author's natural right to a property in his creation. Second, the opponents of perpetual copyright replied that ideas could not be treated as property and that copyright could only be regarded as a limited personal right of the same order as a patent. Third, the proponents responded that the property claimed was neither the physical book nor the ideas communicated by it but something else entirely, something consisting of style and sentiment combined. What we here observe, I would suggest, is a twin birth, the simultaneous emergence in the discourse of the law of the proprietary author and the literary work. The two concepts are bound to each other. To assert one

---

<sup>22</sup> The technique of separation is deployed throughout the varied discourses of copyright. The following is taken as one example among many: "During the heyday of the concept of romantic authorship, the eighteenth and nineteenth centuries, the work was depicted as an entire text. Works were envisioned as indivisible wholes, created out of thin air by the genius author. But the very concept of derivative work rights institutes a revolution in the "work." The existence of the derivative work right subtly alters how we look at all texts. By presupposing that any text might not be wholly original, it reinforces the idea/expression dichotomy's tendency to disaggregate the text, which has a historical pedigree at least as distinguished as romantic authorship. The derivative work right makes it necessary to dissect every text into its constituent parts: ideas, facts, unoriginal expression, public domain material, pre-existing copyrighted material, and finally original expression. Only the latter receives copyright protection" (Hamilton 1994:104).

<sup>23</sup> See Abrams (1953), Woodmansee (1984), Chartier (1994), or M. Rose (1994).

<sup>24</sup> See Sherman and Bently (1999).

<sup>25</sup> See in particular Gaines (1991).

<sup>26</sup> For discussions of the dichotomy between public and private see N. Rose (1987), Thornton (1991), Blomley (1994), Weintraub and Kumar eds. 1997).

<sup>27</sup> The apotheosis of originality was the denigration of imitation. It is interesting to note that "The literary criticism of the sixteenth century knew of no breach between originality and imitation" (Wittkower 1973:306). See also Lowenthal (1985) and Schwartz (1996).

is to imply the other, and together, like the twin suns of a binary star locked into orbit about each other, they define the centre of the modern literary system (M. Rose 1994:39).<sup>28</sup>

### *The Work as a Confluence of Framing Operations*

The notion of the work exemplifies the role of framing strategies within the activities of the Irish Music Rights Organisation. The autonomous work has its most extensive formulation in and legitimation from discourses of aesthetics (Goehr 1992). Yet when the term is used in the context of performing rights its meaning is primarily grounded, not in aesthetic discourses, but in legal and economic framing operations. Thus, the work is sheltered by the certitude of spatial, temporal, and social closures.<sup>29</sup> The work operates as a nebulous fulcrum of (hardly merited)<sup>30</sup> certitude around which the Irish Music Rights Organisation operates within a maelstrom of abstractions, inclusions, and exclusive separations. The concept of the work stands as though referring to a fixed and unchanging entity, a structure of expectation with a negligible uncertainty index. It serves, then, as a highly directive frame, a powerful vectoral mechanism, within a

---

<sup>28</sup> It could also be argued that the legal and economic formulations of the 'work' are based in a radical separation of space and time. It is clear from the reliance on the spatial 'certitudes' of boundedness, repeatability, and fixity that the notion of the 'work' within intellectual property is fundamentally grounded in masculine conceptions of space as the realm of stasis, "a passive arena, the setting for objects and their interaction" (Massey 1994:261). There are two consequences of this position. The first affirms the apoliticality or atemporal transcendence of 'the work'. As Doreen Massey has written of space-as-stasis in the work of Laclau: "There is, in the realm of the spatial, no true temporality and thus no possibility of politics" (1994:251). The second facilitates the smooth operation of the 'work' of copyright within a range of wider discursive dualisms: "There is a whole set of dualisms whose terms are commonly aligned with time and space. With time are aligned History, Progress, Civilization, Science, Politics and Reason, portentous things with gravitas and capital letters. With space on the other hand are aligned the other poles of these concepts: stasis, ('simple') reproduction, nostalgia, emotion, aesthetics, the body. All these dualisms, in the way that they are used, suffer from the criticisms made above of the dichotomies of this form: the problem of mutual exclusivity and of the consequent impoverishment of both of their terms" (Massey 1994:257).

<sup>29</sup> The 'work', in the legal or economic terms of the Irish Music Rights Organisation, ironically retains the autonomy granted to it by the discourses of aesthetics while totally disregarding any question of aesthetic merit by treating it as a pure commodity. Within the systems of copyright a 'work' is, in principle, due protection in complete oblivion to its 'artistic merit': "For a work to enjoy copyright protection ... it must be an original creation. The ideas in the work do not need to be new but the form, be it literary or artistic, in which they are expressed must be the original creation of the author. And, finally, protection is independent of the quality or the value attaching to the work - it will be protected whether it be considered, according to taste, a good or a bad literary or musical work - and even of the purpose for which it is intended, because the use to which a work may be put has nothing to do with its protection" (WIPO 1997b:153-154).

<sup>30</sup> "The word *work* and the unity that it designates are probably as problematic as the status of the author's individuality" (Foucault in Rabinow, ed. 1984:104).

working assembly of highly directive frames. Thus, it is naturalised beyond question, imbued with qualities of prescription and control. The expansion of the Irish Music Rights Organisation is grounded in the licensing, performance, registration, and monitoring of works as commodities.

We have illustrated the techniques of framing by focusing on the work within discourses of copyright and performing rights. Framing is here taken to be the first of the three features of enclosure. Framing is understood to be constituted by three interdependent techniques of power: monologic generalisation, closure, and separation. We can now turn to the second feature of enclosure - expansion.

### **The Politics of Enclosure III: Expansion**

Enclosure, it is being argued, is a particular modality of negotiation. By understanding the expansion of the Irish Music Rights Organisation as an example of the process and practices of enclosure we can understand that expansion, then, as a particular modality of the exercise of power.

The first feature of enclosure is framing. We highlighted framing strategies in IMRO's activities by looking at the role that the commodified work plays in the organisation's operations. Expansion is now presented as the second feature of enclosure. In Chapters 2, 3, and 4, it was argued that the dominant feature of the activities of the Irish Music Rights Organisation during the period 1995-2000 was an aggressive expansion. Following the work of John Ryan (1985), this was portrayed as a cyclical process of expansion, resistance, and legitimation, followed by further expansion. Examples illustrating this were drawn from IMRO's involvement with primary schools, publicans, and supporters of 'traditional music'. By turning to the work of John Kenneth Galbraith it was argued in a more explanatory fashion that the expansionary dynamic of the Irish Music Rights Organisation was grounded in an organisational tendency towards the achievement of predictability, control, and the elimination of uncertainty. This tendency

was exemplified by the protective and affirmative purposes of the technostucture of the Irish Music Rights Organisation.

### *Defining Expansion, Defining Authority*

At its most basic, expansion is formally defined as: “The action or process of expanding or spreading out” (Onions, ed. 1973:704). This gives us a general idea of what expansion *involves*, but it does not give us any clear insight into what expansion *is*. In this section we define expansion, in the context of anthropological or sociological concerns, as ‘the extension of authority’. Authority is predominantly understood as the provision of certitude. However, a broader understanding of authority, consistent with the understanding of power in negotiation (outlined in Chapters 7 and 8), is now presented. Authority-in-negotiation is *the ability to increase the experience of certainty in one’s own life or that of another*. With this understanding of authority we are able to define the expansion of enclosure as the extension of authority-as-certitude. The authority of enclosure, then, is merely a particular modality of authority in exercise of power. This will clarify what we mean when we speak of ‘expansion’ in the context of this analysis of the expansion of the Irish Music Rights Organisation, and in the context of this general theory of enclosure.

### *Authority-in-negotiation*

In Chapter 6 it was noted that authority is predominantly understood as the provision of certitude (see pp. 140-144). Authority-as-certitude is generally understood to be something that is *possessed*. It is no surprise that discussions of this type of authority are frequently couched within discussions of what we referred to in Chapter 8 as ‘behavioural power’ or ‘power over’<sup>31</sup> (see pp. 202-203). If we look to the definition of power offered within the theory of negotiation, as the ability to increase or decrease the awareness of uncertainty or the emergence of certainty in either one’s own life or that of another (see p. 204), then we are drawn to provide an alternative definition of authority.

---

<sup>31</sup> Hindess (1996) characterises this conception of power as ‘quantitative’.

As Peter Hall remarks: “Power ... is typically linked to and therefore must be distinguished from authority because they have often been defined in terms of each other” (1972:47).<sup>32</sup>

Authority-in-negotiation is understood to refer to *the ability to increase the experience of certainty in either one’s own life or that of another*. Authority is, in this case, most definitely linked to power, being an aspect of it. Like power, then, authority is both constant and dynamic, and an intimate aspect of our experience of social interaction. Authority, like power, is no longer understood to be vested in single, centralised points of certitude. Authority, then, need not always be claimed in ways that seek to bypass the specificity of social interaction - ‘you must obey’ (regardless of your circumstances). Authority, rather, can also be earned in and through social interaction, in the infinite particularities of experience. Within this scheme, we can see authority at work whenever one person makes another person smile, for example. This second type of authority emerges in and through our negotiation of social interaction, and need not be a question of total or absent authority. Our experience of authority-in-negotiation, like our experience of power, is a question of ever-presence and degree. Our experience of certainty, it will be remembered, is an element of our experience of consciousness, our experience of expectation. Understanding authority in this way reveals authority-as-certitude to be but a modality of authority. Authority-as-certitude is a claim to the elimination of uncertainty as the absence of doubt. Understanding authority *only* as authority-as-certitude occludes vast swathes of experience of authority-in-negotiation.

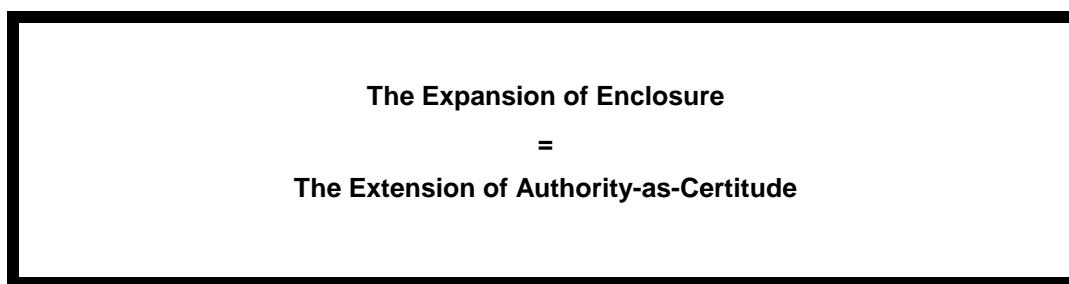
It could be suggested, indeed, that the claims of authority-as-certitude are all that is available to those who bypass the patient process and power relations of authority-in-negotiation in favour of a complete reliance on the rarefied expectations of intellectual property and the frictionless, arelational space of commodity capitalism. This is exemplified by the opening ethnographic passage in the introduction to the thesis. In

---

<sup>32</sup> It is interesting, for example, that “it has been customary to use the term authority in dialectical juxtaposition to power to describe a situation in which a claim to obedience may be largely neglected. It is then said that a person has authority, but no power” (Friedrich 1964:43). This is, of course, stated within the authority-as-certitude paradigm.

that case, a publican had received a letter from the Irish Music Rights Organisation asserting a claim to licensing revenue for the performance of copyrighted works. This can be seen as a typical example of a highly directive claim made with the assumption of authority-as-certitude. For the publican, however, the Irish Music Rights Organisation did not constitute a point of certitude. Instead, the claims greatly increased his experience of uncertainty, resulting in his experiencing IMRO's claims as a threat. So it was, then, that the organisation's claims to 'authority'(-as-certitude) were not compatible with the level of authority-in-negotiation that IMRO had achieved in the experience of the publican.

