Enclosure Without and Within the "Information Commons"

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[For those who might feel that this paper doesn't help much: someone commented to me by email that this paper left them feeling very pessimistic, as it identifies commodifying contradictions in 'commons' discourses but offers no alternative. This is a fair point, as offering alternatives was not a point of this paper. It is, however, the primary focus of my current and future research, which deals with an elaboration of a 'politics of gentleness' as a predominantly uncommodifying ethic. Some of the basic ideas about this work can be found at http://www.craftinggentleness.org]

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The information commons is an idea whose time has come. In part this is a result of pressures that face the commons. Issues related to intellectual property law in particular are leading to what many are now calling the enclosure of the information commons - a process that separates people from ideas. This process is analogous to the fencing off of the English commons, an act that separated people from the material resources they needed for their survival

Info-commons.org, 2002

Within a repressive society, even progressive movements threaten to turn into their [declared] opposite to the degree to which they accept the rules of the game.

Herbert Marcuse, 1965

Unless we demonstrate greater caution with analytical models that are products, as they all are, of particular histories, we are in danger not only of solving but also of producing tragedies and dilemmas in the commons and elsewhere

Pauline E. Peters, 1987

Introduction

There are perhaps three primary ways in which the notion of the "information commons" has been taking shape since Felsenstein's seminal 1993 article promoting the notion of a "Commons of Information". The first two have been developing in direct response to the demands and discourses of public library practice, first in the United States, and now internationally. Allmang et al. (2005) note in the context of library practice, for example, that a generally accepted meaning of "information commons" has been "a specific location designated to deliver electronic resources for research and production that is maintained by technically proficient staff" (Cowgill et al., 2001). They also note that a second meaning of the term is emerging, speaking more to the notion of

open access space with shared information rather than technological enhancement. They quote Nancy Kranich of the American Library Association (ALA), who sees the information commons as a "new dynamic approach to serving the public interest in the digital age" (Kranich 2004). Within the specific contexts of library practice, Allman et al. suggest that a comprehensive information commons is constituted by the combination of "a place that offers shared technology/work/study spaces *and* a place that supports the distribution of as much full text of published scholarly information as possible" (2005). This is clearly a powerful notion, as a quick google search of the term will confirm that libraries in universities across the world are being renamed "information commons".

There is a third, not entirely distinct, way in which the notion of "information commons" is being deployed. It's this one that concerns me most in this paper. The term has become a banner of action for a concerted lobby group of public policy activists and legal scholars from all over the United States, centred primarily in and around the civic communities of Washington D.C. Even more specifically, some of the most intense lobbying for the concept of the "information commons" can be located around a series of interconnected websites, in particular http://www.info-commons.org, and http://onthecommons.org. The first is the website of the Information Commons Project of the ALA, run by Frederick Emrich, a librarian and policy activist. This website also serves as something of a nexus for all three notions of "the (information) commons". The second is a private website run by David Bollier, who was a founding member of the non-profit organisation Public Knowledge, and author of the influential book *Silent Theft* (2002), a veritable bible for the new "commons" movements in the United States. David Bollier might easily be taken as the flag-bearer of the cause, and it is his work that will provide much of the focus of this article. The websites run by Emrich and Bollier have provided a focus for thinkers such as Howard Besser, Yochai Benkler, Jonathan Tasini, and Jorge Reina Schement. Other people that might be included as working in the spirit of the "information commons" lobby, sometimes referred to optimistically as a "movement", are legal scholar Lawrence Lessig, author of *The Future of Ideas* (2001), communications scholar Siva Vaidhyanathan, author of *The Anarchist in the Library* (2004), and legal scholar James Boyle, author of *Shamans, Software and Spleens* (1997), among a number of others. I would argue that these people have become key drivers of meaning in discourses of "information commons".

From this point on I will be using the term "(information) commons" to refer to this third strand of "information commons" thinking. This is because of the ways in which notions of the "information commons" in this regard intersect and overlap with the use of a rhetoric of "the commons" in American public policy. These discourses are co-extensive and mutually nourishing, and it is interesting, in passing, to note that discourses of "the commons" in the United States are more and more becoming synonymous with discourses of "the information commons".

