

Chapter 2

The Irish Music Rights Organisation and the Achievement of Monopoly

Introduction

This chapter provides a descriptive examination of the operations and monopoly status of the Irish Music Rights Organisation (IMRO) during the period 1995-2000. The three fundamental elements upon which the activities of IMRO rest are performing rights, licensing, and the juridical structure of the organisation. As a performing rights collection agency, the organisation concerns itself with the collection of royalties, through licensing, for the performance of copyrighted 'works'. A related activity is the distribution of those royalties to composer, songwriter, and publisher members. IMRO is supported in this work by a web of national and international legislation. The Irish Music Rights Organisation operates, then, primarily on the basis of licensing operations, supported by a context of law.

The legal support with which IMRO operates is highlighted in an examination of how the organisation is able to operate on the basis of an economic monopoly within the Irish state. The Irish Music Rights Organisation (IMRO) was established in 1989 under the auspices of the London-based Performing Right Society, and achieved independence in 1995. This independence was consolidated in 1995 on account of two rulings, one from the Dublin District Court and another from the Irish Competition Authority. These rulings provided official sanction and legal precedent for IMRO's activities, legitimating their collection of royalties throughout the Irish jurisdiction, thereby securing the position of the Irish Music Rights Organisation as both a *de facto* and *de jure* monopoly operation. In practical terms, this monopoly provides IMRO representatives with a *carte-blanc* for the expansion of the organisation's interests.

Performing Rights and the Irish Music Rights Organisation

In this section we explore the role that performing rights play in the operations of the Irish Music Rights Organisation. Performing rights are statutory, that is, they exist solely on the basis of legislation. They are understood to be analogous to copyright. Like copyright, a primary function of performing rights is that they act as a prescriptive control, allowing one person to prescribe the actions of another unless a fee is paid. The Irish Music Rights Organisation is allowed to enforce performing rights because members assign their performing rights to the organisation. This permits IMRO representatives to license 'uses' of music. Licensing is the primary operation of the organisation, and it is on the basis of licensing that the Irish Music Rights Organisation earns its money. Therefore, for IMRO to operate successfully, licences must be enforced on the basis of either persuasion or the threat of litigation.

Performing Rights

According to the Copyright and Related Rights Act, 2000, "copyright is a property right whereby, subject to this Act, 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). Copyright, then, is a set of prescriptions on the actions of others in relation to a "literary or artistic work" which control what can or cannot be done by other people in relation to that "work". Generally copyright is understood to protect the expression of the author's ideas rather than the ideas themselves (WIPO 1997b:6).¹ This would explain why there is a felt need to fix a work in 'tangible' form, whether written or recorded in some other way, before it may qualify for copyright protection. Once a work can be pointed to as an 'expression', it qualifies. According to the Copyright and Related Rights Act, 2000 (4.37), the owner of a copyright has the exclusive right to undertake, or authorise others to undertake, all or any of the "acts

¹ The World Intellectual Property Organisation (WIPO), based in Geneva, is regarded as the ultimate official arbiter in doctrinal matters of intellectual property. See <http://www.wipo.int>.

restricted by copyright”. A person is understood to infringe the copyright in a work if they undertake or authorise another to undertake any of these acts without the licence of the copyright owner. The acts restricted by copyright are as follows:

- (a) to copy the work;
- (b) to make the work available to the public;
- (c) to make an adaptation of the work or to undertake either (a) or (b) in relation to an adaptation.

The “performing right”, although not specifically mentioned in the Copyright and Related Rights Act, is generally understood to pertain to (b), making a work available to the public. If the act of copying is the first act which requires authorization, then the second is the act of public performance: “The right to control this act of public performance is of interest not only to the owners of copyright in works originally designed for public performance. It is of interest also to the owners of copyright, and to persons authorized by them, when others may wish to arrange the public performance of works originally intended to be used by being reproduced and published” (WIPO 1997b:155). This ‘performance’ is understood to be analogous to copying. This includes performing, showing or playing a copy of the work in public; broadcasting a copy of the work in public; including a copy of the work in a cable programme service; issuing copies of the work to the public; renting copies of the work; or, lending copies of the work without the payment of remuneration to the owner of the copyright in the work. Performing rights are statutory, that is, they exist solely and exclusively by virtue of the laws that create and recognize them (Sinacore-Guinn 1993:14).

Licensing

Enforcement of the property right of copyright can be exercised by other persons by licence or assignment (WIPO 1997b:5). Licensing constitutes the primary activity of the Irish Music Rights Organisation during the period 1995-2000, for “the licensing of works is how collectives earn their money” (Sinacore-Guinn 1993:30). In 1999 licensing revenue for the Irish Music Rights Organisation came to IR£17,418,077. In 2000, the figure had risen to IR£19,457,780 (IMRO 2000:6). Members grant IMRO the nonexclusive right to license non-dramatic public performances of their works, reserving

to themselves the nonexclusive right to license holders. By way of a Deed of Assignment, the member vests the ownership of their performing rights and film synchronisation rights in the Irish Music Rights Organisation in order that IMRO might administer performances of works on the member's behalf. It is still technically possible for the member to license 'users' outside of IMRO. By virtue of the Deed of Assignment to which each member consents upon joining, the Irish Music Rights Organisation is empowered to license 'users' to perform all the works in its repertoire. Members also authorise IMRO to bring suits in their name against alleged copyright infringers, and appoint IMRO legal counsel to act on their behalf. Members also agree to accept and be bound by the organisation's distribution system by which individual royalties are determined.

The Irish Music Rights Organisation can then license 'music users', by way of contract, to perform all the works in its repertory. The primary objective of these societies is to enable their writer and publisher members to license all nondramatic public performances of their works. Being organised nationally, they can effectively license 'uses' on a national basis, and internationally, on the basis of reciprocal agreements with similar societies. They also police unauthorised 'uses' in a bid to maximise the royalty payments for their members. The benefit for those who might be considered 'music users' is that they are able to obtain the right to perform the works of all members of both the national society and those of the members of all internationally affiliated societies, without the burden of administrative and recordkeeping requirements (Korman and Koenigsberg 1986). The sum total of these works is often referred to as the 'repertoire' of the collection agency. Taking out a licence with IMRO gives the owner of a premises permission to 'perform' any music from the IMRO repertoire. Owners, of course, are not obliged to 'use' any of this music, but, once licensed, they are assumed to be doing so. The number of songs in the 'world repertoire' is considered to be in the region of 14.25 million (source: IMRO website).

Licensing is also, however, the most debated and litigated area of collective administration worldwide (Sinacore-Guinn 1993). In 1993 the Irish Music Rights

Organisation paid out more than IR£47,000 in legal expenses (Curran 1994). By 1999 IMRO's legal, collection and professional fees came to IR£476,258, a rise from IR£413,453 the previous year. Musical performing rights entitle the copyright owner of a work to receive a royalty whenever their musical work is performed in public or broadcast. The responsibility for securing money from the 'public performance' of IMRO's repertoire, whether 'performed' by live performers or mechanical means, rests ultimately with IMRO's Director of Licensing and Finance.² It is important, first of all, to ensure that premises which are party to the performance of music are licensed, and, secondly, to maintain a system of continuous monitoring. Monitoring of licensed premises ensures that the appropriate performance royalty tariffs are applied, and that the number of performances reported by the premises is consistent with the number of performances that actually occur. Under the auspices of the Director of Licensing and Finance there are five account executives. Each of these is responsible for the collection and licensing activities in several counties.³ In turn, these five executives supervise around 40 agents who deal directly with IMRO customers in the activities of collection and licensing. A new development is the presence of a 'telephone sales force', which concerns itself with licensing (Lyons 1999:7).