Having defined the character of authority within the general schemes of negotiation, we are now in a position to define the expansion of enclosure as the extension of authority-as-certitude. To trace the expansion of the Irish Music Rights Organisation, as we did in Chapters 2, 3, and 4, is, then, to trace the extension of the authority of the Irish Music Rights Organisation *as a source of certitude* - that which must remain unquestioned if it is to retain the status of authority-as-certitude. As noted in Chapter 6, to question the 'natural, inevitable, universal, and unchallengeable principles of copyright law', to question 'the ubiquity and universality of performing rights administration', is to question the existence of the Irish Music Rights Organisation itself (see p. 140-142). Authority-as-certitude is all that the representatives of the organisation really have to rely on as the basis for their activities.



**Figure 9. The Expansion of Enclosure**

## *The Expansion of Enclosure: Representation and Resistance*

Enclosure is understood to entail three features: framing, expansion, and consolidation. The framing of enclosure was seen to be constituted by three interdependent operations of power: monologic generalisation, closure, and separation. The expansion of enclosure (the extension of authority-as-certitude) can be understood by looking at two interrelated processes: representation and resistance. First we consider 'representation'. We outline some of the dominant meanings of the term, before redefining representation in the context of the theory of negotiation as *the articulation of one's own or another's negotiation of meaning*. Our understanding of the representation of enclosure is more specific, however. The representation of enclosure is understood as *the articulation of one's own or another's negotiation of meaning with a claim to authority-as-certitude*. We then consider resistance, for it is through resistance that we identify the representations of enclosure. Dominant meanings of the term 'resistance' are first considered, before a redefinition of resistance is offered in the light of the theory of negotiation. Resistance is here defined as *the constant and dynamic experience of encounter with expectational difference (vectoral incompatibility)*. Resistance is not, then, understood in opposition to power. Resistance, rather, can serve as a diagnostic tool with which to identify the representations of enclosure. Taken together, an awareness of the representation and resistance of enclosure can give us a clear picture of the expansion of enclosure as the extension of authority-as-certitude.

### *Representation*

A useful summary of some of the central issues concerning representation can be found in the Open University text, Representation: Cultural Representations and Signifying Practices (S. Hall, ed. 1997). At its most basic, Hall would suggest, representation is the production of meaning through language. Three general approaches to the representation of meaning through language can be identified. According to Hall, these are the reflective, intentional, and constructionist or constructivist approaches. To adopt the reflective approach, also sometimes referred to as the 'mimetic' approach, is to

understand language as a mirror which reflects the true meaning that exists externally in the real world. The intentional approach would take the opposite view, proposing that the speaker, author, or subject imposes their own unique meaning on the world through language, words meaning precisely what they are intended to mean. The third approach, constructivism or constructionism, is the one with which Hall would align himself. Discussed in Chapter 7 (see pp. 184-185), constructivism owes a considerable debt to the semiotic work of Saussure, who showed that language and representation constitutes, rather than mediates, practice. This position recognises the social character of language, acknowledging that meaning cannot be fixed in language by either users of language or by an objective reality of things in themselves. Meaning is understood to be produced rather than found, constructed rather than discovered, in and through representational systems of concepts and signs in social interaction: "Meaning is produced by the practice, the 'work', of representation" (S. Hall, ed. 1997:28). Representation of meaning, then, and, in particular, representation of meaning as natural, inevitable, and fixed, is of great concern to those who would seek to govern, regulate, order, structure, and shape the conduct and ideas of others:

I believe it needs to be made clear about cultural discourse and exchange within a culture that what is commonly circulated by it is not "truth" but representations. It hardly needs to be demonstrated again that language itself is a highly organized and encoded system, which employs many devices to express, indicate, exchange messages and information, represent, and so forth. In any instance of at least written language, there is no such thing as a delivered presence, but a *re-presence*, or a representation (Said 1978:21).

The work of Michel Foucault is crucial in this regard. Foucault investigates the politics of representation, examining the intimate connections between language, meaning, knowledge, and power through theoretical explorations of 'discourse'. Foucault's understanding of discourse, though profoundly influenced by constructionist approaches to representation, seeks to widen the scope of inquiry beyond language to include elements of institutional regulation and practice, allowing for a broader investigation of the effects and consequences of representation. Foucault was clear in pointing out that he did not wish to treat discourses as groups of signs, but as fundamental guidance systems for power relations: "practices that systematically form the objects of which they speak" (1972:49):

Discourse - the mere fact of speaking, of employing words, of using the words of others (even if it means returning them), words that the others understand and accept (and, possibly, return from their side) - this fact is in itself a force. Discourse is, with respect to the relation of forces, not merely a surface of inscription, but something that brings about effects (Foucault, cited in A. I. Davidson, ed. 1997:4-5).

Particular discourses authorise particular people to speak and particular views to be heard, while also marginalising, deriding, excluding, and even prohibiting others: “Discourses impose themselves upon social life, indeed they produce what it is possible to think, speak, and do” (Hunt and Wickham 1994:8-9). The effect of this is such that what is socially constructed can, through the power of discourse, appear natural. Not only are language and representation implicated in the production of meaning, but the knowledge which a particular discourse produces was seen to link into relations of power, defining and limiting representation, defining and limiting the ways in which things are thought about, practised, and studied: “Knowledge linked to power, not only assumes the authority of ‘the truth’ but has the power to *make itself true*. All knowledge, once applied in the real world, has real effects, and in that sense at least, ‘becomes true’” (S. Hall, ed. 1997:49). Discourses, then, are embedded in characteristic practices. The emphasis for Foucault is historical specificity, representational practice and power/knowledge relations in concrete historical situations, in particular times and places. Foucault highlights not only the power of representation but also the question of power *in* representation, including “the exercise of *symbolic* power through representational practices” (259).

It is important to acknowledge here the use of the term ‘representation’ in ‘political representation’ for “political representation cannot be dealt with in isolation from other kinds of representation” (Sartori 1968:466). Political representation has often been presented as “the foremost structural problem of democracy” (de Grazia 1968:462). Within a political context representation has been defined in terms of a binary relationship, that between a ‘representative’ and the ‘represented’ or ‘constituent’, “with the representative holding the authority to perform various actions that incorporate the agreement of the represented” (461). Similarly, E. M. Sait states that representation “occurs whenever one person is authorized to act in place of others” (1938:476). Giovanni Sartori acknowledges that ‘representation’, in this sense, is a many-faceted

and elusive concept. Nevertheless, he presents three dominant meanings of the term: “(1) the idea of *mandate*, or instructions; (2) the idea of *representativeness*, that is, resemblance and similarity; and (3) the idea of *responsibility*, or accountability” (1968:465). It is interesting to note in passing, for reasons that will become apparent below, that “the origin of the modern idea of representation was vitally connected with the principle that the deputies represent the will of the nation, not the will of the people” (466).

### *Representation in Negotiation*

Within the context of the theory of negotiation, representation is not necessarily associated solely with language, but it may be, in that representation is understood to be *the articulation of one's own or another's negotiation of meaning*. Understanding representation in this way we can immediately collapse the distinction between political and other representation - all representation is political; all representation involves people, and all representation involves relations of power in and through negotiation in social interaction. A second corollary of this approach to representation is that all representation is (mis)representation insofar as there can never be an exact equivalence between the articulation of one's own or another's negotiation of meaning and the actual experience of negotiation. A personal diary, for example, can never fully communicate what it was actually like to experience 'being there'. Representations are inherently “partial - committed and incomplete” (Clifford and Marcus 1986:7).

### *Representation and Enclosure*

Within the context of enclosure, however, we must understand representation differently. The representation of enclosure is understood as *the articulation of one's own or another's negotiation of meaning with a claim to authority-as-certitude*. The representation of enclosure is a particular modality of representation, and can be simplistically characterised as a process of 'framing and claiming'. It therefore implicates people in the power operations of monologic generalisation, closure, and separation, as

outlined earlier in this chapter. Perhaps most crucial among these is closure, or rather, 'semantic closure', in which an exact equivalence is claimed between the articulation of negotiated meaning and the experience of negotiation. The representation of enclosure can mostly be summarised as a claim to 'truth-as-certitude' in the sense of 'this is the way the world is, and the way the world must be'. It is suggested that we can understand 'reflective', 'intentional', and 'political' approaches to representation as examples of the representation of enclosure. What becomes apparent from this understanding of the representation of enclosure is that it involves not only (mis)representation but *gross* misrepresentation of individually-negotiated experiences of negotiation, and, consequently, *gross* misrepresentation of the element of ever-present uncertainty by its very denial.<sup>33</sup>

Understanding the role and activities of the Irish Music Rights Organisation within the frameworks of the politics of representation-as-enclosure allows us to perhaps characterise IMRO's expansion as what Whisnant (1983) would call 'cultural intervention'. Whisnant emphasises that cultural issues must be construed in political terms. This is all the more important in situations where the differences between cultural systems are socially or economically unequal. This is certainly the case here, insofar as the Irish Music Rights Organisation has the lobbying support of the music industry, the Irish government, and national and international legislation on their side. Many people who felt that the meanings that IMRO encroached unnecessarily and inappropriately upon their lives speak without such legitimation. As Whisnant frames it, the "culture" that is perceived by the intervenor rarely coincides with what actually happens. *Gross* misrepresentation often results. That this was felt to be the case with IMRO was made

---

<sup>33</sup> We can perhaps understand this better by looking to Marcus and Fischer and their identification of a 'crisis of representation' with the human sciences: "The authority[-as-certitude] of "grand theory" styles seems suspended for the moment in favor of a close consideration of such issues as contextuality, the meaning of social life to those who enact it, and the explanation of exceptions and indeterminants rather than regularities in phenomena observed - all issues that make problematic what were taken for granted as facts or certainties on which the validity of paradigms had rested" (1986:8). This 'crisis' could be reinterpreted as a growing movement against those categories, metaphors, narratives and discourses that are predicated on certitude (and implicated in the process and practices of enclosure). Not only does the 'crisis of representation' arise from 'uncertainty about adequate means of describing social reality', but, in very real terms, it is founded on uncertainty about the dynamic discrepancy involved in representing anyone's negotiation of meaning-making, even our own.

clear by the many people who expressed that representatives of the organisation simply did not know what they were talking about when it came to what might be considered “traditional” contexts. What the representatives of the Irish Music Rights Organisation understood as ‘Irish Traditional Music’ was, as David Whisnant would phrase it, “a *selection*, an *arrangement*, an *accommodation* to preconceptions” (1983:260), or, in other words, their understandings arose from monologic generalisation, closure, and separation - the operations of framing.

From a position of certitude, the representatives of the Irish Music Rights Organisation claim that their organisation only has the best interests of musicians at heart, and within their own circle of logic this is undoubtedly true. IMRO was formed to champion the cause of commercial composers and songwriters, and those who work on behalf of the organisation feel duty-bound to extend its reach on the assumption that all musical practice is commodity exchange, an assumption founded on the epistemologies of neo-classical economics. Enthusiasm, however, is no excuse:

That cultural intervenors may be on the whole decent, well-meaning, even altruistic people does not (indeed must not) excuse them from historical judgment. One may reasonably display great charity for the cross purposes, confusions, and miscalculations of fallible individuals in difficult circumstances. But insofar as those people actively intervene in the cultural (or other) lives of large numbers of people, their failures and miscalculations, however “understandable,” become a legitimate object of concern. For the effects of what they do touch so many, and linger so long (Whisnant 1983:263-4).

The activities of the Irish Music Rights Organisation rely on the authority-as-certitude of narratives that weave the frames and expectations of law, intellectual property, copyright, and performing rights in and through negotiations of social interaction. Our lives are saturated by stories in which we play a part. In the words of radical pedagogist Roger Simon: “The stories we tell, the narratives that give coherence and meaning to our lives, set the terms within which we are able to formulate the possibilities of existence” (1992:60). Following Ricoeur, we might look to the ‘paradox of narration’, whereby contingent events are transformed into ‘necessary’ episodes by providing a context or link with other events, unifying elements that appear to be totally disparate through a process of emplotment (*mise en intrigue*), creating what Ricoeur refers to as a dialectic of sameness and selfhood (Reagan 1996:85). This is particularly the case with

IMRO's justificatory narratives. From the position of authority-as-certitude, they serve as highly-directive vectoral mechanisms. As they lay down the law, so, also, they lay down clear paths that guide our experience of negotiation.