There are a number of lines of critique that I could take with regard to discourses of "the (information) commons" and their buddy-narrative of enclosure. I could focus on the use of fear and threat as a way to rally people around a political cause on American Democratic principles; I could focus on the reimagination of both "public domain" and "(information) commons" as more recent versions of the colonial imaginary of *terra nullius*; I could focus on the utopian technoromanticism of "(information) commons" notions; I could focus on the ways that the Creative Commons movement allows people to enthusiastically endorse the expansionary principles of intellectual property doctrine while sometimes believing that they are radically challenging them; I could focus on the weakness of "information" models as a foundation for sociological analysis; or, I could focus on the ways in which proponents of "the (information) commons" seem to forget that not everyone has a computer, and not everyone either has or wants to have access to the Internet. There's not time to take on all of these issues here, but I certainly invite you to follow them up yourself. One point that I do want to make, however, is that discourses of "the (information) commons" do not present us with a "new narrative", as some would claim. As with other post-9/11 American democratic rhetoric, the narratives and rhetoric imbedded in "(information) commons" discourse are tried and tested, not so much new as renamed and repackaged to appeal to a specifically American audience. Not only that, but we do well to remember what Kevin Robins and Frank Webster have written: "there is much about the 'information revolution' that is just business as usual (if the technologies are new, the social visions that they generate tend to be surprisingly conservative)" (1999:5).

Champions of "the (information) commons" tend to be critics of what they term "enclosure". Understandings of enclosure within discourses of "the (information) commons" rely very heavily upon economically-based resource-management models of "the commons". Historically these have tended to be used by apologists, not critics, of enclosure. What I will suggest is that dominant understandings of the notion of "the (information) commons" within American public policy don't actually combat the dynamics of enclosure, as the rhetoric would suggest. In particular, I will go as far as to suggest that we might consider many discursive instantiations of "the information commons" to be subtly-cloaked political manifestations of the dynamics of legislative, technological, political, and theoretical enclosure and, more specifically, of the continued expansion of intellectual property doctrine. It has been written that the notion of the "information commons" is "a much-needed tool for achieving intellectual clarity about the digital revolution" (Bollier 2002a). I would suggest, rather, that discourses of the "(information) commons" tend to work more in the spirit of a Trojan horse than an analytic tool.

The idea of "the (information) commons" is not simply "gaining currency". It is being aggressively sold by David Bollier and others as a "new idea for new times", to "help name and mentally organize a set of novel, seemingly disconnected phenomena that are not yet understood as related to each other or to the health of our democratic polity" (Bollier 2002a). With a tone

interestingly not dissimilar to post-9/11 'The World Has Changed' rhetoric, "(information) commons" apologists suggest that we have to change our discourses to adapt to this Brave New World: "The functioning of our economy and culture has changed dramatically as a result of digital technologies, but our mental maps still tend to depict the landscape of another time, one that is fast-disappearing" (ibid.). This is a new discourse, it is suggested, unlike those "rooted in an earlier media culture" (ibid.). The notion of "the (information) commons", it is suggested, allows Americans to "talk more cogently about constitutional and cultural norms that are increasingly threatened in the new digital environment. Being able to name endangered values is the first step toward understanding what is at stake and mobilizing suitable responses" (ibid.). I will suggest later that such discourses constitute anything but new ideas for new times.

So what do apologists of "the (information) commons" mean when they talk about "the (information) commons". The point is that we can never really be sure. David Bollier has written that, "While still a rudimentary concept, the information commons is a valuable idea because it provides a coherent framework and language for explaining phenomena that are otherwise ignored or misunderstood" (Bollier 2002a). This is patently not true. While a discourse of "the (information) commons" may well focus minds, the analytic frameworks that have been erected around the notion are often anything but coherent. Never mind confusion across different writers, even in the same piece of work there can be much confusion, as I will later show. This would suggest that the power of "(information) commons" discourses rests not in the light they shed on the sociological or political aspects of either the process of enclosure or the constitution of "the commons". Rather, the interchangeability of meanings and metaphors of "the (information) commons" would suggest that the power of the notion "the (information) commons" lies primarily in its ability to draw a public-policy lobby around a rhetorical (American) flag.