When the representatives of the Irish Music Rights Organisation identify that a premises requires an IMRO license the proprietor is approached, and asked to sign a standard public performance contract. The licence granted by IMRO permits the licensee "to perform copyright music from the IMRO repertoire on the premises, in return for paying royalties to IMRO according to the applicable tariff" (Lyons 1999:7). This blanket licence⁴ runs from year to year, until such time as the licence is cancelled. The

² Some of the information in this section is drawn from the IMRO document The Irish Music Rights Organisation - Revenues, Costs and Distributions (Lyons 1999), which is available online as a .pdf file at http://www.imro.ie/about/imro_Costs_Revenues.shtml For further information on the organisational structure of the Irish Music Rights Organisation see the IMRO website at <http://www.imro.ie>.

³ <http://www.imro.ie/Licensing/Licarea.htm>. Accessed 1999 (No longer active).

⁴ The immeasurable 'use' of 'music', by which is meant 'creative works', has provided the justification for both the need and the demand for cheap methods of licensing 'music' (creative works) in bulk. Blanket licences allow music users to choose and perform copyrighted music without having to worry about obtaining licences from each and every copyright owner, or keeping a detailed account of each performance (Korman and Koenigsberg 1986). However, there are fears that blanket licences are not matched with equally comprehensive distribution of royalties. These fears arise from the logical

performance royalty tariff charged in the first year is 50% greater than that charged in the second year. The standard rate of royalty is deemed to be that charged from the second year on. The high first-year charge results from the tendency for IMRO representatives to have to make the first move in the licensing relationship. Most music users will not attempt to contact licensing collectives. Often they will only enter into a licensing agreement upon threat of litigation (Sinacore-Guinn 1993:36). As a result, collectives actively identify and pursue all potential music users:

It is an unfortunate fact of life that respect for the rights of creators is not the norm. A significant number of users avoid or even actively resist a collective's efforts to control the use of its repertoire of works. It is up to the collective to assert its rights and the rights of its affiliated rights owners in a way that will cause compliance (Sinacore-Guinn 1993:39).

Strong-arm, coercive tactics, including litigation, are generally avoided, as they are costly and generate bad public relations. If someone refuses to pay for an IMRO licence when approached, then the organisation takes recourse to the Circuit Court. If a licensing agreement has been contracted but royalties are not paid, then the 'music user' is sued by the Irish Music Rights Organisation as a commercial debtor. The use of debt-collection agencies is standard practice for IMRO as the last attempt at resolution before more substantial coercion. The use of persuasion is preferable for the organisation, so significant efforts are made to convince users of the necessity for proper licensing. Often a performing rights society will undertake cultural activities, programs, and sponsorships in order to encourage the creation of new works, educate people as to the nature of creative rights, and garner support for those rights. The Irish Music Rights Organisation is very active in this regard. Such activities also perform the obvious functions of brand recognition and public relations.

impossibility that they ever could: the blanket licence is all-encompassing, covering every copyrighted work in the world repertoire. Although the number of those works which have been registered may be quantifiable, the number of potentially copyrightable and therefore licensable creative works stretches to infinity and beyond. The issuing of blanket licences creates something of a paradox. A blanket licence authorises music users to use any work within the world repertoire, without advance notice. In order to be fully equitable in distribution practices, however, the collective must find ways to monitor the uses of its works under blanket licences (Sinacore-Guinn 1993:36). If it were to monitor all of these uses, however, the collection and distribution of royalties would not be possible on account of the exorbitant administration costs.

IMRO agents are granted a right of free entry, for monitoring purposes, to any premises which has been licensed. The performance royalty rates vary greatly from premises to premises. They take account of the type and frequency of 'performances', the nature of the venue and other variable conditions. Royalties are paid annually and, in advance. If not based on a flat annual rate, payment in the first year is based on estimated 'music usage'. There are three categories from which tariffs are constructed: 'background music', 'featured music' and 'amusement music'. Background music is considered to be 'performances' which occur as a result of mechanical equipment, for example, a CD player, radio, or television set. The category of featured music for the most part refers to 'live performances', but is also considered to include music which is played on 'disco equipment' or karaoke machines. Amusement music is taken to refer to 'impromptu performances' by customers. Paying for royalties in advance makes the inclusion of an amusement music category something of a logical anomaly, unless the amusement rate is extended to cover every day of the year on the possibility that a customer might suddenly engage in music or song. To cover this, at the end of the year a 'return of usage' is submitted by the licensee, which is compared to the estimated 'usage', and a readjustment to the payment is made. Often a premises will be subject to two or more different tariffs.

Juridical Structure

Performing rights organisations operate within a multilevel juridical structure that regulates and controls their activities (Sinacore-Guinn 1993). Domestic legislation is the first level. Domestically, the representatives of the Irish Music Rights Organisation have looked to the Copyright Act, 1963, the Performers' Protection Act, 1968, the Competition Act, 1991, and, most recently, the Copyright and Related Rights Act, 2000, for support of their position. The organisation must also remain cognisant of company law in regard to internal administration. The second level of the juridical structure is provided by the international copyright conventions which extend the qualification of copyright protection offered by domestic legislation. The most important of these are international creative rights conventions. These include: the Berne Convention for the

Protection of Literary and Artistic Works, initially signed in 1886, revised in 1971, and amended in 1979; the Universal Copyright Convention, revised in 1971; the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations of 1961, otherwise known as the 'Convention of Rome'; the World Intellectual Property Organisation (WIPO) Copyright Treaty of 1996; the WIPO Performances and Phonograms Treaty of 1996; and the 1994 World Trade Organisation GATT Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

The Irish Music Rights Organisation, like any other collective rights administration, also claims legitimacy from a range of other international agreements, reports, and recommendations, for example: the Subcommittee of the Executive Committee of the Berne Union and the Intergovernmental Copyright Committee (1975); the Committee of Government Experts on Copyright Problems Arising from the Use of Computers for Access to or the Creation of Works (1982); the Group of Experts on Unauthorized Private Copying of Recordings, Broadcasts and Printed Matter convened by WIPO and UNESCO (1984); or, the Group of Experts on Direct Satellite Broadcasting (1985) (Sinacore-Guinn 1993:7). The third level of juridical governance is provided by the rules of international associations such as CISAC⁵ (International Confederation of Societies of Authors and Composers), an overarching body of performing rights organisations with which the Irish Music Rights Organisation is affiliated. The fourth level is provided by the rules, bylaws, and articles of association of the organisation itself.⁶ The operations of the Irish Music Rights Organisation are underpinned, then, by the operations of law. This is clearly illustrated by following the organisation as it moved towards the achievement of monopoly status.

⁵ The acronym refers to the French title, *Confédération Internationale des Sociétés d'Auteurs et Compositeurs*. It is standard practice in English-speaking countries to follow the acronym CISAC with the English translation.