We can adequately speak about these narratives as 'narratives of certitude' because that is how they are presented and deployed - as universally-applicable, totalizing schemes. These have been detailed throughout this thesis. Working from abstract, tidy, idealised 'truths' and principles, 'narratives of certitude' are predicated on oblivion to the particular.<sup>34</sup> It is clear that we can include Jean-François Lyotard's (1997) 'grand' or 'meta-' narratives as examples of narratives of certitude.<sup>35</sup> Thomas Docherty (1993) approaches metanarrative within the context of a general critique of Enlightenment rationality, such as that offered by Adorno and Horkheimer (1979), whereby 'reason', as implied by Enlightenment thinking, is exposed as a "specific *form* of reason"; mathematical consciousness and formalism privilege abstract and utilitarian categories as "knowledge is reduced to technology, a technology which enables the *illusion* of power and of domination over nature" (Docherty 1993:6). Docherty traces the Enlightenment's dominant abstract certitude through the narratives of structuralism, semiotics, historicism, and 'rational efficiency'.<sup>36</sup> In the atmosphere of the 'postmodern', the certitude of 'reason' has gone on trial: "It can no longer assume the capacity for self-legitimation without assuming an exclusivity; and henceforth its claims upon universality are sullied by its inherent tendency to fall into rationalism. It produces an administered society, not a rational society: reason is replaced by efficiency and by the aesthetic and formal vacuities of *rationalism*" (13-14). Following Lyotard, Docherty reaffirms the affiliation of metanarrative with the certitudes of Enlightenment's 'reason'; through the assertion of an abstracted master code, the employment of metanarrative necessarily denies "the specificity of the local and traduce[s] it in the interests of a global

---

<sup>34</sup> "Institutional creeds, such as law, economics, or theology, must be false in order to function effectively. This paradoxical statement means that they must express contradictory ideals, and must authoritatively suppress any facts which interfere with those ideals" (Arnold 1937:357).

<sup>35</sup> Although where Lyotard would see them as characteristic of 'the modern' (and 'incredulity' towards them as characteristic of the 'postmodern'), it is suggested here that the representation of narratives of certitude has always been a possibility. It is a sobering thought to consider that what we understand as 'history' could simply be the histories of successful enclosure.

<sup>36</sup> The last of these is significantly implicated by Zygmunt Bauman (1989) in the horrors of the Holocaust.

homogeneity, a universal history” (11). This is the environment of certitudes in which the Irish Music Rights Organisation operates. These are the narratives that the representatives of IMRO promulgate.<sup>37</sup>

The expansion of enclosure, it has been argued, can be better understood by turning to the concept of representation. It is suggested that the representation of enclosure entails claims to authority-as-certitude. The expansion of enclosure, then, is understood as the extension of authority-as-certitude. The expansion of the Irish Music Rights Organisation, detailed throughout this thesis, can be understood as the extension of IMRO’s claims to and narratives of authority-as-certitude. However, we are only really able to identify the character of the frames, claims, and narratives of the Irish Music Rights Organisation by identifying the points of resistance that they evoke in social interaction.

### *Resistance*

Now we look to the second element of the expansion of enclosure - resistance. In this section we will first note that resistance is often understood as juxtaposed in opposition to power or domination. This can be simplistically characterised as ‘resistance *to*’. The work of Michel Foucault on power has also led to fresh approaches to resistance. Here we once again build upon the theory of negotiation in order to redefine resistance in negotiation as *the constant and dynamic experience of encounter with expectational difference (vectoral incompatibility)*. This enables us to draw upon the work of scholars who use resistance as a diagnostic tool with which to analyse power relations, working

---

<sup>37</sup> Rosemary Coombe (1998) also speaks to the way in which such narratives empty social relations of specificity, thereby diffusing the challenge, or even possibility, of alternative interpretations or practices. Within narratives of certainty, conflict, difference, and social inequality are effaced: “The dialogic, contested dimensions of social life [are] evaded by a focus on dominant interpretations as the univocal voice of legitimate meanings and values” (13-14). As Sandra Harding has shown in her feminist critique of the knowledge politics of science (1991), such all-encompassing narratives of certitude are most often accompanied by claims to value-neutrality and the cleanliness of objectivity, thereby divesting the Big Story of all social causes, and hiding the question of ‘whose perspective?’ under the carpet. Certain feminist thinkers such as Genevieve Lloyd, Sara Ruddick, and Susan Bordo have also come to critique such homogenising ‘master codes’ within a gendered frame, as “abstract masculinity” (see Harding 1991).

from the principle that 'wherever there is resistance there is power'. We then reassess the character of resistance in the face of the expansion of enclosure. Resistance, it is argued, will always be deeply experienced in cases of enclosure, though not always clearly manifest, and the identification of particular resistance is a key step in the identification of the process and practices of enclosure. This is evidenced by a review of the resistance uncovered during the course of this research.

### *Resistance 'to'*

A formal definition of 'resistance' presents it as: "The act, on the part of persons, of resisting, opposing, or withstanding. ... Opposition of one material thing to another material thing, force, etc. ... *esp.* in the physical sciences, the opposition offered by one body to the pressure or movement of another" (Onions, ed. 1973:1807). Correspondingly, resistance in social life is often defined in terms of dualisms. One popular dualism, based upon notions of what we identified in Chapter 8 as behavioural power or 'power *over*' (see pp. 201-203), is that of resistance in opposition to power or domination: "The orthodox assumption seems to be that resistance is against power and that effective resistance will eventually overturn power" (Cresswell 2000:264). Analyses of resistance, therefore, have tended to focus on social movements, organised in opposition to dominant forces of state or multinational capital (see Sharp et al. 2000). It has been noted, however, that within anthropology such dualistic approaches have had the drawback of vagueness, "the vagueness of what was taken to be 'resistance' - i.e. action which *impeded* or subverted unequal power relations, as apart from moments of relative autonomy when the apparently powerless could step aside from the realities of oppression" (Spencer 1998:489). In what should now be a familiar rhetorical structure, dominant understandings of resistance constitute a prime example of contextual or dialectical definition, being most often defined in relation to its 'opposite', that being 'power' or 'domination'. In some cases, indeed, that power is represented as being so 'powerful' that resistance is the work of the powerless, and hence futile (Sharp et al 2000:2). Resistance, then, is primarily understood as 'resistance *to*'.

## *Resistance in Negotiation*

Thanks to the work of Foucault, however, “Resistance is in danger of becoming a meaningless and theoretically unhelpful term” (Cresswell 2000:259). This is largely on account of his statement that: “Where there is power, there is resistance, and yet, or rather consequently, this resistance is never in a position of exteriority in relation to power” (1990:95). Foucault has argued at length for the ubiquity of power. It follows, therefore, that he must also be arguing for the ubiquity of resistance. As Cresswell remarks, however:

Something that is applicable to everything is not a particularly useful tool in interrogating social and cultural life. ... Everybody is so busy resisting always, and already, that little more needs to be done. One problem is that an act such as an armed insurrection or a general strike is equated with the act of farting in public or telling jokes about the boss. The word resistance can apply to all of these and yet they are clearly more different than they are alike (2000:259).

In the theory of negotiation presented earlier, a way was found in which the ubiquity of Foucault’s conception of power could be grounded by locating power in the experience of uncertainty and certainty in social interaction. Similarly with resistance, although it must be noted in passing that “Foucault did not spend too much time on the subject of resistance” (263). Resistance, then, is redefined as *the constant and dynamic experience of encounter with expectational difference (vectoral incompatibility)*. This understanding of resistance is still compatible with definitions, such as that found at the ‘Lectric Law Library on the Internet, that present resistance as “the opposition of force to force”<sup>38</sup>, if only in the sense that expectations are understood in terms of forces or vectors in negotiation. This allows us to think of resistance in a way which is not opposed to power, or domination. Resistance is best understood as resistant negotiation. In many ways resistance is the tension of difference within social life. Its ubiquity might render it totally useless were it not for the benefits of resistance as a diagnostic tool.

---

<sup>38</sup> <http://www.lectlaw.com/def2/q154.htm>

## *Resistance as Diagnostic of Enclosure*

Tim Cresswell (2000) emphasises the usefulness of resistance as a diagnostic tool. His position draws on Lila Abu-Lughod's (1990) anthropological fieldwork among Bedouin women. The complex realities of Bedouin life challenged Abu-Lughod's search for resistance as the absence or incompleteness of power. The 'romance of resistance' with which she had originally approached her work had led her to foreclose her analyses of power and social life among Bedouin women. It was ultimately more useful to allow resistance to "tell us about forms of power and how people are caught up in them" (42). Tim Cresswell combines the work of Abu-Lughod with the insights of Foucault, thereby inverting Foucault's dictum, that where there is power there is resistance, to come up with the slogan that "everywhere there is resistance there is also power" (2000:265):

It is important that we do not stop thinking about everyday forms of resistance, but equally important that we do not romanticise and essentialise them. Rather than telling us how people are free or partially free from forces of oppression inscribed in space, resistance can be used strategically to reveal how people are caught up in a multitude of often invisible modes of power (266).

This is broadly how 'resistance' is presented in Chapter 3 of the thesis, in the context of the analysis of IMRO's 'cycle of expansion':

"Resistance" refers ... to a manifestation of opposition to the expansion of the Irish Music Rights Organisation in such a way as hinders the licensing operations of the organisation. Resistance, in this sense, is an indication of a refusal to comply with IMRO's contractual expectations. In the case of both the primary schools and the Vintners' Federation, resistance was vociferous. The claims made by IMRO representatives were characterised in both disputes as being unnecessarily aggressive. In the case of primary schools, the claims to jurisdiction were even portrayed as being both inappropriate and immoral, though undeniably "legal". In the case of the Vintners' Federation, the most obvious resistance took the form of adversarial legal action in direct opposition to the demands of the Irish Music Rights Organisation. For the purposes of analysis, resistance can prove very useful. It is unlikely that the claims that IMRO representatives made regarding licensing would have even been noticed by anybody other than the contracting parties had it not been for the resistance offered by both primary schools and publicans. In this sense, identification of IMRO's cycle of expansion relies heavily on the identification of resistance (pp. 62-63).

In this thesis, then, we have focused on manifestations of resistance, and these manifestations of resistance have allowed us to identify the expansion of the Irish Music Rights Organisation. This thesis, then, has proceeded in the spirit of Stuart Hall's remark that "The effects of power are particularly visible when attempts are made to fix

meanings” (S. Hall, ed. 1997:10).<sup>39</sup> We might say that we are only able to identify the expansion of the Irish Music Rights Organisation, the extension of the organisation’s authority-as-certitude, by identifying and highlighting the moments and sites of most resistance. What follows from an understanding of the representation of enclosure as claims of authority-as-certitude, is that resistance indicative of enclosure will be experienced as quite extreme. As noted before, where authority-as-certitude is concerned there is no middle ground. The claims of authority-as-certitude must be met with either acceptance or rejection. One of the primary features of resistance in situations of enclosure, then, is that it is characteristically negotiated within discourses of obedience and disobedience, loyalty and disloyalty, orthodoxy and heresy, truth and error. This is clearly evident in the polarisation of legality and illegality that overshadows the activities of the Irish Music Rights Organisation, and, indeed, any operation reliant on the certitudes of legislation.

Greatest indication of widespread resistance in the face of IMRO’s ‘framing and claiming’ from 1995-2000 was found among people who supported ‘traditional music’, or, more to the point, people whose expectations in social interaction were more compatible with what they considered to be a ‘traditional’ perspective than with the perspective promoted by the representatives of IMRO. Resistance was primarily evidenced by the championing of the cause of ‘traditional music’ as a ‘commons’ in opposition to the legislative enclosure of copyright and intellectual property (see Shields 1993:179; Ó hAllmhuráin 1998:151; Carolan 2000:27). The final act of ‘enclosure’ was deemed by some to be the accession of Labhrás Ó Murchú and Comhaltas Ceoltóirí Éireann to IMRO’s licensing demands. As one contributor to the IRTRAD-L internet mailing list in 1999 put it: “Before, traditional music was a “commons” on which we all could graze. Now it has been grabbed and fenced by IMRO with CCÉ assistance”.