My discussion in this paper runs as follows:

- Discourses of "the (information) commons" are also discourses of "enclosure"
- Discourses of "the (information) commons", although often quite confused and confusing, tend to involve us in resource-management approaches to social analysis, primarily reducing analytic discussion to the access, control, allocation, protection, and ownership of posited resources. These tend to be consistent with profoundly inadequate (socio-politically limited) models of expansion and commodification, the primary features of the process and practices of enclosure.
- Resource-management approaches to concepts of "the (information) commons" likely contribute in the long-term to intensifying (enclosing) dynamics within what might be referred to as commons systems, despite best intentions. This is because resource-management approaches in analysis tend to be both symptomatic and constitutive of the dynamics of enclosure

"Enclosure" and "the Commons"

Discourses of "the (information) commons" emerge from discourses of enclosure. It is a frequent strategy among "(information) commons" theorists to ground and legitimate their narratives in the English parliamentary enclosures of the Industrial Revolution (see, for example, Felsenstein 1993; Lessig 2001; Boyle 2001; Bollier 2002, among others). Indeed, the parliamentary enclosure narratives of history have provided a powerfully-emotive metaphor for many people[1], far beyond the concerns of information or the Internet. Throughout relevant literature, "enclosure" has been contrasted with or, more often perhaps, set up in direct opposition to notions of "the commons". It comes as little surprise, then, that much of the coherence in rhetorical deployments of "(information) commons" discourses comes from narratives of "enclosure". "(Information) commons" discourses are couched in a rhetoric of crisis, positing an often vague threat, against which "the (information) commons" must be protected. The danger to the "(information) commons" (and to democratic process and, arguably, the American Way of Life) comes from "enclosure". Howard Besser, for example, writes:

> In recent years we have begun to experience the erosion of various aspects of our contemporary commons. … Just as the coming industrial revolution provided an excuse for the wealthy to enclose the commons grazing land, the current information age is providing an excuse for the content industry (publishers, motion picture studios, music distributors, etc.) to fence off access to our information commons. (Besser 2002).

What normally happens is that the analogy is made, and a general threat posited as equivalent to the earlier threat of parliamentary enclosure. On the back of identification of this threat a notion of "the (information) commons" is formulated to counter this threat, working by analogy with "the commons" that were enclosed during the English enclosures from the fifteenth to eighteenth centuries. There are two analogies, then, although they are often dealt with as one. It is important to first be a little clearer about where these analogies come from.

"Enclosure" is frequently used as a label to speak of broad social processes and pervasive social change, and variously equated with commodification, privatization, commercialization, and the marketization of everyday life (see, for example, Midnight Notes 1990; Goldsmith et al. 1992; Brush 1996; Gudeman 1996; Shiva et al. 1997; Frow 1997; May 2000; Boyle 2001; Bollier 2002). In this way, "enclosure" has become very much about the identification of the threat of unwelcome social changes, driven by often anonymous corporate agents, fueled by the expansionary logic of free-market capitalism. However, it has been noted that the term "enclosure" is "an arena for the criss-crossing of disputed and competing values and orientations"

(Siemon 1994:23). The relationship between "enclosure" and the "commons" has been, if nothing else, 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" (Goldsmith et al. 1992:131).

In simple terms, it can safely be said that study of parliamentary enclosure concerns land, property, and "the commons" (see Thirsk 1958; Mingay 1968; Yelling 1977; Turner 1984; Allen 1992). "Enclosure", in this sense, refers primarily to a series of changes to the English landscape from the fifteenth to the nineteenth centuries. It often 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).