⁶ Sinacore-Guinn also notes the importance of the European Community, or what is now known as the European Union: "Note must be taken of the European Community Treaty Law, which, while it has a significant impact upon collective administration organizations, is *not* an international treaty; it is a supernational treaty creating a special political and social entity known as the European Community [now European Union]. As such, the EC Treaty has direct application to collective administration organizations without question as to whether they involve private or governmental acts" (1993:47-8).

Towards the Achievement of Monopoly

In this section we highlight the milestones that led to the Irish Music Rights Organisation achieving monopoly status in the Irish state. In 1995 IMRO attained independence from the English Performing Right Society (PRS). This was also the year in which IMRO received official sanction on the basis of two important rulings. The first was passed down from the Dublin District Court and confirmed IMRO's authority to collect royalties for its members. The second ruling was delivered by the Irish Competition Authority, and cleared IMRO of accusations of monopoly abuse. These rulings provided legal precedent and official legitimisation for the licensing operations of the organisation. More than that, however, the rulings firmly established the *de facto* and *de jure* monopoly position of the Irish Music Rights Organisation.

The Road to Independence

On the 1st of January, 1989, a transfer of functions occurred between the Performing Right Society (PRS) and the newly-formed Irish Music Rights Organisation (IMRO), applicable for a period of 3 years, to be automatically renewed yearly thereafter. Up until this point the London-based PRS (see Peacock and Weir 1975; Ehrlich 1989) had acted as the performance royalty collection agency within the Irish territorial jurisdiction. That a British collection agency was still administering the licensing of Irish performing rights in 1988 was something of an anomaly, considering that Ireland had attained formal independence from British rule in 1922, and had been declared a Republic in 1949.⁷ Up until 1989, any Irish songwriters or composers who wished to receive royalty payments for works which they had copyrighted were obliged to join the Performing Right Society, and PRS were the sole distributors of licences for performing rights in Ireland. This led to accusations of an inequitable distribution system for Irish members (Vallely unpubl.

⁷ "The PRS spread its activities throughout the British colonies (where British copyright law usually applied). When Britain gave independence to its colonies, the PRS was not so quick to disband its empire" (Wallis and Malm 1984:164).

1996). As a 1992 Competition Authority⁸ ruling was to show, the transfer of functions still meant that PRS and IMRO retained the relationship of parent and subsidiary companies respectively, and were therefore still to be regarded as separate branches of the same organisation. Under the first Articles of Association of the Irish Music Rights Organisation (1990), the Performing Right Society was still to control the composition of IMRO's Board of Directors and was to remain the 'ultimate parent company'⁹. This Competition Authority ruling also reinforced the fact that IMRO had no freedom to determine its own course of action in the relevant market. The transfer of functions still required the Irish Music Rights Organisation to distribute its licence revenue, less operating expenses to the Performing Right Society, and by the end of the year 1990, for example, the net assets of the organisation were nil.¹⁰

Under the transfer of functions agreement, The Irish Music Rights Organisation undertook to enforce the music rights licensed to the Performing Right Society within the Irish territory. IMRO was to supply PRS with any information for which it was asked concerning IMRO tariffs for 'music use'. If the English society determined that any legal 'or other' situation arose in the Republic of Ireland that was considered less favourable to its members than if the agreement hadn't existed, they could terminate the agreement by notice in writing. IMRO was entitled to deduct a sum of money from the gross sum due to PRS in each year for future contingencies, providing prior consent was obtained from PRS in writing.

Although the 1992 ruling of the Competition Authority denied that the operations of the Performing Right Society constituted anti-competitive practices in Irish territory, by 1995 the Irish Music Rights Organisation had secured a ruling from the Competition Authority

⁸ The Competition Authority was established as a governmental body with the signing of the Competition Act, 1991. According to the Act: "The Authority may, at the request of the Minister [for Industry and Commerce], study and analyse and, when requested by the Minister, report to him the results of any such study or analysis, any practice or method of competition affecting the supply and distribution of goods or the provision of services" (11).

⁹ Irish Competition Authority, Decision 5, 14 May, 1992. Full text of the decision is available at the Competition Authority website <http://www.tca.ie>.

¹⁰ All of these things go some way to explaining why the Association of Irish Traditional Musicians, a trade union organisation, might dismiss IMRO in 1996 as "an English import" (cited in Vallely unpubl. 1996).

which allowed them independent status as the sole performance royalty collection agency operating within the Irish state. IMRO was thus established as an independent, registered, private company limited by guarantee, not having share capital, with non-profit status. It was registered with nine founding members, including PRS. The establishment of IMRO as an independent body was achieved following a considerable amount of lobbying activity on the part of Irish writer and publisher members of PRS who felt, as Ireland constituted a separate territory, and had its own separate Copyright Act (1963), there should be a separate Irish performing rights society. But it wasn't an easy task. In the words of IMRO chairman, Shay Hennessy, "[PRS] wouldn't go away. They just wouldn't let go" (personal interview, May 2000).

The District Court Ruling

1995 was most definitely a landmark year for the Irish Music Rights Organisation. As well as securing independent operational status, IMRO won a crucial case in Dublin District Court against the Vintners' Federation of Ireland (VFI). The District Court's was the first decision to come from approximately 800 cases in process at that time. These cases largely dealt with re-evaluations of music use and venue areas. Hugh Duffy, then Chief Executive Officer of IMRO, estimated in 1996 that 30% of payments were paid straight away, 30% were paid on reminder, and 40% would go to debt-collection or litigation (Vallely unpubl. 1996). IMRO had taken a case against Bridie O'Sullivan, of The Tatler Jack Bar in Killarney, Co. Kerry, for non-payment of performance royalties. It started as a normal debt-collection action, pursued by the solicitors Matheson Ormsby & Prentice. In October 1994 the solicitors Niall Brosnan & Co. informed IMRO that the file had passed on to the Vintners' Federation of Ireland, who then nominated a solicitor in Dublin to deal with the affair. The case ran before the Dublin District Court between March 9 and December 15, 1995. District Justice Thelma King upheld IMRO's action, stating that there had been a valid contract between the parties, that she was satisfied that the musical performances had indeed taken place as alleged by the Irish Music Rights Organisation, and that therefore Mrs. O'Sullivan was bound by the terms of the

contract. A decree for the sum claimed, IR£4,986.56, together with costs of £IR1,761.70 was awarded against Mrs. O'Sullivan in favour of IMRO.¹¹

Despite being decided solely on the basis of a valid contract between the parties, it was claimed in the Irish Music Rights Organisation newsletter that the “judgement, delivered in Dublin District Court ..., in writing, confirmed the right of IMRO to collect royalties for the public use of copyright” (IMRO 1996). Brendan Graham, then Chairman of IMRO, expanded upon the ramifications of this case in supporting IMRO's position; the court's decision was seen as a victory for justice in the face of exploitation:

This was more than a simple case of a disputed debt. What I heard in court was that people who use our songs and music want to deny us basic human rights:

1. The right that what we write and compose is our property.
2. The right to sell our property for hire.
3. The right to eat, feed and clothe our children and to have a living wage.