We are not concerned here to analyse expectations that were, and are, incompatible with those of the Irish Music Rights Organisation. Rather, we are interested in

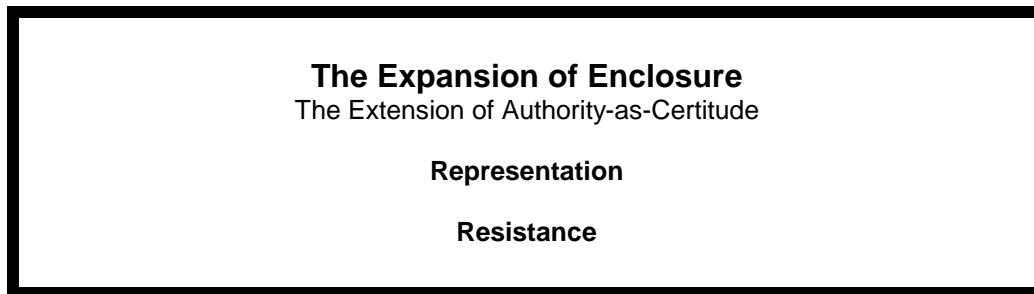
---

<sup>39</sup> We are reminded of the words of poet John Clare, that “enclosure had a terrible but instructive visibility” (cited in E. P. Thompson 1993:180).

identifying resistance in order to bring the power relations deployed by IMRO to visibility. This has already been done. The structure of this thesis is founded on an initial examination of the expansion of the Irish Music Rights Organisation and the resistance manifested by that expansion. This is not now understood simply as 'resistance to' that expansion, but is now complexified to speak of expectational difference in social interaction. Resistance is not the privilege of any one group. Indeed, it might even be suggested that resistance and conflict are here taken to be synonymous.

In this chapter we are both moving towards a theory of enclosure and towards an understanding of the expansion of the Irish Music Rights Organisation from 1995-2000 as an example of both process and practices of enclosure. By understanding enclosure as a modality of negotiation and of the exercise of power, we can come to a better understanding of the relational implications of IMRO's expansion. Enclosure it is argued, can be understood as disclosing three primary features: framing, expansion, and consolidation. Framing, we have seen, is constituted by three operations of power: monologic generalisation, closure, and separation. These operations were exemplified by a brief examination of the role of the 'work' in IMRO's activities. The second feature of enclosure is expansion. The expansion of enclosure, it has been argued, refers to the extension of claims to authority-as-certitude, and, in particular, claims to authority-as-certitude made by representatives of IMRO. It has been suggested that the expansion of enclosure can be usefully viewed from the perspectives of both representation and resistance. Representation is here understood as the articulation of one's own or another's negotiation of meaning, and the representation characteristic of enclosure, and of the Irish Music Rights Organisation, is understood as the articulation of one's own or another's negotiation of meaning with a claim to authority-as-certitude. High levels of resistance are typically experienced in social interaction following such absolute claims, insofar as claims to authority-as-certitude must be either accepted in full or rejected as spurious. Absolute claims leave no room for compromise or expectational ambiguity. Resistance is redefined as the constant and dynamic experience of encounter with expectational difference. The manifestation of resistance, then, can be used in the analysis of enclosure as a diagnostic tool with which to clarify

the character of divergent expectations, the character of the representations of enclosure, and their role in power relations of negotiation. Now we in a position to examine the third feature of enclosure - consolidation.

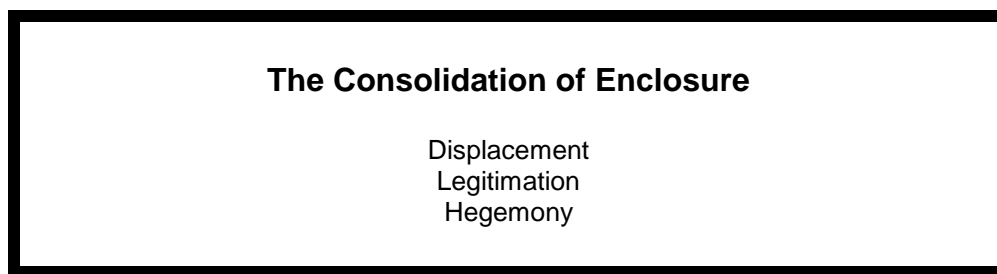


**Figure 10. Analysing the Expansion of Enclosure**

#### **The Politics of Enclosure IV: Consolidation**

Consolidation is the third feature of the process and practices of enclosure. The word 'consolidation' suggests a number of primary associations, each of which is relevant to our concerns here. First, it conveys the sense of a process of making strong or solid. Second, it can be used in the sense of reinforcing or strengthening one's position, 'consolidating' one's power. Third, it can be used in the sense of unification, combining disparate parts into a general whole (Tulloch, ed. 1993:305). Within this theory of enclosure, consolidation is the stage in which the power effects of enclosure, and thus the effects of the expansion of the Irish Music Rights Organisation, are seen most clearly. Following on from our discussion of expansion as the extension of claims to authority-as-certitude, in the elements of consolidation we get some idea of the effects of power that arise as people respond to those claims. The consolidation of enclosure is understood here to be comprised of three elements: displacement, legitimation, and hegemony. Displacement refers to the effects that acceptance of the representations of enclosure brings. Accompanying the acceptance of such absolute claims is the displacement of local, personally negotiated expectations in favour of the universal, absolute, and generalised expectations of enclosure. This can be simplistically viewed as an experience of 'conversion'. Legitimation happens when claims to authority-as-

certitude are rejected. Legitimation is understood here as *deferral to a source of authority-as-certitude other than oneself in the cause of representations of enclosure*. Displacement comes with acceptance, legitimation comes with rejection, and the achievement of hegemony means that whatever the response to absolute claims might be it doesn't really matter. It will be shown that the term 'hegemony' speaks to the nesting of claims to authority-as-certitude within multiple authorities-as-certitude, such that the representations of enclosure achieve the status of unquestioned and unchallenged dominance.



**Figure 11. The Consolidation of Enclosure**

### *Displacement*

The expectations that structure the Irish Music Rights Organisation also contribute to the structure of negotiations within the lives of those who fall on the side of acceptance rather than rejection of IMRO-as-certitude: "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). With acceptance of the representations of enclosure new expectations take the place of old. New relations of power are established in negotiation which prescribe the voices that are to matter, and concentrate power around newly focused expectational assemblies:

Enclosure tears people and their lands, forests, crafts, technologies and cosmologies out of the cultural framework in which they are embedded and forces them into a new framework which reflects and reinforces the values and interests of newly-dominant groups. Any pieces which will not fit into the new framework are devalued and discarded (Goldsmith et al. 1992:149).

Three points serve to exemplify the displacements that occur with acceptance of the absolutist representations of enclosure, remembering that the range of possible displacements is as specifically infinite as the negotiations in which displacements occur. The first point is that the acceptance of the authority-as-certitude of the Irish Music Rights Organisation displaces the possibility of disagreeing with the organisation on the most basic principle - that it should exist. The second point, related to the first, is that acceptance of the authority-as-certitude of IMRO implicitly displaces the possibility of disagreement with the basic assumptions on the basis of which the organisation operates.<sup>40</sup> Accepting the validity of IMRO's operational status is implicitly to accept the orthodox assumptions of law, economics, and literary production that ground its expansion, and subsequently, to abide implicitly by what these discourses say about what it means to be human. Is it enough to assume that human life can be adequately explained by the principles of neo-classical economics or by romantic ideologies of literary production? To acquiesce to IMRO's activities is to agree implicitly that the universalisms of such conceptions of humanity suffice. Whether someone who accepts IMRO knows what these discourses say about what it means to be human is neither here nor there. General acceptance of the Irish Music Rights Organisation implies suspension of radically effective disagreement.

This has very real consequences. It can involve displacement, for example, of perhaps unacknowledged understandings of musical activity, rooted in fuzzy, bulging, dangerous, overflowing, uncertain experiences of social relationships and social interaction, in favour of highly directive framings of 'music', based on notions of 'authorship', 'composition', 'originality', and 'works', in the certified safety of 'purely' aural or visual understandings. This kind of displacement may be manifest in the smallest ways. In 'traditional circles' a 'tune' or 'song' might have many names or be played in many ways, for "the names of tunes are *not* the tunes: they are tags, referents, snippets of speech which find themselves attached to musical encounters ...

---

<sup>40</sup> This echoes one of the arguments of systems theorist Niklas Luhmann, as summarised by Barbara Mizstal, that: "Once citizens have accepted their own roles within procedural mechanism ... they no longer possess any opportunity for questioning its results and mobilizing on the basis of values, interests or general principles" (1996:249-250).

as mnemonics, the names summon up a tangled web of circumstances; they not only help to summon the tune into being, but recall other times and other places where the tune was played, and [who] the company there might have been” (Carson 1996:7-8). Within the expectational matrices of copyright, however, particular tunes, and particular ways of playing particular tunes, are associated with one name for the purposes of registration and royalty collection, thereby satisfying the monologic generalisation, closure, and separation required for the commodity of the work. A ‘definitive’ name thus becomes a unitary focus for authority-as-certitude. In the session situation described in Chapter 4, where musicians made a point of not playing certain tunes because they were ‘copyright’ (see p. 80), we can see a clear and unequivocal example of this displacement in practice. ‘Tunes’, singularly conceived, are ‘displaced’ from the session, as, clearly in this case, are understandings of the purpose and role of tunes within the fluidity of a relaxed ‘traditional’ session.<sup>41</sup>

A key operation in the process of displacement, then, is naming. Naming, like anything else, is often considered a value-neutral activity. Like anything else, it isn’t. Naming can be an operation with a low uncertainty index: fluid, adaptive, and negotiable. Naming can also, however, be coopted as an operation within the wider operations of enclosure. Feminists in particular have drawn attention to monologic strategies of linguistic authority. As Mary Daly notes: “Women are now realizing that the universal imposing of names by men has been false because partial. That is, inadequate words have been taken as adequate” (cited in Fetterly 1998:566). The naming of enclosure can be seen as a task of ‘framing and naming’, implicated in the operations of monologic generalisation, closure, and separation. Each act of ‘framing and claiming’ is an act of misrepresentation. Each act of ‘framing and naming’ is also, then, an act of misnaming within a scheme of misrepresentation, if only because the singularity of highly-directive, single-association naming is a denial of the possibilities of negotiation. The declaration

---

<sup>41</sup> For example, in a session, tunes are sometimes known by one name, sometimes by another. Sometimes they can have up to thirty names. Sometimes the name refers to a moment with which a musician associates the tune. Sometimes it refers to a person who is fondly remembered for playing the tune a particular way. Exploration of this is beyond the scope of this thesis. For considerable insight into these and other related matters see Carson (1996), or Wilson (1995).

of 'the real/proper/only name' is more a declaration about 'authority to name' than a declaration about a name 'itself'.

This is related to a third point about the displacement of enclosure. Through the acceptance of the representations of enclosure, personal authority, experience through locally- and individually-negotiated meanings, is displaced in favour of abstract, generalised, universalising prescriptions of normative, legal authority-as-certitude. Instead of working it out for yourself, you actively do what other people expect you to do, but then only within the parameters defined by the Irish Music Rights Organisation and other organisations like it. Within the context of copyright and the Irish Music Rights Organisation, labels like 'author', 'singer-songwriter', 'creator', or 'composer' refer specifically to very specific roles that are suffused with very specific and highly directive expectational requirements of prescription and control, remembering that: "No set of legal institutions or prescriptions exists apart from the narratives that locate it and give it meaning" (Cover 1983:4). These terms are effectively synonymous with the term 'producer', and it is within the narrative of production and consumption that members of IMRO find themselves operating: "[Enclosure] shifts the reference points by which people are valued. Individuals become "units" whose "value" to society is defined by their relationship to the new political entity that emerges from enclosure" (Goldsmith et al. 1992:152).