For many people, this "enclosure" was 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). This didn't make the designation any less meaningful for those who resisted enclosure. As the works of E.P. Thompson (1968, 1993), Jeanette Neeson (1993), Kevin Robins and Frank Webster (1999), and Iain Boal (forthcoming), among others, have made clear, changes to the English landscape were symptomatic of a broad programme of expansionary social changes. Profound changes to people's everyday lives were driven by the burgeoning popularity of a capitalist ethos. Resistance to these changes, such as that offered by the Luddites, was often stereotyped as anti-progressive and backward:

> "Luddism was a response to deep-seated changes in ways of life, changes in which technology was undeniably implicated, but which were about much more than mere technical matters. What the Luddites were fighting against, more broadly, was the unfolding logic of the Enclosures movements. The Enclosures ... were fundamentally about bringing realms that had hitherto been exempted into the new and expanding commercial relationships that marked the growth of capitalism. Former ways of providing food and sustenance - strip farming, labour

relationships based on obligation and deference, widespread access to, and availability of, common land for grazing, hunting and collection of fuel - were denuded and done away with in the name of efficiency, progress and private property rights" (Robins and Webster 1999:7).[2]

There are others, however, for whom "parliamentary enclosure" 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 increasing the productivity or profitability of land. This definition would apply accurately to all forms of enclosure" (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).

Whether people are referring to the parliamentary enclosures in England from the fifteenth to the nineteenth centuries or to the more recent critiques of "corporate enclosure", there have tended to be two dominant characterizations of "the commons".

In the first, people have conceived of "the commons" as a particular character of uncommodifying social relations in a localized context of community. It is important to note that, in the literature on the parliamentary enclosures, this has tended to be the characterization of "the commons" adopted by critics of the broad social changes that enclosure brought about. This can primarily be characterised as a relationship-centred approach to "the commons", whereby "the commons" is understood to refer to a particular character of social relations that are constituted, at least in part, by an ethic of interdependence and cooperation (see, for example, E. P. Thompson 1968, 1993; Neeson 1993). The key point has been, however, that the relations in question are of a peculiarly uncommodifying character. As the editors of The Ecologist note: "[The commons] provides sustenance, security and independence, yet … typically does not produce commodities. Unlike most things in modern industrial society, moreover, it is neither private nor public" (Goldsmith et al. 1992:7-8).[3]

The second dominant characterization of "the commons" is as a resource-pool to be managed. Within the literature on parliamentary enclosure, this has tended to be the characterization of "the commons" adopted by those very much in favour of enclosure as a means of enacting economic progress and the capitalist ethos.[4] The term "commons", in this sense, refers to resources "held in common" or managed in such a way as to allow common access. Again, "the commons" is often considered within a context of community, but the community does not need to be localized or situated. As there is no necessity for a resource management model of "the commons" to consider experiential or broader social psychological

elements, the community in question may have the character of an "imagined community" or a simplistic and reductionist abstraction.

"Enclosure" and "the (Information) Commons"

Upon examination the analogies with "parliamentary enclosure" and the English "commons" don't hold up. No real grounds are offered for the comparativist claims. Yes, a threat has been identified, and yes, this threat has been identified as long-acknowledged processes of commodification, privatization and marketization. Thus far there are similarities with earlier critiques of parliamentary enclosure. But beyond this the analysis does not go. The threat is left vague, and the analogy is never properly justified. No sociological or social psychological explanation is ever offered for the processes of commodification, privatization, or marketization that are identified as threats, therefore no appropriate comparisons can ever be made in considerations of enclosure as a social process. In light of the general discussion in this paper, this is important. On the one hand this lack in the analysis, the deferral to an abstracted threat, allows the threat to remain external to the person identifying the threat. No room is left to understand how we ourselves might be possibly participating in the dynamics of commodification and enclosure, at least in any way that we could do anything about.