I felt anger and betrayal for every songwriter whose works are used nightly, the length and breadth of this country, to bring enjoyment to so many people. However, in the end the good guys won.

District Justice King upheld the long established right of creators of music to be paid for the use of their works. She judged that IMRO was entitled to be paid the amount claimed. She said the pub owners knew the royalty charges and had the choice to use or not use our music.

The Judge in effect said that creators of music could eat (IMRO 1996).

The Competition Authority Ruling

Also in 1995, IMRO received an important Competition Authority ruling in its favour, against submissions which complained of IMRO's monopolistic position in Ireland.¹² A challenge had been offered by organisations such as the Vintners' Federation of Ireland (VFI), RGDATA (the small shopkeepers' body), the Irish Music Users' Council (IMUC), Quinnsworth (a supermarket chain), Concert Promoters & Venue Owners Association, and the Ward-Anderson Cinema Group. The ruling declared that “The agreements between creators and IMRO represented an efficient, and for many creators, the only way to obtain payments lawfully due to them for the use of their work” (IMRO 1996a). The Competition Authority also recognised that the impracticalities and high transaction

¹¹ See the IMRO members newsletter of January 1996 (IMRO 1996).

¹² Irish Competition Authority, Decision 457, 21 December, 1995. See full text at <http://www.tca.ie/decisions/457.doc>.

costs that would arise from individual agreements between creators and music users led to an acceptance that an IMRO blanket licence was a viable alternative. Without a blanket licence, the Authority stated, transaction costs would be prohibitive, and many music users “would therefore be denied the right to lawfully use copyright music”. As one commentator put it: “the nature of the right to be recognised demands collective administration if it is to be of any value” (Sinacore-Guinn 1993:6).

Although clearly confusing the denial of rights with the creation of disincentives, the decision of the Competition Authority confirmed the status of the Irish Music Rights Organisation and officially sanctioned their monopoly position as not being in breach of Section 4(1) of the Competition Act 1991 (IMRO 1996a). The Chairman of the Competition Authority at this time, Patrick Lyons, was later to take up a position as an External Director on IMRO’s Board of Directors (source: IMRO website). Lyons also acts as a consultant economist for the organisation (Lyons 1999). In an IMRO press release following the Competition Authority’s ruling, the then Chief Executive Officer of IMRO, Hugh Duffy, “acknowledged the role of the Competition Authority in protecting the integrity of the Internal Market by ensuring that the product, performing rights, could be traded fairly within the European Union” (ibid.). In the IMRO members’ newsletter of January, 1996, Duffy stated that he saw both the District Court decision and the ruling of the Competition Authority as boosting their ‘prime objective’, “to secure more equitable treatment for songwriters and composers”, and as confirming and endorsing IMRO policies and practices:

Music is a product, a most valued product in the context of the Irish economy. The successes being achieved by the music industry in this country are consistently contributing to job and wealth creation. ... Yet it is inexplicable that there has existed an inherent reluctance, and in some cases a downright refusal, on the part of owners of public premises ... to subscribe for performance licences. For example, music is used by owners of pubs throughout this country each year to attract millions of customers, from home and abroad and yet so many publicans, and indeed others, go to great lengths to avoid paying for the very ingredient that is being used to woo business. ... Hopefully, the recent decisions in our favour will send a clear and unambiguous message to the marketplace, that music is a commodity like any other, and just like any other product in a consumer society, it must be paid for (IMRO 1996b).

Monopoly Achieved

It is interesting to note that in the Competition Act 1991, the term “monopoly” “shall be construed as a reference to an abuse of a dominant position” (14.7). Legally speaking, then, the dominant position of the Irish Music Rights Organisation does not constitute a monopoly, insofar as the organisation has been cleared of any accusations of monopoly *abuse* by the Competition Authority. Practically, however, the monopoly remains. In the words of the then Chief Executive Officer of IMRO: “We don’t have a monopoly ... I mean we have a monopoly here in this country. We have been cleared by the competition authority as being legitimate, as being the only way” (Colmcille 1400 1997). Economically, a monopoly is said to exist “when an industry is in the hands of a single firm selling a product for which there are no close substitutes. Since one business unit has the market for the product all to itself, the firm and the industry are synonymous” (Morrice 1972:96). The Irish Music Rights Organisation is the only ‘business unit’ sanctioned to license performing rights in the Irish state. In Ireland, to all intents and purposes, the operations of performing rights and the operations of IMRO are synonymous. The organisation retains and exercises exclusive control of the market for performing right royalties, apparently merely facilitating consumer-producer transactions while also defending the rights of IMRO members. As Sinacore-Guinn notes: “It is a practical reality that most collectives throughout the world operate as *de facto* or *de jure* monopolies within their territory of primary administration” (Sinacore-Guinn 1993:16).

Summary

In this chapter we first focused on the operations of the Irish Music Rights Organisation, specifically in its role as a performing rights organisation. Performing rights are statutory rights; that is, they only exist insofar as copyright legislation allows them to exist. These rights provide the basis for IMRO’s licensing operations. Members assign their performing rights to the Irish Music Rights Organisation. This allows IMRO representatives to exercise prescriptive control over others, that is, the organisation is sanctioned by member mandate to prescribe the actions of others unless a fee is paid

for music 'use'. The licensing of performing rights constitutes the primary activity of the Irish Music Rights Organisation during the period 1995-2000. It is on the basis of licensing that IMRO gathers revenue, and it could be said that licensing provides the *raison d'être* of the organisation. Successful operation of the Irish Music Rights Organisation relies on the successful operation of licensing activity. Hence, licensing must be maintained on the basis of either persuasion or the threat of litigation.

The second section of the chapter followed the Irish Music Rights Organisation as it moved towards the achievement of monopoly. Since 1995, the licensing operations of IMRO have been greatly assisted by the achievement of three things: independence from the Performing Right Society; legal precedent for the organisation's activities; and, official sanction from the Competition Authority for IMRO's monopoly position. These factors contribute greatly to the provision of a secure economic environment in which the Irish Music Rights Organisation might carry out its licensing operations. In the period following these rulings it is of no surprise, then, that the licensing operations of the organisation entered a period of intensification. This shall be the focus of the next chapter.

Chapter 3

The Cycle of Expansion and the Achievement of Hegemony

Introduction

Expansion was the most significant aspect of the activities of the Irish Music Rights Organisation during the period 1995-2000. In this chapter we follow the course of that expansion. It is no coincidence that an intensification in licensing activity occurred following the achievement of a secure monopoly position in 1995. We focus, in particular, on two disputes. The first arose in April 1996 when the Irish Music Rights Organisation demanded that Irish primary schools contract for a performing rights licence for 'music use' in classrooms. Vigorous objections were raised to the organisation's aggressive pursuit of royalties in this regard, and the issue achieved a high degree of notoriety in a very short time. The second dispute was that between IMRO and the Vintners' Federation of Ireland (VFI), an association of publicans. This was a long-running dispute over tariff rates for IMRO licences. Publicans objected to the amounts they were being asked to pay for performing rights licences and registered this objection in a campaign of non-cooperation with the Irish Music Rights Organisation.