This suggests that displacement effected by acceptance of the claims of representatives of the Irish Music Rights Organisation to authority-as-certitude affords greater concentrations of power to those who master the language and expectations of the system of enclosure, those whose negotiations are most compatible with the logic of enclosure. A new, focused, goal-oriented language of power is there to be employed and deployed, a language inaccessible to those who have not been 'successfully' 'educated' in the ways of the Irish Music Rights Organisation or the 'music industry'. This is perhaps most clearly shown by the binary opposition of the terms 'professional' and 'amateur' within copyright discourse. This binary operates very simply, serving as

an overlay for a more obviously dubious dichotomy, that of legitimate and illegitimate musical activity:

Whether male or female, a person's influence and ability to make a living depends increasingly on becoming absorbed into the new polity created by enclosure, on accepting - willingly or unwillingly - a new role as a consumer, a worker, a client or an administrator, on playing the game according to new rules. The way is thus cleared for cajoling people into the mainstream (Goldsmith et al. 1992:154).

The expansion of the Irish Music Rights Organisation is the extension of claims made by representatives of the organisation to authority-as-certitude. Acceptance of those claims is acquiescence to a silence of unquestioning, unchallenging negotiation, at least insofar as the existence and, importantly, the activities and assumptions of IMRO are concerned. The claims of the Irish Music Rights Organisation call for a positioning of oneself, a declaration of self-inclusion or self-exclusion, a wonderful example of co-optation into the operations of framing. The boundary between acceptance and rejection is not only a boundary between orthodoxy and heresy, but, crucially, also a boundary between obedience and disobedience, legality and illegality. It is also effectively a boundary between worlds:

The point that is relevant here is not only that private lawmaking takes place through religious authority, contract, property, and corporate law (and of course through all private associational activity), but also that from time to time various groups use these universally accepted and well-understood devices to create an entire *nomos* - an integrated world of obligation and reality from which the rest of the world is perceived. At that point of radical transformation of perspective, the boundary rule - whether it be contract, free exercise of religion, property, or corporation law - becomes more than a rule: it becomes constitutive of a world. We witness normative mitosis. A world is turned inside out; a wall begins to form, and its shape differs depending on which side of the wall our narratives place us on (Cover 1983:31).

### *Legitimation*

The second element of the consolidation of enclosure is legitimation. Where displacement is associated with *acceptance* of representations of enclosure, the 'need' for legitimation emerges with their *rejection*. 'Legitimation' has been formally defined as "The rendering or authoritatively declaring (a person) legitimate" (C. T. Onions, ed. 1973:1197). Here, we adapt this definition slightly to understand the power operation of legitimation as *deferral to a source of authority-as-certitude other than oneself in the cause of representations of enclosure*. There are two important points to highlight here.

The first is that the vital element (literally) in both of these perspectives on legitimation is that authority(-as-certitude) is bequeathed to another *person*. No matter what we call it, or how we label it, the deferral of authority to a 'legitimate' authority-as-certitude is always and most importantly the deferral of authority in negotiation to a *person* other than oneself.<sup>42</sup> Legitimation thus defers authority for meaning, interpretation, and definition to a source other than oneself. The second point is that this deferral is effected *in the cause of representations of enclosure*. This is sympathetic with the position of Berger and Luckmann who identify legitimation as the process of 'explaining' and 'justifying' "the salient elements of the institutional tradition":

Legitimation 'explains' the institutional order by ascribing cognitive validity to its objectivated meanings. Legitimation justifies the institutional order by giving a normative dignity to its practical imperatives. ... Legitimation not only tells the individual why he *should* perform one action and not another; it also tells him why things *are* what they are (1966:111).

With the absolutist character of the representations of enclosure, however, the 'why' eventually comes down to: 'because that's the way things are'. Berger and Luckman also point out that the problem of legitimation arises most inevitably arises "when the objectivations of the (now historic) institutional order are to be transmitted to a new generation" (ibid.). I would suggest that the issue of legitimation arises not just with the involvement of a new generation, but generally with the involvement of anyone who has not yet been 'converted' to (mis)recognise the authority-as-certitude of the representations of enclosure. If the basic assumptions of the Irish Music Rights Organisation remain unquestioned, then the issue of legitimation need not arise.

Legitimation is deployed primarily in the face of challenges to representations of enclosure, claims to authority-as-certitude. Legitimation, that is, is deployed primarily in the face of a rejection of enclosure. As Frederic Jameson writes in the introduction to

---

<sup>42</sup> This needs to be particularly remembered in the case of an organisation such as IMRO, where the monologic generalisation implied by unitary corporate branding can blind us to the reality that it all still comes down to people in social interaction with other people. The power relations that characterise the organisation are the power relations that characterise the lives of those who constitute the organisation. Subsequently the effects of these power relations are felt in the social interactions of those who defer to the authority-as-certitude of the organisation. A similar point is emphasised in a Competition Authority ruling: "A body corporate, in itself, is merely a legal conception. Its purposes, objectives and activities are determined by individual human beings. To suggest some general distinction between a purpose of the body and a purpose of the constituent members is somewhat unreal. The purposes of a company and the purposes of its members, as members, are ultimately identical" (IECA Ruling no. 4, June 30, 1992).

Lyotard's Postmodern Condition (1997): "legitimation becomes visible as a problem and an object of study only at the point in which it is called into question".<sup>43</sup> It has already been argued that representations based on authority-as-certitude are gross misrepresentations of the experience of negotiation. Because such claims are misrepresentative, the perpetrator of such a claim, if questioned, must enthusiastically undertake a program of legitimation until such time as the status of the claim's authority-as-certitude is secured, and the questions subside. Any other outcome unsettles the delicate balance of duplicity, and uncovers the representations of enclosure as vulnerable to the criticism of 'infinite regress':

The adequacy of logical proofs was always suspect. For a logical proof to be a justification, it must be possible to demonstrate the proof for all to see. Failure to do so is evidence of an error. An example of a failure to demonstrate is the so-called 'infinite regress'. If we give reasons for *why* some particular statement is true, we might be asked to show why we think our reasons are true. ... we must [then] step backward and provide another set of reasons to prove the truth of the first set of 'reasons'. But if that is possible, then any subsequent reasons can also be questioned. This requires still another backward step and another set of reasons. There is no limit to the number of required sets. Hence, we have an infinite regress. Such a possibility means that one could never provide a complete (and thus finite) proof of one's knowledge (Boland 1997:99).

Legitimation is very clearly, then, a technique of power deployed in the cause of 'conversion': from disobedience to obedience, from heresy to orthodoxy, from illegality to legality, from injustice to justice.<sup>44</sup> This returns us to our earlier discussion in Chapter 5 about what Galbraith calls the 'cultivation of useful belief' and its role in the expansion of the Irish Music Rights Organisation (see pp. 128-136). For Galbraith, the 'cultivation of useful belief' "consists ... in inducing the individual to abandon the goals he would normally pursue and accept those of another person or organization" (1973:22). This is primarily achieved, it was argued, through the twin process of persuasion and, in the case of the the failure of persuasion, coercion. It is now argued that persuasion and coercion are undertaken as operations of legitimation within the general schemes of

---

<sup>43</sup> It has been argued, indeed, that the issue of legitimacy as problematic is historically linked to this very issue: "In the form most familiar, legitimacy as a distinct issue traces to the seventeenth century when the above assumptions were challenged by the view that human beings (some among them) are, by nature or before God, free and equal in at least one respect: no human being has natural or divinely ordained authority to rule them. On this picture, the only unproblematic authority is each person's authority over herself. Government of any kind, certainly government with content-independent authority, demands justification" (Flathman 1993:527).

<sup>44</sup> See Jack Goody's The Logic of Writing and the Organization of Society (1986) for some interesting remarks on connections between the role of conversion and the institutionalisation of literate authority(-as-certitude). See also Muir (1967).

enclosure. Legitimation, then, is the key technique of power in the ‘cultivation of useful belief’.

To reiterate, legitimation is here understood as *deferral to a source of authority-as-certitude other than oneself in the cause of representations of enclosure*. We turn now to provide examples of the authorities-as-certitude to which representatives of the Irish Music Rights Organisation turn in the face of resistance and outright rejection. First, the role of ‘member’, ‘consumer’, and, now, ‘authorial’ mandates is noted. Second, the ‘perfect reason’ of the ‘rule of law’ is presented as an underlying source of authority-as-certitude for IMRO. Third, it is suggested that the positivist approaches implied by the ‘rule of law’ are reinforced by positivist neo-classical economic doctrines that pervade the organisation’s claims. With contracts, we find deferral to the authority-as-certitude provided by instruments of both legal and economic closure.

In Chapter 5 we highlighted the member<sup>45</sup> and consumer mandates upon which IMRO relies to furnish support for its activities from the explanatory logic of neo-classical paradigms (see pp. 113-121). These mandates, it is now noted, constitute key authorities-as-certitude in the organisation’s legitimation strategies. In performing rights discourse, however, not only does taking recourse to neo-classical economics or the member mandate serve to deflect attention away from the power and influence of the technostucture of the royalty collection agency, but so too do appeals to romantic discourses of creativity, genius, and originality. We might refer to this as the ‘authorial’ mandate. As Mark Rose has remarked generally: “Copyright is founded on the concept of the unique individual who creates something original and is entitled to reap a profit from those labors. Until recently, the dominant modes of aesthetic thinking have shared the romantic and individualistic assumptions inscribed in copyright. But these assumptions obscure important truths about the processes of cultural production” (1993:2). Appeals to the rights of “creators” serve to further deflect attention away from

---

<sup>45</sup> Legitimation strategies which embrace the member mandate have much in common with strategies that look to the democratic mandate: “The notion that government must rest on the consent of the governed has become an article of political faith, a conviction that much contemporary political philosophy labours to secure” (Flathman 1993:528).

the economic and political implications of the activities of the Irish Music Rights Organisation. They also defer to the authority-as-certitude of the legal 'subject'. Jane Gaines refers to the 'subject' as "the hypothetical point where meanings converge - the "point of unity" where sense is made" (1991:22). She also draws on the work of Pashukanis and Edelman, proposing that we consider intellectual property through the concept of the legally- and capitalistically-constructed "author-subject": "Only as an author can a legal subject have a right in a work, and only as a legal subject can an author be said to have a "right" to defend or to assign to a third party" (26). Through the rhetoric of romantic creativity, focus is maintained on the individual "creator" as the locus of the power, another locus of authority-as-certitude for the system, adding to the other convenient constructs of member-producer or consumer-user. This allows the activities of the collection agency to again go unexamined, unquestioned, and unchallenged for the very simple reason that they are rendered invisible, or at least irrelevant: "there is a way in which we *are* imprisoned by legal discourse. As rights-holders, we are built into an invisible structure that requires our symbolic agreement *whether or not we act in any empirical way in concert with this structure*" (1991:28).