When there is such a possibility for internal paradox with regard to what constitutes the threat of enclosure, it is little wonder that there tends to be some degree of internal contradiction with regard to understandings of how the expansionary process of enclosure operates. For example, at one point David Bollier claims that "The privatization of the commons has crept up slowly and quietly, in fits and starts. It has not been an identifiable juggernaut with a single battlefront or defining moment" (2002:4). Elsewhere, in the same document, he states that "… market enclosure … is typically a coercive *fait accompli*" (2002:22). In the same document, Bollier declares, however, that: "The issue is not market versus commons. The issue is how to set equitable and appropriate boundaries between the two realms – semi-permeable membranes – so that the market and the commons can each retain integrity while invigorating the other" (Bollier 2002:4). This rhetoric of equilibrium fails to take into account the expansionary character of capitalist market relations, and ignores the expansionary dynamic of enclosure that has elsewhere, countless times, been identified as the key threat against which apologists of "the (information) commons" must fight! This is possible, because an underlying sociological explanation for enclosure is never offered, against which to compare his declarations. The concept that lives by the rhetorical sword can just as easily die by the rhetorical sword. Failure to account for the expansionary logic of capitalism leaves Bollier open to accusations of economic and political naivety. Denying his own critique of the expansionary commodification of enclosure might leave his arguments, grounded in the celebration of copyright, intellectual property law, and

legislative expansion of the American constitution in the name of "democracy", open to accusations of complicity with, or, at the very least, enthusiastic participation in broader processes of enclosure. This is confirmed, in the same document, when Bollier actually goes as far as to literally naturalize the expansionary dynamic of capitalism by way of a nature metaphor:

> "Business, let it be said, is no more a villain than a lion whose metabolism needs gazelles. Companies are in the business of maximizing competitive performance in the market, and use of the commons simply represents an available resource and frequently a path of least resistance. That is why fortifying the commons is not equivalent to attacking the market, which clearly generates many important benefits for our society" (Bollier 2002:3).

If the analogy with parliamentary enclosure is problematic (if not empty), the analogy with "the commons" is equally problematic. Yes, attention is sometimes drawn to a threatened way of life, and, yes, the way of life that is threatened has been identified as uncommodifying social relations. To that extent the positioning of a commons-critique against processes of enclosure has validity. However, as I have just noted, the point is that this tends not to be the primary characterization of "the (information) commons". What is crucial, and vital to the arguments set forth in this paper, is that conversations about "the commons", and in particular "the (information) commons", tend now to be effectively monopolised by those who espouse resource management conceptualizations of "the commons". For example, at one point David Bollier describes "the commons" as "the collectively owned resources that are fundamental to a democratic commonwealth … valuable resources that the American people collectively own" (2002:2). He suggests that these:

> "include resources that we have paid for as taxpayers and resources that we have inherited from previous generations. They are not just an inventory of marketable assets, but social institutions and cultural traditions that define us as Americans and enliven us as human beings – public education, community institutions, democratic values, wildlife and national forests, public spaces in cities and communications media" (2002:3).

Ignoring for a moment the American flag-waving, pretty much anything you can imagine becomes a resource, within the American democratic polity.[5]

This is where the confusion starts. It is simply prevarication to suggest that this resource management discourse is not based on economic principles. It is an attempt to outline a notion of non-marketability without acknowledging that the attempt is taking place firmly within an overarching normative framework of free-market capitalism and orthodox economic discourses.[6]

This allows Bollier, for example, to nestle in paradox (or outright contradiction) by claiming on the one hand that "… the idea of the commons helps us identify and describe the common values that lie beyond the marketplace" (Bollier 2002b:14), while also stating, in the full garb of political economy, that,

> There is a vital political analysis implicit in commons-speak, and this analysis presumes that citizens, not investors, are the primary stakeholders. It also presumes that citizens are not just the owners of these assets, but often the *users*, and so they ought to be direct participants in how their assets are managed (Bollier 2002a).

Jonathan Tasini, at least, is up-front about it, stating that "(information) commons" activists "have to carve out a more aggressive role in defining the economic rules of the game" (Tasini 2002). The game of resource management discourse is very much an economic one.