These disputes allow us to characterise IMRO's expansionary activities between 1995-2000 as entailing what we term a "cycle of expansion", that is, a cycle of expansion, resistance, legitimation, and further expansion. The representatives of the Irish Music Rights Organisation would lay claim to a domain of jurisdiction. Resistance would be offered to that claim. In response to resistance, however, IMRO would successfully turn to legitimating support in the form of government and legislation. Expansion would then continue as IMRO made further claims to jurisdiction in other domains. In this manner, the successful expansion of the Irish Music Rights Organisation led to the hegemonic acceptance of the role and activities of the Organisation in these domains before the end of the twentieth century. By 1998, IMRO had achieved a position of unchallenged

authority from which to undertake activities and deploy strategies in all domains within the Irish state.

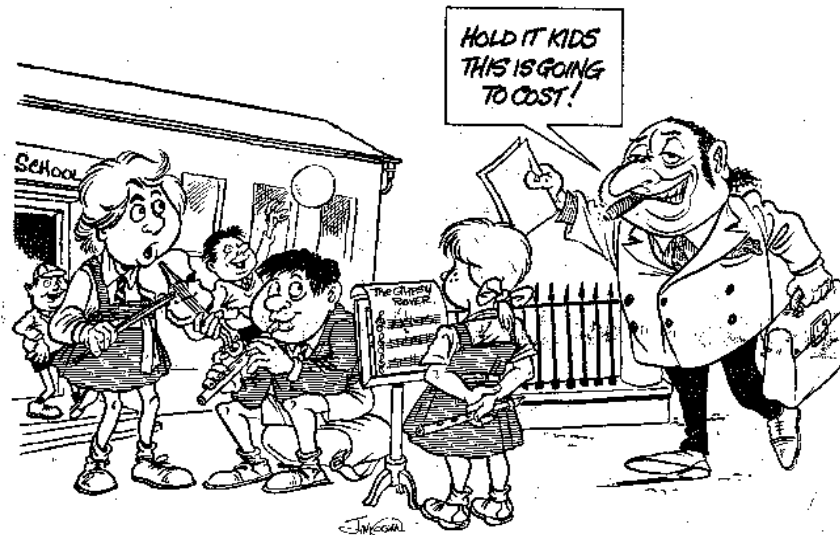


Figure 2. Sunday Independent Cartoon, 28th April, 1996

The Primary Schools

In one week at the end of April 1996 there was a short flurry of public outcry in the national media and in sessions of the Dáil (the Irish parliament)¹³. On the 26th April the story even made the front of The Irish Times. The outcry arose as a result of The Irish Music Rights Organisation's dogged pursuit of performance royalties in relation to primary schools. Although primary schools were IMRO's target at that time,

¹³ "The *Oireachtas* or National Parliament consists of the President, a House of Representatives (*Dáil Éireann*) and a Senate (*Seanad Éireann*). The *Dáil*, consisting of 166 members, is elected by adult suffrage on the Single Transferable vote system in constituencies of 3, 4 or 5 members. Of the 60 members of the Senate, 11 are nominated by the *Taoiseach* (Prime Minister), 6 are elected by the universities and the remaining 43 are elected from 5 panels of candidates established on a vocational basis, representing the following public services and interests: (1) national language and culture, literature, art, education and such professional interests as may be defined by law for the purpose of this panel; (2) agricultural and allied interests, and fisheries; (3) labour, whether organized or unorganized; (4) industry and commerce, including banking, finance, accountancy, engineering and architecture; (5) public administration and social services, including voluntary social activities. The electing body comprises members of the *Dáil*, Senate, county boroughs and county councils" (B. Turner 2000:439).

representatives of the organisation also announced their intention to approach second-level schools at a later date. The IMRO position was that songs and tunes were being used in public performances, and the writers and composers of those songs and tunes were therefore owed royalty payments for use of their property. Teachers, politicians, and journalists condemned the move.

IMRO's demands to schools were heralded as a direct threat to the continuance of some of education's most sacred rites: "The school concert, disco, sale of work and even nativity play are under threat from a demand by the Irish Music Rights Organisation (IMRO) for at least £3 million in royalties from primary schools" (Cullen 1996). The Fianna Fáil¹⁴ education spokesman of the day, and later Minister for Education, Micheál Martin, declared the demands "anti-music" and called on the Minister for Enterprise and Employment to change the 1963 Copyright Act so that school performances would be exempt from such charges: "Isn't it a rather sad reflection on modern society that we are at the stage where a child singing in a school concert is to be the subject of a licence fee?" (Keena 1996). The National Youth Council of Ireland were quoted on the front page of The Irish Times as having called upon the representatives of the Irish Music Rights Organisation "to back off in their demands for royalties from schools", claiming that "the blatant greed" of the organisation would discourage music in schools (Keena 1996). There was recognition of the fact that the representatives of the organisation were within their legal rights to pursue royalties from primary schools, but the morality of such actions was questioned. The general secretary of the Irish National Teacher's Organisation, Senator Joe O'Toole, was reported as saying that IMRO had a legal right to seek a licence fee from schools, but that it was not right to pursue it (Keena 1996).

Representatives of the Irish Music Rights Organisation argued that it was obliged under Irish and international law to collect royalties for composers and songwriters, especially those who were "not currently being compensated for their product" (Cullen 1996). Brian Power, Field Services Manager for IMRO, was reported as saying: "The performing right

¹⁴ Fianna Fáil is the republican nationalist political party in the Republic of Ireland.

is a traded commodity; it doesn't come down the chimney" (quoted in Cullen 1996). In a peculiarly Irish-Catholic claim to legitimation, Power referred to the fact that in Germany the Catholic hierarchy offered to meet the cost of curricular and extra-curricular royalty payments in schools: "Even the Vatican pays copyright, so why should Irish schools be any different?" (quoted in Cullen 1996). One of the reasons that such demands hadn't been made of Irish schools before was that the London-based Performing Right Society had, in IMRO's estimation, been lax in their duties. Since attaining independence in 1995, it was stated, the Irish Music Rights Organisation had "tightened up our affairs" (quoted in Keena 1996).

Then Chief Executive Officer of IMRO, Hugh Duffy, responded to the emotive charges that even nativity plays would be threatened, denying that his organisation wanted to charge for "music in the classrooms" or for nativity plays. The licensing fees were explained away as generally applying to music broadcast in staff rooms, for which £50 a year would be charged: "The composers of music are being discriminated against and it is our duty to collect this money. ... We could be sued if we don't look after people's copyright" (Sunday Independent 1996:2). In an article entitled "Sing a Song o' Sixpence, a pocketful of cash", Sunday Independent journalist Declan Lynch (1996) reported otherwise: "IMRO has written to 3,200 primary schools looking for at least £96 a year, plus VAT, and declaring that permission is required for any public performance, which is defined as anything outside of curricular activities attended only by pupils and teachers". Lynch denounced the organisation's actions as "petty" and "anti-social". As Lynch was also to comment, the controversy has "generated widespread odium" against the Irish Music Rights Organisation, confirming these disputes as a public relations disaster. Ultimately, however, the disputes were settled when, following negotiations, schools agreed to contract for performance royalty licenses at reduced rates. Following that week of controversy, IMRO were to have no more publicly-aired disputes with primary or secondary schools.¹⁵