This suggests that another key source of authority-as-certitude that is deferred to in the legitimation processes of the Irish Music Rights Organisation is 'Law' itself. This is entirely appropriate, as the etymology of the word 'legitimate' is rooted in an allusion to law. Nicholas Blomley, in Law, Space, and the Geographies of Power (1994), outlines how the rule of common law, in particular the 'supremacy of law', or, for our purposes, the 'certitude of law', received a crucial and highly influential elaboration through the work of Edward Coke (1552-1634). It was Coke who defined law as "perfect reason" and this definition became the fulcrum of his theory of precedent, finding optimum articulation in Coke's, "*Neminem oportet esse sapientiores legibus*: no man (out of his own private reason) ought to be wiser than the law, which is the perfection of reason" (cited in Blomley 1994:72). Coke's second major contribution was the related effect whereby all other sources of legal interpretation became subordinate to the rule of common law in its perfect rationality. This effected a disconnect between local legal life, and the "disembedded superstructure" (76) of common law. This ran counter to the

multivocal, decentralised origins and aspirations of early common law, but became an influential component of increasingly centralised and rationalised legal practices. “Local legal knowledge is subsumed within a unitary and systematic monolith. The diversity and materiality of social life and legal understanding is consumed by a unitary and abstract system in which legal practice and legal doctrine exist in a self validating circularity, independent of “external” conditions” (82). This perception of the law as the source of authority-as-certitude is reflected most obviously in the notion of the ‘rule of law’, which underpins much Anglo-American conceptions of law, and is also, subsequently, a source of authority-as-certitude to which the representatives of the Irish Music Rights Organisation may defer in their deliberations:

The English jurist A. V. Dicey formulated in the late nineteenth century (Dicey 1885) the most celebrated composition of the rule of law as involving three elements: first, the absolute supremacy of law over arbitrary power including wide discretionary powers of government; secondly, that every citizen is subject to the ordinary law of the nation administered in the ordinary courts; and thirdly, that rights are based not upon abstract constitutional statements but upon the actual decisions of courts. ... (Cotterrell 1984:168).

As Cotterrell notes, the certitudes of the rule of law presuppose the certitudes offered by a positivist approach to law insofar as “The doctrine of the rule of law demands that law consist of known, predictable rules” (ibid.). The role of legal positivism within the claims of the Irish Music Rights Organisation is further reinforced by an economic version of logical positivism. Donald McCloskey (1994) terms it ‘architectural modernism’, while Lawrence Boland (1997) prefers the term ‘conventionalism’. Distinguishing in particular a “workaday rhetoric” of logical postivism within the practices of neo-classical economics,<sup>46</sup> McCloskey has shown how it flees from the uncertainties of “ambiguity, polysemy, obscurity, mythopoeic allusion, and primitivism” (xii), participating in what Richard Rorty has termed “the triumph of the quest for certainty<sup>47</sup> over the quest for wisdom” (cited in McCloskey 1994a:398). The authority of the discourse of neo-classical economics, grounded in logical positivism, assumes the status of authority-as-certitude for IMRO representatives, providing yet another source for legitimation in times of challenge. As Boland notes, one of the key advantages of the legitimations of postivist

---

<sup>46</sup> As distinct from the more sophisticated but related positivisms of philosophers such as Schlick, Carnap, and Ayer (see Ayer 1960).

<sup>47</sup> Within the terms of reference provided in this thesis, what Rorty refers to here as 'certainty' might be better understood as 'certitude'.

rhetoric is that neo-classical hypotheses are often immunised by rhetorical strategies that keep such claims safe within a merry-go-round of certitudes: “This *strategy* immunizes the neo-classical hypothesis from refutation even when it is false – and regardless of whether the axiom is falsifiable. The question is not whether the statement of the maximization hypothesis is falsifiable but whether the immunization *strategy* can ever be defeated!” (1997:74).<sup>48</sup>

Knowledge within positivism is taken to be asocial and independent of both ‘senders’ and ‘receivers’, culture, and history, and it is guided by “the Cartesian dogma that only the indubitable is true” (McCloskey 1994:398). The certitudes provided by the legitimations of positivism also save effort in that they require no broad-based consideration of factors other than those that interest you: “Most of the facts of the matter could be ignored, since most could be construed, if you were dull enough, as not bearing on the hypothesis under test. No tacit knowledge was necessary, no sense of the landscape, no feel for the story” (8-9). This is reflected unconditionally in Hugh Duffy’s admission during his radio argument with Fintan Vallely, presented in Chapter 4: “I don’t claim to have a knowledge of music” (p. 84). Such knowledge is not deemed necessary, or relevant. Another statement of Duffy’s is perhaps more obviously positivist: “Who owns the tune is a matter of fact! It’s property rights. It’s nothing to do with us.” (p. 84). This statement, for all its brevity, is particularly revealing, in that it manages to highlight the composite legitimations of both legal and economic closure, through an appeal to the certitudes of ‘property rights’. Duffy also defers here to the certitudes of the classic fact-value split of positivism,<sup>49</sup> grounded in a behaviourist phenomenism that cannot incorporate introspection or meaning negotiated in and

---

<sup>48</sup> In Chapter 1, I made a similar point: “What is particularly powerful about the discourse of copyright is the way in which it is comprised of elements from a number of different and often paradoxical literary, economic and legal discourses that coalesce around a regularising terminology of creativity, originality, authorship, incentive, rights, property, and individualism. What happens is that a challenge to one aspect of this working assembly of discourses is often undertaken in the language of another one of copyright’s constituent discourses” (p. 19).

<sup>49</sup> “Believing, mistakenly, that operationalism and objectivity and statistical significance are enough to end all dispute, the economist assumes that his opponent is dishonest when he does not concede the point at issue, or that he is motivated by some ideological passion and by self-interest, or that he is simply stupid. It fits the modernist split of fact and value to attribute all disagreements to political differences, since facts are alleged to be, unlike values, impossible to dispute” (McCloskey 1986:184).

through social interaction. It is through claims like these that the operations of the organisation are consistently portrayed as value-free and politically-neutral.<sup>50</sup> In both cases, the IMRO representative's claims disclose unequivocal operations of the legitimization of enclosure.

Contracts are also an issue here. In the face of resistance, people defer to contracts as a source of authority-as-certitude. This is exemplified by the 'turnaround' enacted by Labhrás Ó Murchú's declaration of the 'end of debate' upon the signing of a private contract with Shay Hennessy of the Irish Music Rights Organisation, on behalf of all the members of Comhaltas Ceoltóirí Éireann. Contracts typically play a key role in many legitimations of enclosure, given that they serve simultaneously as instruments of both legal and economic closure. First come the alliances: "Throughout history, enclosures have been resisted: and throughout history, enclosers have sought to contain that resistance, where possible turning it to their advantage. ... [A]lliances between different interest groups have played a key role in the enclosers' strategies" (Goldsmith et al. 1992:161). Then comes the contract as a seal of certitude: "By helping us categorize, [contracts] encourage us to simplify in a way that denies the complexity, and ambiguity, of human relationships. By offering us the false hope of definitive resolution, they allow us to escape the pain, and promise, of continual reassessment and accommodation" (Dalton 1989:195).

These are just some examples of the authorities-as-certitude that are available to representatives of the Irish Music Rights Organisation in their drive to 'cultivate useful belief' amidst the extension of their own claims to authority-as-certitude for their own organisation. When their own representations of enclosure fail they move to shore up those claims by deferring to one 'certitude' after another until acquiescence is achieved. The ultimate aim is total acquiescence. Only then can the authority-as-certitude of the organisation, which is arguably based on what Mark Kelman refers to as "patently

---

<sup>50</sup> "The notion of value-free objectivity is morally and politically regressive ... It has been used to legitimate and hold up as the highest ideal institutions and individuals that are, insofar as they are scientific, to be studiously unconcerned with the origins or consequences of their activities or with the values and interests that these activities advance" (Harding 1991:158).

unstable babble” (1989:215), be secured, and, importantly, validated, as ‘natural, inevitable, and necessary’. Legitimation is an attempt to displace other people’s interpretive structures of expectation, other people’s experience of meaning. It signals a call to delegate personal power and authority in negotiation to others within the parameters of specific concerns, thereby hiding, and even denying the degree to which responsibility can be assumed for meaning in that regard. In a very real way, acquiescence to legitimation is acquiescence to a degree of self-disempowerment. As Richard Flathman writes of political legitimacy: “To concede the legitimacy of government is to accord some number of persons a right that we otherwise reserve to ourselves, the right to conduct our own lives and affairs as each of us deems appropriate” (Flathman 1993:527). Legitimacy need not have anything to do with the ‘content’ of that which is deemed legitimate. Once things are placed beyond question, the content is largely irrelevant. As Thurman Arnold puts it: “When we attempt to analyze the actual operation of creeds in society, we discover the surprising fact that their content and their logic are the least important things about them” (1937:21). What matters is one’s orientation to that ‘content’ in a submissive stance of deferral to authority-as-certitude: “Legitimacy ... relies not on trust, but on an impersonal sense of duty on the part of the followers to follow commands of a proper authority, whoever is in authority, and whatever is the content of these commands” (Pakulski 1992:26).

### *Hegemony*

Consolidation is the third feature of enclosure, the first two being framing and expansion. The first two elements of consolidation are displacement and legitimation. The third element of consolidation is hegemony, initially discussed in Chapter 3 (see pp. 64-67). In this section we will first be examining general understandings of hegemony. The term ‘hegemony’ is most commonly used to speak of relations of domination, and then most frequently in relation to the work of Antonio Gramsci. There is another use of the term, however, whereby hegemony is understood in terms of leadership. Here it is argued that both of these perspectives can be united by viewing hegemony as *the nesting of heavily-sedimented interlocking frames (authorities-as-certitude), around*

*people whose negotiations of meaning subsequently achieve the legitimacy and status of authority-as-certitude.* With this understanding of hegemony, then, we move towards further analysis of the expansion of the Irish Music Rights Organisation, with particular emphasis on the relational implications of this expansion. First, we will identify how IMRO satisfies the requirements of this understanding of hegemony. Second, we will focus on the consequent 'self-evident' character of the organisation. Third, we will examine the role and place of resistance within hegemony. Fourth, we will bring these points together by suggesting that the achievement of hegemony coincides with the emergence of what we might call 'registers of enclosure'. By briefly examining this notion we can come to a preliminary awareness of the particularities of the relational implications of IMRO's expansion.

### *Hegemony: Domination and Leadership*

There is an interesting tension in notions of hegemony, a tension that highlights and, it will be argued, usefully clarifies key aspects of what is understood here by 'hegemony'. A tension exists between understandings of 'hegemony' that emphasise its negative role in 'domination', and those that emphasise its positive role in 'leadership'. Most often, however, the dual purposes of the notion have been ignored, and associations with domination have been embraced. Kay Anderson, for example, sees hegemony as "the pervasive type of conceptual domination that has been exercised by powerful groups over the definition of people and places in Western societies" (1988:130). This type of understanding, implicitly or explicitly evoking narratives of domination and subordination, is deeply influenced by the work of Italian theorist Antonio Gramsci (1892-1937). For Gramsci hegemony was "the means whereby the dominant class obtained the spontaneous adherence of the rest of the population to its rule" (Bellamy 1998:153). The dominant class, he argued, "achieve domination not by force or coercion alone, but also by creating subjects who 'willingly' submit to being ruled" (Loomba 1998:29). Thus, typical of general definitions of 'hegemony', we find:

This is a term used by A. Gramsci to describe how the domination of one class over others is achieved by a combination of political and ideological means. Although political force—coercion—is always important, the role of ideology in winning the consent of the dominated classes may be

even more significant. The balance between coercion and consent will vary from society to society, the latter being more important in capitalist societies. ... Hegemony is unlikely ever to be complete (Abercrombie et al. 2000:195).

Gramsci also used the term 'hegemony' in other ways, however, ways which emphasise the role of hegemony in positive 'leadership' as opposed to domination. This is sympathetic with the position of Mensheviks and Leninists, where the term is used to "indicate political leadership in the democratic revolution, based on an alliance with sections of the peasantry" (Sassoon 1983:201). In work written before his incarceration, Gramsci similarly used the term to refer to "the system of alliances which the working class must create to overthrow the bourgeoisie state and to serve as the social basis of the workers' state" (ibid.). Gramsci held that it was the educative task of the Communist Party to contribute to the formation of "a moral awareness and political will among the proletariat" (Bellamy 1998:153). As Bellamy notes, this involved two stages. First, this education involved making the proletariat conscious of their 'real' class and economic interests. Second, it involved educating the peasantry and the petit bourgeoisie to identify their interests with those of the proletariat. This was a clear echo of the vanguardism of Lenin's Marxism, which was based on the principles of "there can only be one struggle, there can only be one theory, there can only be one leadership" (T. May 1994:20). Lenin was adamant about the nature of hegemonic leadership: "The workers must be taught their true interests; they are mistaken about them. ... In order to discover the proper route, they need a vanguard party to educate them about the true struggle and its theory" (21). For both Lenin and Gramsci, the 'Party' and its cause were central to the achievement of hegemony: "The moral and intellectual revolution within people's consciences was to be so complete that the Party was to take the place of 'the Divinity or the categorical imperative' in their minds, with all acts judged good or bad to the extent that they benefited the Party" (Bellamy 1998:153). For Gramsci, then, in contrast to what is generally conveyed, hegemony is *both* a focus of criticism *and* a call to arms.