Rather than being about uncommodified spaces, uncommodifying, non-capitalist, non-propertized social relations, notions of "the (information) commons" tend to refer to always-already commodified resources, always-already commodifying management of resources, or an always-already commodified space of propertized resources (a classic commodity framework): "What unites these highly disparate commons … is their legal and moral ownership by the American people" (Bollier 2002b:3). The resources become "givens" of the discourse, and the focus shifts from things to the management of things. This is a discussion about a *control economy*, about who gets to control resources, and how: "A reckoning of what belongs to the American people is a first step to recovering control of common assets and protecting them for public purposes. When we argue for the American commons, we assert the right to public control over public resources …" (Bollier 2002b:14). David Bollier declares it to be the central issue under debate: "One of the great questions of contemporary American political economy is, *who shall control the commons*?" (2002b:1). Discourses of "the (information) commons" tend mainly to refer to resources (commodities) that are under the threat of an *alternative mode* of commodification or propertization. To identify the threat of enclosure within "(information) commons" discourses as the threat of even solely economic commodification, then, is to hoist a straw man on a rhetorical petard.

This is, of course, not without consequence. It is no coincidence that, in the past, resource management notions of "the commons" were espoused by those intent on driving the logic of enclosures and capitalism to their best advantage. The possibilities of conceiving of "the commons" in terms of uncommodifying social relations, in terms of the political character of relationships at all, or even in terms of resistance to the dynamics of enclosure, are decidedly limited when resources are the focus of attention.[7]

As with the analogy with parliamentary enclosure, the analogy with "the commons" gets a little shaky upon closer inspection. When we historicize the dominant model of "the (information) commons" it has tended to be deployed as a privileged discourse by people in favour of enclosure, not those critiquing it.[8] I would suggest that the use of resource-management models to either counter the expansionary dynamics of enclosure or to characterise "the commons" will tend to lead to inadequate analysis that, in the long-term, will likely exacerbate rather than ameliorate the broader socio-political consequences of enclosure. I would also suggest that the analogies drawn between past and recent examples of "the commons" only really work insofar as capitalism is excluded as a focus of critique, and insofar as the rhetorical promise of uncommodifying social relations is foregrounded to cloak the commodifying presence of resource management frameworks.

With the analytic weaknesses embedded in these particular deployments of analogy, it is no great stretch to establish a rhetorical opposition between enclosure and "the (information) commons". It takes little effort to state that one is protecting "the commons" and combating enclosure, because both terms operate more or less as free-floating rhetorical implements. This crisis rhetoric allows apologists of "the (information) commons" to appropriate the emotional weight of historical narratives of "enclosure and the commons", without every really justifying comparisons with those narratives in any rigorous fashion. Rhetorically, they frame it in terms of widespread social changes involving commodification and the spread of market values, but they are a little shy to push the analysis so far that they might have to acknowledge that they might actually be espousing commodification and the spread of market values.

If it is accepted that deployments of the notions of "enclosure" and "the (information) commons" in the literature in question tend to be primarily rhetorical, it will not come as too much of a shock to find that there is considerable shifting of meaning and metaphor within the rhetoric. It can get a little confusing.[9]

Take, for example, when resource management notions of "the commons" are "mixed" with notions of enclosure. The (information) commons" is often those resources that are both being enclosed, as well as being that which is not enclosure, indeed, the opposite, the 'necessary Other' of enclosure:

> "The commons" refers to that vaste range of resources that the American people collectively own, but which are rapidly being enclosed: privatized, traded in the market, and abused." (Bollier 2002b:1).

> "… the idea of the commons helps us identify and describe the common values that lie beyond the marketplace" (Bollier 2002b:14).

This raises a problem not dissimilar to the problem of causation raised by Descartes' separation of mind and body - if "the (information) commons" is separate from enclosure, and fundamentally different, how is it that enclosure happens within "the (information) commons? You can't have it both ways. This doesn't make much sense unless we accept that the Othering of enclosure is primarily a rhetorical strategy. It draws attention away from the possibility that *how* proponents of "the (information) commons" are claiming to protect what they wish to protect isn't all that different from what they identify as the process of enclosure.