¹⁵ A similarly public outcry opposed the American Society of Composers, Authors and Publishers' decision in the Summer of 1996 to approach Girl Scout Camps in the United States for performance royalty licences. The Wall Street Journal reported that ASCAP had informed camps across the U.S. that they must pay licence fees to use any of the four million copyrighted songs written or published by

The Vintners' Federation of Ireland (VFI)

If nothing else, the disputes involving the Irish Music Rights Organisation were increasing brand recognition for the organisation. From being described in an Irish Independent headline in 1994 as a 'Music Rights group' (Cullen 1994), by 1996 IMRO's name had reached a level of widespread infamy. Even bad publicity is publicity. All that was left for the organisation to do was to convince those in opposition that they were legitimate, and worthy of widespread support. There were some, however, who were determined to milk the atmosphere of controversy and anti-IMRO antagonism in a spirit of blatant opportunism. On Sunday, 12th May, 1996, the company Heatley Tector Limited, providers of background music, took out an advertisement in the Sunday Independent. Explicitly directed at "PUBLICANS. HOTELIERS. RETAILERS. RESTAURATEURS. [sic.]", the advertisement led with a series of newspaper headlines condemning IMRO. These were most likely fictitious, but the spirit in which they were written was indicative of the general level of animosity the representatives of the Irish Music Rights Organisation were facing nationwide at that time. Therein lay the power of this advertisement. It even offered a 24-hour telephone hotline. By reinforcing the sense of threat that many were feeling on account of IMRO's actions, Heatley Tector Ltd. tapped into a wide range of deeply felt concerns, and offered an alternative to people who felt themselves trapped. In fact, the advertisement portrayed the dilemma as a 'Royalty Trap', and portrayed the Irish Music Rights Organisation variously as hunters ("IMRO Chases £1M"), terrorists and/or extortion-racket gangsters ("Showbiz 'bagmen in balaclavas'"), and avaricious over-reachers ("IMRO move smacks of greed"). It even indulged in a pun worthy of a jail-sentence: "IMRO out of tune with reality". What was being offered was a service of 15 hours of copyright-free music "in a wide variety of moods and styles" for a "one-off payment of just £400 plus VAT @ 21%":

ASCAP's 68,000 members. SESAC, another performing rights organisation, also announced their intention to ask camps for royalties. Rather than risk lawsuits, many camps were provoked into excluding copyrighted songs from their activities. The Wall Street Journal article left the enduring image of 214 Girl Scouts at the Diablo Day Camp 3 p.m. sing-along, learning the Macarena dance: "Keeping time by slapping their hands across their arms and hips, they jiggle, hop and stomp. They spin, wiggle and shake. They bounce for two minutes. In silence" (Bannon 1996).

The music is yours to use as often as you like - and completely free of recurring copyright charges. So, if you're among the growing number of business people who are fed up paying through the nose for musical copyright, this is your opportunity to break out of the royalty rut once and for all (Heatley Tector 1996).¹⁶

Members of the Vintners' Federation of Ireland (VFI), which represented publicans outside the Dublin area, were among those who clearly sympathised with the tone of this advertisement. The Vintners' Federation had been contesting payments to PRS-IMRO since 1984. In 1993 the publicans' lobbying led Seamus Brennan, later Minister for Trade and Marketing, to commission a report from Cooney Carey Consultants on the issues involved, through his personal secretary Dick Doyle¹⁷. This report, coordinated by Angela Butler, was subsequently shelved (Vallely unpubl. 1996). 1996 saw an escalation of the ongoing disputes between the Vintners' Federation and the Irish Music Rights Organisation, and a concentration of IMRO's efforts to resolve them. By the end of 1996, the VFI, on the other hand, were the only major music-using group with which IMRO had been unable to agree a tariff for performing rights licences.¹⁸

It must be remembered that publicans, for the most part, weren't arguing that performance royalties shouldn't be paid to the Irish Music Rights Organisation at all, as had been the case with primary schools. Rather, what was in dispute was the level of the tariff which publicans were being charged for blanket licences. As in the case of primary schools, some felt that the Irish Music Rights Organisation's pursuit of royalties was unnecessarily aggressive. Other reasons, or rather justifications, were given for opposition to IMRO; among them, that the organisation was undemocratic and unregulated, and in practical terms accountable to no-one. It was felt that the levels of payment requested from the publicans were arbitrary, 'made-up', and unjustifiable. It is true that the tariffs have been arrived at on the basis of convention, some would say arbitrary conjecture. However, one major point in IMRO's favour during negotiations

¹⁶ It is interesting that an IMRO document (Lyons 1999) notes that Heatley Tector have, in 1999, a licence from IMRO, and supply IMRO with set lists.

¹⁷ Doyle subsequently became chief executive of the recording industry organisation, PPI, a sister organisation to IMRO (Vallely unpubl. 1996).

¹⁸ As early, relatively speaking, as November 1993, IMRO had secured a licensing agreement with the Licensed Vintners' Association (LVA), which represented publicans in the Dublin area (Lyons 1999).

was the fact that the tariffs offered by the organisation for performance royalty licences were and continue to be the lowest tariffs offered anywhere in the European Union.

As Valley has noted (unpubl. 1996), the Vintners' Federation's opposition¹⁹ was coordinated by a body called the Irish Music Users' Council (IMUC), which operated from the offices of the Vintners' Federation of Ireland (VFI) in Dublin, sharing their phone number. The Tatler Jack and Competition Authority rulings, mentioned earlier (see pp. 49-51), could only be considered major defeats. Vintners' Federation members received information from the Irish Music Rights Organisation following the District Court decision. According to one inside source, this was described in internal Vintners' Federation letters to members as 'propaganda' which was 'very one sided, selective, and biased'. The decision of the Competition Authority was characterised by the vintners as 'inconclusive'. The VFI leadership informed members that the decision reached was not in consideration of IMRO's alleged *abuse* of their monopoly position, a matter which would have been considered under Section 5 rather than Section 4 of the Competition Act, 1991.²⁰ In fact, the Vintners' Federation promptly filed for appeal to the High Court, and continued to pursue the Irish Music Rights Organisation through the courts under Section 5. Members of the VFI were instructed not to sign any contracts with representatives of IMRO without first getting legal advice or the advice of the

¹⁹ The organised and sustained opposition that IMRO has faced from the VFI in many ways echoes opposition that the PRS faced in the early days of the society, founded in 1914 following the 1911 Copyright Act. Peacock and Weir (1975) note that opposition to performance royalties and the principle of collection generally took one of two forms: "At the level of the individual dance hall owner, cinema owner or publican it simply consisted of denying the right and refusing to pay a licence fee. As such it served more as a time-wasting irritant and was usually dealt with by a lawyer's letter or, if that failed, by legal action for infringement. Whilst until the late 1920s every attempt to collect a licence royalty carried with it a potential legal action, such intransigent individuals were but a fact of everyday business and posed no serious threat to the Society. Much more worrying was the appearance of organized opposition amongst music users to the Society's activities. Although the Society established the principle of negotiating contracts with representative trade associations ... right from the outset, it was not a policy free from risk. Composers and publishers having united to assert their rights, it was just as likely that music users would group together to protect their own interests. So long as the aims of these Associations were simply to increase their members' bargaining power with the PRS and to lessen the transaction costs of individual negotiations, their activities from the PRS point of view were both legitimate and helpful, for they facilitated the collection of royalties" (73-4).