### *The Hegemony of Enclosure*

The tension between domination and leadership in understandings of 'hegemony', and particularly in the meanings brought to bear upon the term by Gramsci, brings a central issue to light. Whether conceived as domination or leadership, hegemony still refers to negotiations suffused by interlocking authorities-as-certitude, available to those who would enact enclosing strategies of legitimation. It doesn't matter what you call it, in either case the power effects of legitimation are the same. 'Domination' from one standpoint can be 'leadership' from another and vice versa.<sup>51</sup> Within the theory of enclosure, then, 'hegemony' is understood as *the nesting of heavily-sedimented interlocking frames (authorities-as-certitude), around people whose negotiations of meaning subsequently achieve the legitimacy and status of authority-as-certitude*. With acquiescence to the multiple legitimations of hegemony, then, comes participation in the operations of legitimation, acceptance of the role of authorities-as-certitude in personal negotiation, and some degree of displacement of one's own authority by the act of deferral to the certitudes of another's negotiation of meaning. It is precisely on account of the apparently impenetrable 'ring' of authorities-as-certitude that "The term hegemonic contains within its network of associations the sense of a 'master principle'" (Williams 1976:117).

### *It's There Because It's There*

One of the most significant effects of IMRO's achievement of hegemony is that the authority-as-certitude of 'self-evidence' comes to be vested in the organisation. With the achievement of hegemony, the activities of the Irish Music Rights Organisation, and the assumptions upon which they are based, become naturalised, assuming a patina of necessity and inevitability. The existence of the organisation "becomes experienced as an axiom, a *fait accompli*: children all too soon stop asking 'Why?'" (Jenkins 1992:107). The very existence of the organisation becomes monologic, not being open to question, for questions only ever run into the brick walls of nested justifications. In some ways, we

---

<sup>51</sup> This is another good example of David Icke's notion of 'opposames' (2001:4).

might understand this as an example of the 'organisation-as-spectacle'; Guy Debord's critique of spectacle can also be taken as a critique of the hegemony of enclosure: "The spectacle is by definition immune from human activity, inaccessible to any projected review or correction. It is the opposite of dialogue. Wherever representation takes on an independent existence, the spectacle reestablishes its rule" (1994 sect. 18). It could equally be said that: "The certainty of the political order is everywhere on exhibit, yet nowhere quite accessible, never quite touchable" (Timothy Mitchell, cited in Gregory 1994:174).

With the self-evidence of the existence of the Irish Music Rights Organisation comes systematic reinforcement of the organisation's authority-as-certitude. Something as simple as an IMRO sticker on the door of every commercial premises in the country quietly reinforces the position of the Irish Music Rights Organisation as a taken-for-granted presence in the social interactions of everyday life in Ireland. Many music festivals are sponsored by the organisation, increasing brand recognition and garnering bucketloads of positivity-by-association. The Irish Music Rights Organisation takes out a monthly full page advertisement with the influential Irish Music Magazine, self-proclaimed as "The Definitive Voice of Irish Music Worldwide", a deal which has been accompanied by adulatory feature article interviews with past and present members of IMRO management.<sup>52</sup> IMRO showcase gigs are held regularly to promote the musical talents of IMRO members in major Irish population centres such as Dublin, Belfast, Cork, Limerick, Galway, Waterford, and Wexford. Such exposure allows the organisation to consolidate the unchallenged position it holds in virtually all contexts of Irish life. In a variety of ways the unquestioned status of the organisation is perpetuated, the hegemony of IMRO's influence maintained.

---

<sup>52</sup> As John Kenneth Galbraith writes: "The power of the Planning System in relation to the media lies not in forthright control of expression but in its capacity to identify its needs with what, in public policy, seems basic and reputable. Thus, while interesting deviation has no difficulty finding a voice, the needs of the Planning System are the norm to which discussion eventually returns. 'Men with power have an extraordinary capacity to convince themselves that what they want to do coincides with what society needs done for its [own] good' [Raymond Vernon]. And this is the norm to which editors, publishers and broadcasters, in the absence of thought to the contrary, also automatically repair" (1973:175).

It is perhaps useful to view this as a process of 'autopoiesis', literally 'self-production'. Autopoiesis, following Maturana and Varela (1987), refers to the property of systems whose components, first, participate recursively in the same network of productions that produced them. Second, they realise the network of productions as a unity in the space in which the components exist. Autopoiesis is thereby a process whereby a system produces its own organisation and maintains and constitutes itself in a space. Although too overtly structuralist to be wholly compatible with the theory of negotiation presented earlier, the notion of autopoiesis adequately represents the process of multiple and mutual reinforcement which occurs over time within the authoritative nestings of hegemony. The achievement of monopoly-in-hegemony cradles the representatives of the Irish Music Rights Organisation in a situation of such security that they are solely concerned with the maintenance of the organisation, and the constant reproduction of the operations of power that constitute its existence as a unitary body. The enclosed unity of the organisation is epitomised by the monologically generalised corporate brand of 'IMRO'. Within the closed circle of authorities-as-certitude that hegemony provides, expectations seem to petrify as negotiations become *framed* negotiations: "Past experience is encapsulated in an institution's rules so that it acts as a guide to what to expect from the future. The more fully the institutions encode expectations, the more they put uncertainty under control, with the further effect that behaviour tends to conform to the institutional matrix: if this degree of coordination is achieved, disorder and confusion disappear" (Douglas 1986:47-48).

### *Hegemony and the Place of Resistance*

One of the primary occlusions of 'self-evidence' is resistance. With the achievement of hegemony resistance is rendered 'silent'. This is despite the fact that "What appears to us today as self-evident ... has quite often been the stake of struggles and instituted only as the result of dogged confrontations between dominant and dominated groups" (Bourdieu 1998:56-57). This silence happens in two particular ways. It all depends on which side of the representations of enclosure (or the enclosures of representation) one is standing. For those whose negotiations accept the full support of the hegemonic

order, resistance takes the form of that-which-must-be-overcome. This is very much in the spirit of Jacques Attali's "Make people Forget, make them Believe, Silence them" (1985:19). To seek to overcome resistance is to deploy the techniques of legitimation, to shore up leakages perpetrated by the 'not-self-same' (Cixous 1997) with any or all available authorities-as-certitude. Within this atmosphere manifestations of discontent are simply irritating, and are thus rendered 'disobedient', 'illegal', 'unjust', and just 'wrong'. Resistance is also "overcome" by processes of 'hegemonic streamlining', in which the operations of the Irish Music Rights Organisation are maintained by those most compatible with the smooth functioning of acquiescence to authority-as-certitude. It is significant, for example, that the current Chief Executive of the organisation, Adrian Gaffney, has a training in orthodox economics. As Galbraith sees it:

In a world of organization the values of organization are brought strongly to bear in selecting men for positions of public responsibility. Again the man who offers a divergent view - who departs from the Establishment position - is heard. But he is not thought fit for what is called real responsibility. That requires a man who accepts the goals of organization with a minimum of question, inner conflict or even ostensible thought. The Planning System defines public policy in accordance with its own need. It also specifies the qualifications of those who carry forward the policy (Galbraith 1973:179).

Another form of streamlining occurs within the parameters of the organisational structure. The 'constitutional' documents of the organisation (1990, 1995a, 1996c, 1996d), for example, provide "the limits beyond which controversy must not extend. Arguments may occur within the terms of the constitution, but to attack the constitution itself is heresy and calls down penalties which vary with the culture of the people from a mild ostracism to instant execution" (Arnold 1937:28). This is consistent with Foucault's recognition that "dominant structures legitimise themselves by allowing a controlled space for dissidence - resistance, in this view, is produced and then inoculated against by those in power" (Loomba 1998:50).

A key forum for such procedures is the Annual General Meeting of an organisation, for "Public debate is necessarily only a method of giving unity and morale to organizations. It is ceremonial and designed to create enthusiasm, to increase faith and quiet doubt, it can have nothing to do with the actual practical analysis of facts" (Arnold 1937:379). The following ethnographic passage recounts the business of the Extraordinary General

Meeting and Annual General Meeting of the Irish Music Rights Organisation as convened on the 13th of September, 2000, at HQ, *The Irish Music Hall of Fame*, no. 57 Middle Abbey Street Dublin.

*Dublin 1, 2.00 p.m., 13th September, 2000.*

I wasn't sure what time the meeting was supposed to be starting. It was 1pm now. I hadn't been in the place before, although I had heard about it for a while. It was set up in association with Hot Press, Ireland's leading music magazine, to pay tribute to the many musicians who had contributed to Ireland's prominent position in the music industry worldwide. I was told to come back and see again at around 2pm. The people at the door weren't too sure about the time either. I went to get a curn (currant) scone and a drink to tide me over for food until after the meeting.

I arrived at the newly-allotted time and went up to the table that had been placed at the bottom of the staircase at the far end of the narrow lobby. Behind it sat a man wearing a dark business suit, white shirt, and tie. He had an IMRO badge on his lapel so I presumed he knew what was what. There were row upon row of name tags on the table for IMRO staff who had not yet arrived. The first issue of the new and glossy IMRO magazine was freely available for the taking, a small pile of them sitting over to the left of the table. In the centre was an open book with a pen attached, and blank spaces for names. I presumed that this was where attendees would sign in. I leant over to sign my name. As I did so, I thought to ask the man a question.

"Would it be at all possible to record the proceedings of the AGM on a tape recorder?" I thought it better to ask. I always feel guilty if I haven't done so.

"No, I don't think that would be possible. We'd have to get the permission of all of those speaking, and I don't think that would be possible." I knew this to be patently untrue, so I tried again.

"It's for academic purposes," I offered for the purposes of illumination. I received no reply. I thought briefly about arguing the case of Fair Dealing under the new Copyright and Related Rights Act but decided it might be better not to cause a scene. Although a registered IMRO member, I was also here in my capacity as an unobtrusive academic observer. I didn't want to blow my cover. I was motioned up the stairs to the main music venue on the premises, the room in which the Extraordinary General Meeting was to be held. I decided not to tape, but felt frustrated that I hadn't been afforded permission. I had, after all, bothered to ask.

It was a spacious medium-size music venue, probably capable of seating around 200 people comfortably. The lights had been turned down low. Small round tables, permanent fixtures, sat empty for the expected crowd. The semi-circular room focused all attention on the stage, at least it would have done so normally, but today the focus was redirected to a table in front of the stage, bathed in light so that it stood out against the black swathe of the back wall. At each end of the table was a vase of fresh flowers. Four name-plates had been placed, evenly-spaced, across the table, awaiting the presence of Shay Hennessy, "Cathaoirleach" (Chairman), Adrian Gaffney, Chief Executive, Mike Hanrahan, "Leascathaoirleach" (Vice-Chairman), and Carmel Ryan, Company Secretary. Across the back of the stage hung a large banner with the IMRO logo. To the left and right of the stage hung a black and white poster showing a silhouetted electric guitarist beside a microphone, obviously caught in mid-performance. At the foot of each poster was the statement, "IMRO - Proudly supporting live music in Ireland." Far off to the left was a small photo exhibit to mark the recent Songwriter Collaboration Workshop that had taken place in Maynooth. I seated myself at the back of the room, near the bar. Drinks were bound to be expensive and I hadn't finished the bottle I still had in my bag from lunch, so I wasn't inclined to tipple. I felt a little self-conscious about having a notebook open and a pen at the ready, and it reminded me somewhat of my attempts to be unobtrusive in darkened music venues during my days as a small-time music critic a few years previously. Along the bottom of the upper viewing gallery there were publicity photographs of Irish music industry success stories - U2, the Cranberries, Van Morrison, Clannad, Brian Kennedy and others. Over to my left, up on the wall, there was a permanent sign:

IMPORTANT NOTICE

CAMERAS AND AUDIO  
AND VIDEO RECORDING  
EQUIPMENT ARE NOT PERMITTED WITHIN THE  
AUDITORIUM

IMRO representatives milled round the room in suits and ties or business suits, gesturing, smiling, and welcoming appropriately as people came in and seated themselves. The top table was soon filled, and those seated at it were a little more relaxed and a lot less formally dressed than others. As more people filed in I began to feel less underdressed, as many were suitably scraggy to fit the eccentricities of the creative singer-songwriter stereotype. Around 160 members eventually turned up, above expectations. The place was starting to buzz.