The key to understanding all of this confusion may be that the project of "the (information) commons" is not a project of social or political analysis. Enclosure is left as a vague threat, "the (information) commons" as an unquestioned good. The refusal to analyse the social dynamic of enclosure in sociological or social psychological terms, particularly at the level of social interaction, leaves any analysis flowing from these statements, at best, simply descriptive; somewhere in the middle, politically naïve; and, at worst, rhetorically manipulative.

Enclosure Revisited, Without "the Commons"

Some time ago I would have been very inclined to go along with the persuasive language offered by the public policy apologists of the "(information) commons". I, too, have become, in spite of myself, a theorist and critic of enclosure. However, my analysis of "enclosure" differs in significant ways from that offered by apologists of the "(information) commons", not least because I seek to extricate my analysis of expansionary social dynamics from notions of "the commons". I have found in my own analysis of the process and practices of enclosure that resource management discourse tends to be both symptomatic of and constitutive of the dynamics of enclosure. This is, of course, quite obvious in the case of the discourses and practices of apologists of parliamentary enclosure. Where it is perhaps not quite as obvious, and where we might indeed think it counterintuitive, is in the discourses and practices of apologists of the "(information) commons".

Over the last number of years my research has focused on the identification and analysis of expansionary social dynamics. Of particular interest to me have been the increasingly influential discourses and practices of law, copyright, and intellectual property. My doctoral dissertation ([http://www.beyondthecommons.com)](http://www.beyondthecommons.com), for example, examined the expansion of the Irish Music Rights Organisation (IMRO) during the period 1995-2000. IMRO administers licences[10] for performing rights[11] in Ireland. As IMRO representatives intensified their efforts to increase the number of licences contracted with the company, a series of controversies resulted during the second half of the 1990s, allowing for an eruption of suspicion, if not paranoia, about their operations. Representatives of IMRO encountered fierce resistance as certain groups refused to comply with the purported need for IMRO licences, in particular, primary schools, publicans, and supporters of 'Irish traditional music' (see McCann, 2001, 2003, forthcoming). In

the space of five years, however, the organization went from being one of the most hated in Ireland to being one of the most accepted, with full government support and full legal sanction for their monopoly operations. The representatives of the Irish Music Rights Organisation are now allowed to assert absolute authority to undertake their favoured activities and deploy their favoured strategies in all domains within the Irish state. The hegemonic dynamics of IMRO's operations effectively sustain 'the end of debate'; resistance to the foundation of IMRO's authority is consistently rendered ineffective, politically irrelevant, and, especially now, discursively invisible. I was interested in how this public relations miracle had been achieved.

I read the rapid expansion of the Irish Music Rights Organisation's authority across the Irish jurisdiction as an example of "enclosure". Enclosure, as I understand it, is a process that is not helpfully identified with specific historical periods or associated solely with identifiable "movements". I believe enclosure is more helpfully understood not as one side of a binary opposition in relation to notions of "the commons", but, rather, as a character or mode of power relations. There is not, then, any *a priori* assessment of enclosure as positive or negative, with associated tendencies to judgment and blame. Rather, in a Foucauldian move, my focus is on enclosure as a particular mode or character of the exercise of power, with characteristic consequences. I understand enclosure to be a social psychological, and deeply political, process which operates in and through the very particular practices of very particular people in very particular circumstances. I will let it be known at this stage that I am no fan of invisible hand solutions to sociological analysis. Any 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). The aim of my research, then, has been, in my dissertation of 2002 and since, to identify the features of enclosure as a process[12], to identify family resemblances across various contexts.[13]

From my work (discussed at length in McCann 2003), two elements stand out as characteristic in my analysis of the process, discourses, and practices of enclosure. The first is the experience of commodification. The second is the extension of authority-as-certitude, which could be otherwise understood in the context of this paper as 'doctrinal expansion.' Both of these elements I take to be symptomatic and constitutive of enclosure. Thus, for the purposes of this short paper, I will only be directly addressing the first of these, commodification.