²⁰ Section 4 of the Competition Act, 1991, concerns "anti-competitive agreements, decisions and concerted practices", that is, such as "have as their object or effect the prevention, restriction, or distortion of competition" (4.1). Section 5 deals with "abuse of dominant position" whereby "any abuse by one or more undertakings of a dominant position in trade for any goods or services in the State or in a substantial part of the State is prohibited" (5.1).

Federation. The conflict was portrayed in decidedly militaristic terms. Following the Competition Authority ruling it was announced (capital letters in original): “OUR BATTLES WITH IMRO ARE FAR FROM OVER” (VFI 1996). IMRO had made numerous attempts to achieve an agreement with the Vintners’ Federation, and it was in their best interests to do so, both financially and from the point of view of public relations. The 1996 IMRO Director’s Report and Financial Statements, however, indicated that 900 court cases were still in progress for non-payment of royalties, mainly against members of the VFI. In 1996, the bill for the Irish Music Rights Organisation’s ‘vigorous pursuit’ of the outstanding debts owed by the Vintners’ Federation of Ireland came to IR£361,293, or 14.7% of net operating expenses. In their annual report IMRO admitted that such expenses were “excessive and should be unnecessary”, but continued: “However, the Board is implacable in its determination to pursue every single evasion of royalty payment due to you, through the courts if necessary, and we will continue to do so until all outstanding debts are paid” (IMRO 1996:ii).

The Vintners’ Federation of Ireland’s fourteen year dispute with PRS, PRS-IMRO, and IMRO ended anti-climactically in late December, 1997. The written documentation of the agreement was accepted at a meeting in Tuam, County Galway, between the VFI President, Paul O’Grady, and the then IMRO Chairman, Brendan Graham. The negotiations had led to an agreed tariff for the collection of performance royalty charges from publicans outside the Dublin area, effective from the 6th January, 1998. One of the most important aspects of the agreement was the establishment of an IMRO/VFI Arbitration Committee. Led by an Independent Chairman, the role of the new committee was to resolve any further disputes between the Irish Music Rights Organisation and individual publicans without the need for legal proceedings, thereby cutting down on legal and administration costs. Under the newly-agreed PVFI tariff, it was stated that “Irish traditional music in the public domain is exempt ... but that copyright music will incur the full tariff. Disputes about matters such as the definition and categorisation of music, and the status of Irish traditional music, can be referred to the IMRO/VFI Arbitration Committee ...” (Lyons 1999:13). The agreement with the Vintners’ Federation meant that all of the groups that IMRO had targeted as the main ‘music

users' in Ireland had agreed tariffs with the Irish Music Rights Organisation. IMRO's program of systematic expansion had been successfully completed.

The Cycle of Expansion

In The Production of Culture in the Music Industry (1985), John Ryan details the history of the ASCAP-BMI controversy over the collection of performing rights royalties in the United States. Ryan follows the development of the American Society of Composers, Authors and Publishers (ASCAP) from its establishment in 1914, and the subsequent conflict between ASCAP and a rival firm, Broadcast Music Incorporated (BMI). Ryan notes that: "ASCAP's early history was a continual cycle of laying claim to a particular domain, a challenge to this claim by concerned music users, legitimation of ASCAP's claim by the courts, followed by a new expansion of domain" (1985:31). The correlation in this regard between ASCAP's early history and the activities of the Irish Music Rights Organisation after 1995 are striking. The dynamic Ryan has identified we here term a "cycle of expansion". This is the fundamental pattern of IMRO's expansionary activities during the period 1995-2000. It can be simply restated as a cycle of expansion, resistance, and legitimation, followed by further expansion.

The term "expansion" is here used in two senses. It refers to an enlargement in the scale of IMRO's operations, and also to an increase in the number of domains or areas in which the representatives of the Irish Music Rights Organisation claim jurisdiction. Because an increase in the scope of licensing, as IMRO's primary activity, automatically leads to an increase in the scale of the organisation's operations, these two senses are regarded as co-extensive. "Resistance" refers in this case 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.

“Legitimation” here refers to the confirmation of the authority of the Irish Music Rights Organisation by way of another justificatory authority, in such a way as to render IMRO’s activities proper, rational, justifiable, or, simply, legally binding. Quite apart from appeals to legislation, other justifications were offered in the cause of legitimation. In reply to the resistance offered by primary schools, IMRO representatives justified their actions by stating that they were duty-bound to collect royalties for their members. Refusal to pay royalties was portrayed as discrimination against IMRO members. Not collecting royalties was an action portrayed as liable for litigation - members, it was claimed, would sue their own organisation if representatives of IMRO were unsuccessful in contracting for royalty licences. As we saw in Chapter 2, one of the legitimating arguments of the Irish Music Rights Organisation in response to resistance from the Vintners’ Federation was that the refusal to pay for music ‘use’ was a denial of “basic human rights” (see p. 51). It was also argued that music, as a product, contributed to the growth of the Irish economy, and that, therefore, it must be paid for (see pp. 52-53). Regardless of the details of the claims to legitimation, events eventually demonstrated that the combined legitimation strategies proved successful. Resistance to IMRO’s efforts from both primary schools and publicans was ultimately rendered silent through a combination of aggressive demands, persuasive negotiation, and litigation. In one case the cycle of expansion had been completed in a week; in the other, the cycle lasted for fourteen years. In both cases the final outcome was the same - confirmation of the authority of the Irish Music Rights Organisation and consolidation of the organisation’s monopolistic licensing operations.

Hegemony

With the accession of primary schools and the Vintner's Federation to IMRO's demands, the representatives of the Irish Music Rights Organisation had, then, taken a major step towards the achievement of hegemony. "Hegemony" is here understood as unchallenged authority for the Irish Music Rights Organisation to undertake activities and deploy strategies in all domains within the Irish state. This hegemony also includes the unquestioned status of the meanings and prescriptions that the representatives of the organisation propagate in the name of copyright, performing rights, members, and market economics. This is the power of hegemonic definition (Anderson 1988:130). Thus, one of the key features of hegemony, as developed in the Marxist tradition from the writings of Antonio Gramsci (1971), is a predominance that includes a particular way of understanding the world, human nature, and relationships:

It is different in this sense from the notion of 'world-view', in that the ways of seeing the world and ourselves and others are not just intellectual but political facts, expressed over a range from institutions to relationships and consciousness. It is also different from ideology ... in that it is seen to depend for its hold not only on its expression of the interests of a ruling class but also on its acceptance as 'normal reality' or 'commonsense' by those in practice subordinated to it (Williams 1976:117-118).

This aspect is vital in our considerations of the expansion of the Irish Music Rights Organisation. Following Bocock (1986:63), in hegemony the representatives of a group or organisation successfully achieve their objective of providing a dominant, prioritised, and centralised outlook that operates in all aspects of social life. The Irish Music Rights Organisation provides just such an outlook, at least insofar as copyright, music, and ownership are concerned. The effects of this hegemony, then, are felt across the island of Ireland, from the local pub to the seat of government.