Senator Labhrás Ó Murchú, Director-General of Comhaltas Ceoltóirí Éireann, was brought in by an IMRO staff member and seated near the front. He looked a little lonely seated up there by himself. He quickly reseated himself, further back in the room, beside someone he knew. Also present were Senator Tom Kitt, the Minister in charge of the recently ratified Copyright and Related Rights Act, and Senator Donie Cassidy, a strong lobbyist on its behalf.

The main purpose of this Extraordinary General Meeting had been outlined in a letter to members, dated the 15th August. "One of the most important developments for IMRO Members in recent years", the letter stated, had been the enactment of the Copyright and Related Rights Act 2000, which had been signed into law by Mary McAleese, President of Ireland, on the 10th July of that same year. Said to be the largest piece of legislation ever to have passed through the Irish parliament, this Act was the first time that the issue of copyright had been specifically addressed in legislation since the 1963 Copyright Act. A draft of the proposed Bill for the new Copyright and Related Rights Acts had been published in 1998, whereupon lobbying interests had made their case known through the voices of Senators in the Irish Seanad. The new legislation was a significant revision and expansion of the 1963 Act in line with advances in technology, international obligations, and the laws of the European Union. Now, at this meeting, IMRO members were getting a chance to realign the documents of their organisation in light of this new legislation, most particularly the "Deed of Assignment", "the Rules", and what has been called "the Bible of IMRO", the "Memorandum & Articles". "In order to avoid any unnecessary legal complexities", members had been informed, the legal advisors of the organisation recommended that the old language of the 1963 Act be replaced in IMRO documents by terminology from the new legislation. The IMRO Board now strongly recommended that members approve the proposed changes ('To All IMRO Members', Hennessy, 15 August 2000).

The Extraordinary General Meeting was officially opened by Chairman, Shay Hennessy. Attendance and Proxies were noted. The main purpose of the meeting was outlined. Hennessy read the proposed changes out loud from the printed page. Each resolution was proposed, seconded, and voted upon in the standard manner of official business meetings. In each case a call was made for a 'show of hands against', and in each case no objections were noted.

"That completes the EGM," said Hennessy. "Thank you for your attendance, thank you for your vote, and thank you for not asking too many questions." This was greeted with a laugh.

The Annual General Meeting was then declared officially open. A few lines of welcome were said in the Irish language. Note was made of the growing number of members and of the growing interest of members. Carmel Ryan, the Company Secretary, read the Notice of Meeting. A call was made for the Auditors' report, whereupon one of the company auditors stood up with microphone in hand and read the Auditors' Report verbatim. It was asked if there were any questions relating to the accounts, which there weren't, and the accounts were proposed, seconded, and voted. The auditors left once the report had been presented, at which point Hennessy joked, "They charge by the hour!"

The Chairman's report spoke of a resoundingly successful year, the single greatest indicator of which was the 13.5% increase in revenue. A licensing agreement had been signed with Comhaltas Ceoltóirí Éireann, a national traditional music body, which was welcomed not least for the increase in IMRO membership that it promised. A decision had been reached in IMRO's favour in a court case brought by IMRO on the basis of the WTO Treaty against the government of the United States, a decision which calls for the US government to enact changes to its copyright legislation in

order to bring it into line with European practices. Representatives of IMRO had also been involved with the drafting and preparation of the Copyright and Related Rights Act, 2000.

The floor was opened for questions to the 160 people in attendance, and it quickly became apparent, in contrast to the smooth operations of the meeting up to this point, that the overwhelming feeling among people in attendance was discontent. There was widespread anger that Irish radio stations refused to play Irish material, that it was easier to get airplay abroad than it was in Ireland. Hennessy stated that the Irish Music Rights Organisation could absolutely and totally sympathise, indeed this complaint had been the main topic at IMRO members' meetings around the country throughout the year. But it was reiterated that IMRO was not in a position to take up this issue on behalf of Irish members as IMRO also represented the interests of members of all affiliated organisations worldwide. As Hennessy put it, IMRO was not in a position to take a sectional area of their repertoire and seek airplay for it. In response to a comment that musicians are second-class citizens, Hennessy stated, somewhat laterally, that "You should never do anything for free". What IMRO would do for its members, it was claimed, was to make developing the company website a "top priority financially". Plans were announced to develop an internet chatroom, and online collaborative songwriting was mentioned as a possibility. It was felt, said Eoin Colley, the IMRO employee in charge of the company webpage, that IMRO wished "to build a community around the possibilities of the website".

In clarifying IMRO's role and purpose, Hennessy stated that the only aspect IMRO is concerned about is the performing right, that IMRO collects money from anyone who uses music in Ireland, and that everybody who uses music is obliged to have a licence. "We're collecting money on your behalf," he said, "You must join! Any area where people are involved in music we encourage people to join IMRO. Our intention is to increase our membership to the maximum." He admitted that IMRO was an organisation with a lot of power and strength, saying as well that "We are very successful in how we use that power and that strength". It was felt by some that because IMRO was "the organisation with all the clout" in the music industry in Ireland that maybe IMRO should lobby on behalf of the members of the Irish music industry. Hennessy answered that: "The reason we are the organisation with the clout is because we represent the entire repertoire," reiterating that there are certain protocols that IMRO must adhere to in their business dealings. One member remarked that: "Most of the people in this room have no interest in what you collected because we've nothing to collect," to which Hennessy replied: "We collect on behalf of all our members". Another member complained about the amount of mail that he received from IMRO. "We're obliged to send out stuff by company law. We must go through those procedures. It's part of our remit," replied Hennessy. Not only the amount was a problem, the member continued, but he couldn't understand the letters he received: "The legal stuff you sent out ... Possibly you could have sent out a translation as well. You're using a language we really don't understand." Hennessy replied: "Maybe there isn't another language to use." Mike Hanrahan, Leas-Chathaoirleach (Vice-Chairman) remarked in this regard: "Since I joined the board I've learned to read this. Recently we had a board meeting, and we talked about having a "gobshite-friendly" version. We are moving in that direction. We're very much active." Following a few other comments and questions the meeting was officially closed and those who had assembled dispersed.

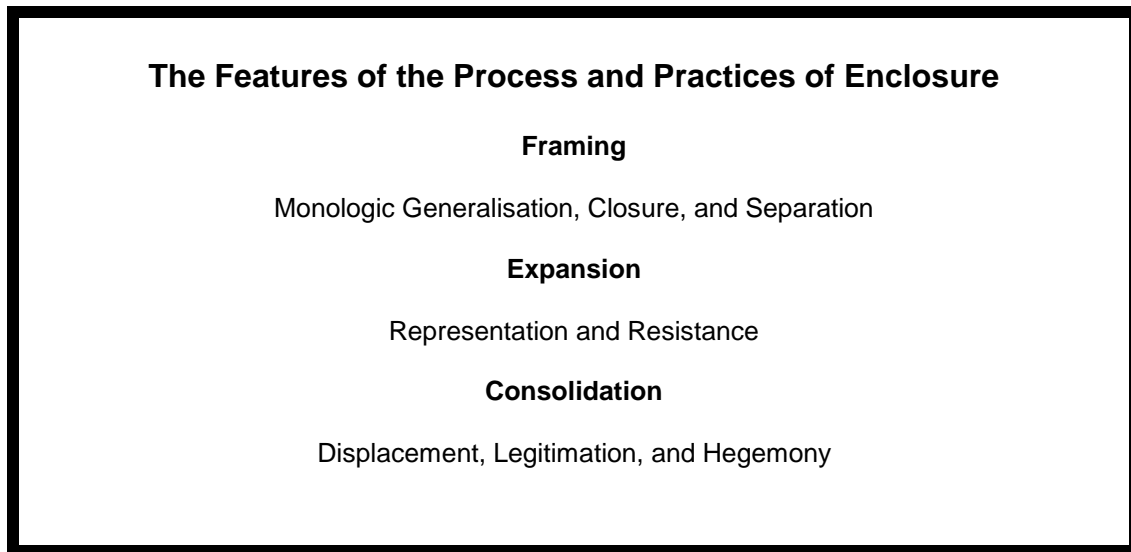
This passage is presented with little commentary, but attention is drawn in particular to the operations of power that have been discussed. The EGM/AGM is presented here as the epitome of a hegemonic environment. There are suggestive indications of monologic generalisation, closure, and separation, realised in dynamics of inclusion and exclusion. Particularly striking, though, are the multiple authorities-as-certitude, provided by texts, legislation, 'authority figures', and even the venue itself. The highly-directive structuring of expectations, with specific relevance to copyright, is particularly evident in

the framing of 'recording' as 'unhealthy', unwanted, and, thanks to a sign, illegal. The role of resistance in the passage is illustrative of the discussion above. Members who were not earning royalties were dissatisfied with their lot. To head off the dissatisfaction, recourse was taken to legitimation through persuasion, in particular the legitimation of the member mandate. Ultimately, resistance was rendered ineffective and irrelevant, while the impression was created that concerns had been heard in a democratic forum.

With this analysis of hegemony we can draw our analysis of the feature of consolidation to a close. The representations of enclosure, it has been argued, are faced with either unquestioning acceptance or outright rejection. This is primarily because these representations are made in the character of claims to authority-as-certitude. Such claims leave little room for compromise. Acceptance of the claims of the Irish Music Rights Organisation, that is, acceptance of the claims of enclosure, leads to considerable displacement of locally-negotiated meanings. Importantly, this also entails the displacement of personal authority to negotiate meaning locally and specifically, in favour of highly abstract, generalising, and universalising claims. Rejection of the framing and claiming of enclosure calls forth the political operation of legitimation, in which people defer to a source of authority-as-certitude other than themselves in the cause of the representations of enclosure. With hegemony we see the effects of widespread legitimation strategies. Representations of enclosure, compatible with the hegemonic order, are cocooned by the security of multiple sources of authority-as-certitude. Hegemony effects the illusion of self-evidence for IMRO's claims, and leads to the widespread silencing of resistance in the cause of certitude.

## Summary

The features of the process and practices of enclosure may be represented as follows:



**Figure 12. The Features of the Process and Practices of Enclosure**

By examining these features we are not only drawn to understand enclosure as an interesting social phenomenon, but are also called to recognise enclosure as an important modality of power in and through negotiation, that is, in the relations of humans-among-humans. Understanding enclosure in this way leads us to an awareness that enclosure is not an abstract process, divorced from the situations in which we ourselves operate. Rather, the process and practices of enclosure implicate us all in a call to greater understandings of our authority, our power, in negotiations of meaning and expectation in everyday life.

Chapter 9 provides evidence of the second stage of the process of emergent theory in this research - the preliminary presentation of a theory of enclosure. This analysis of enclosure undermines the absolute authority of the Irish Music Rights Organisation, but does not replace one set of monologic claims with another. Instead, it makes clear how such dominance has been possible, and, as a consequence, asserts that such absolutism may be challenged. By prioritising the specificities and possibilities of

experience we can move beyond the totalising claims of absolute authority promulgated by the representatives of the Irish Music Rights Organisation. The methodological approach of this thesis, then, offers a direct challenge to both the authority and the activities of the Irish Music Rights Organisation.