A defining moment in IMRO's move towards hegemony was the report of the government task force on the music industry in Ireland, known as the FORTE report (FORTE 1996). The role that copyright played in this report gives some indication of the unquestioned place that copyright and the Irish Music Rights Organisation occupied in official circles at this time. The task force had been appointed in 1994 by the then Minister for Arts, Culture, and the Gaeltacht, Micheal D. Higgins. It became the subject

of controversy in 1995 when IMRO's representatives on FORTE, Keith Donald and then IMRO chairman Brendan Graham, were allegedly instructed to resign unless Michael D. Higgins and his special adviser Colm Ó Briain desisted from lobbying efforts in favour of performance royalty payment exemptions for churches and heritage centres. According to satirical political magazine The Phoenix, such exemptions would be regarded by IMRO as "the thin end of the wedge" (1995:22). When the FORTE report was finally published, the absence of any extended examination of the role of copyright in the music industry was conspicuous, considering that copyright is the foundation on which the music business rests (see Frith, ed. 1993; Ryan 1985; Ehrlich 1989; Howkins 2001).

The reason for the absence, as represented in the report, was decidedly vague. The report made no reference to underlying controversies, stating: "The Task Force is directed not to take into consideration the matter of copyright/intellectual property rights as these are being dealt with by other agencies" (FORTE 1996:13). There was, nevertheless, a short general section on the 'vital role' of copyright, not only in the music industry but in the 'creative process'. Copyright protection was championed as the only guarantee that the international success of 'Irish music' would continue. In something of a circular formation, it was acknowledged that Irish music "forms the very root of the Irish music industry". Therefore, it was stated, "The Government and the Irish music industry must work together at all levels to ensure the highest level of protection possible for this creativity" (41). Ireland, it was noted, was "lagging behind many other countries in the area of copyright", particularly in light of the General Agreement on Tariffs and Trades (GATT) and Trade Related Intellectual Property Rights (TRIPS). "Music copyright," the report stated, "is an internationally traded service". If music copyright is a service, the report argued, the government therefore had a responsibility to ensure "that this property right is protected in the same way as any other goods or services that are traded within the European Union" (ibid.). If Irish legislation did not improve, it was stated, the Irish music industry would have difficulty securing payments due for the exploitation of Irish copyrights from other countries. Therefore, it was argued, to guarantee the future success of the Irish music industry the concept of copyright must undergo a "comprehensive underpinning". The report added that:

“Copyright holders were gladdened by the statement of Justice Keane in the High Court decision in 1994 where he said “...it is the duty of the organs of the State, including the Courts, to ensure, as best they may, that these rights are protected from unjust attack and, in the case of injustice done, vindicated”” (ibid.). The voice of Irish government, the Irish legislature, and the operations of the Irish Music Rights Organisation are seen, then, to work in harmony.

This was symbolically affirmed when, in March 1998, the Irish Taoiseach (Prime Minister), Bertie Ahern, showed his support for the Irish Music Rights Organisation by giving a supportive speech at an IMRO dinner in the Conrad Hotel in Dublin. During the speech he promised changes to Ireland’s copyright legislation that would coincide with the aims of the organisation. The importance of the Irish Music Rights Organisation to the social and cultural life of Ireland was indicated with the following sympathetic words: “Music and writing have always played a central role in the social and cultural life of Ireland. Songwriters and music creators are the very bedrock of music. Without them there simply would be no industry²¹ or source of employment and ... music, like any other resource or property, needs to be funded and paid for” (IMRO 1998a).

The authority of the Irish Music Rights Organisation goes unquestioned, then, despite (or because of) the absence of extended examination of the role of copyright and the activities of the Irish Music Rights Organisation. The understandings embedded in IMRO’s expansion of authority become part and parcel of the ‘commonsense’, that is, “that-which-remains-unquestioned”, of everyday life. The claims of the Irish Music Rights Organisation come to be seen as the natural, indeed inevitable claims of a *necessary* order. In acknowledging this, we might also follow organisation theorist J. D. Thompson, and consider IMRO’s achievement to be one of “domain consensus” which:

defines a set of expectations both for members of an organization and for others with whom they interact, about what the organization will and will not do. It provides, although imperfectly, an image of the organizations role in a larger system, which in turn serves as a guide for the ordering of action in certain directions and not in others (Thompson 1967:29).

²¹ It is hardly useful to know that without the participants in the music industry there would be no music industry.

IMRO's hegemony thereby sets agendas for expectation, agendas for action, wherever the authority of the organisation remains accepted and unquestioned. The condition of hegemony in this case, then, refers to the unquestioned authority of the monopolistic operations of the Irish Music Rights Organisation, insofar as they proceed with governmental and legislative support. The condition of hegemony effectively signals 'the end of debate'; resistance is rendered ineffective because it is irrelevant. In hegemony, then, not only a monopoly of market but also a monopoly of meanings is achieved.

Summary

The Irish Music Rights Organisation maintains a position of unchallenged economic dominance in the market environment in which it operates. IMRO is the only performing rights collection agency working in the Irish state. The organisation, then, operates in a monopoly environment. The primary activity of the Irish Music Rights Organisation is performing rights licensing. The representatives of IMRO issue licences that allow people to undertake 'music use' in exchange for the payment of an advance fee. One of the prime concerns of the organisation, therefore, is to convince people, by way of persuasion or by way of litigation, that performing rights licensing is both necessary and legitimate.

The Irish Music Rights Organisation achieved independence from the English Performing Right Society in 1995. In the period that followed, IMRO representatives intensified their efforts to increase the number of licences contracted with the company. This intensification was made visible on account of fierce resistance, as certain groups refused to comply with the purported need for IMRO licences. In this chapter we focused in particular on disputes that arose with primary schools and with the Vintners' Federation of Ireland (VFI). By 1998 the Irish Music Rights Organisation had successfully achieved a number of important legal decisions and strategic alliances that effectively ended these disputes. These decisions and alliances vindicated the organisation's pursuit of performance royalty payments on the basis of licensing contracts, further sanctioned IMRO's monopoly interest within the Irish State, and

underpinned all subsequent moves to expand the interests of the organisation. By the end of 1998, all major 'music users' had contracted for IMRO licences.

It can be shown, then, that the dominant feature of the Irish Music Rights Organisation's activities from 1995-2000 was expansion. IMRO operations increased both in scale and in scope. We can see the pattern of this expansion by portraying it as cyclical. IMRO's cycle of expansion is a cycle of expansion, resistance, and legitimation, followed by further expansion. The expansionary activities of the organisation at this time were underpinned by IMRO's monopoly position. As they proceeded, it became clear that the Irish Music Rights Organisation had achieved not only economic monopoly, but also the condition of hegemony, that is, unquestioned authority for its operations, with the backing of both governmental and legislative support. The condition of 'hegemony' signalled, in effect, the end of debate, and free rein for the licensing activities of the Irish Music Rights Organisation.

In the following chapter we once again demonstrate the cyclical dynamic of the expansion of the Irish Music Rights Organisation. We turn to the effects of IMRO's expansion in the domain of what is considered 'traditional music'. By following the cycle of expansion, resistance, and legitimation, we can reaffirm the monopolistic hegemony of the Irish Music Rights Organisation. We can also reaffirm that licensing, as IMRO's primary concern, underpins expansion as the dominant feature of the organisation's activities from 1995-2000 - expansion.