Commodification

Commodification is, for me, the first element of enclosure. Commodification (also commoditization) is a popular word among mainly left-wing thinkers, due to Karl Marx's enthusiasm for the term "commodity" as part of his anti-capitalist arsenal in *Das Capital*. It

surprised me recently that the term "commodification" itself has only become a presence in the academic lexicons since the mid-1970s (see Strasser, ed. 2003). It is interesting that people who write about the process of commodification concern themselves almost exclusively with attempts to quantify or define the qualities of "commodities" (e.g. Appadurai et al. 1986). This seems to me a somewhat counterproductive strategy. To focus on commodities-as-things, to focus on access to, and the exchange, movement, allocation, control, ownership, and protection of commodities in these discussions is ironically to adopt a peculiarly commodifying approach, as I argue below. I would further suggest that to consider commodification as primarily or solely an *economic* issue, which most scholars do, is further to diminish its usefulness as a concept in analysis by making commodification in apparently non-commercial contexts invisible. I don't accept that commodification is a primarily or peculiarly economic process, or that it necessarily concerns the abstract exchange and movement of commodities.

In my own work, I understand commodification as a primarily dispositional[14] and discursive[15] process (with very particular political consequences). It arises from a dominance of the expectation that uncertainty can be or should be "eliminated". In this, I make a key assumption, that uncertainty (affect) is a constant and variable aspect of our experience. If this is the case, and my own experience would suggest to me that it is, then it would follow that the "elimination" of uncertainty can only ever be a rhetorical assertion. Therefore, it would seem, the more we participate in the discursive "elimination" of uncertainty, the more we are likely to become alienated from what is happening. The more our discursive renderings of what happens are suffused with the dispositional expectation that uncertainty can be or should be "eliminated", the more misrepresentative are likely to be our renderings of our experience and of whatever we might refer to as reality.[16] The more we seek to "eliminate" uncertainty, then, the more likely we are to become structurally blind to how we ourselves are participating in our own political realities.

I have found in my work that the more we tend towards the discursive "elimination" of uncertainty, the more we are likely to engage in discursive strategies of "closure" and "separation" in the way that we make sense of our experience. Closure is here understood as the discursive "elimination" of variables, and separation as the discursive "equation" of difference as separateness.[17] A discursive dominance of "closure" and "separation" within a particular context is what I mean by commodification. As strategies, they both rely on the assumption that we can achieve an exact equivalence between what we say and think about what happens, and what actually happens. In my dissertation of 2002 I outline how the discourses of the Irish Music Rights Organisation are suffused by such assumptions.

As a consequence of thinking that the commodifying strategies of closure and separation are okay ways to make sense of experience, it is often the case that we think "things" ("commodities", "resources", etc.) are more important than people and how they treat each other. At the very least, we often naturalize or reify these "things" so that we assume that they maintain

an existence independent of ourselves. It is easy then to assume that our reifications (and our responses to them) are natural, and often therefore inevitable and necessary, "the way things are". Little wonder, then, that I have found various versions of resource management discourse (access, control, allocation, protection, and ownership) have provided crucial structural support for the dynamics of enclosure. In my work I now take a dominance of resource management discourse to be both *symptomatic of and constitutive of* the commodifying dynamics of enclosure.[18] I say "commodifying" instead of "commodified" to underline that commodification as I understand it is a dispositional and discursive process *in which we engage and participate*.

Karl Marx suggested that a key characteristic of "commodity relations" was that social relations between people come to assume, it would seem, "the fantastic form of a relation between things" (Kamenka, ed. 1983:446-447). When resource management models become the central concern of a discourse, as happens in the dynamics of enclosure, it is very easy to see how people's lives can become formalistically reduced to involving little more than the exchange, transaction, and circulation of things/ resources/units/commodities. This frequently allows for the erasure, in C. Wright Mills' terms (1959), of both biography and history. This is an obvious way in which uncertainty (affect) can be "eliminated", the experiential and affectual aspects of social life excluded from analysis. All too easily the internal dynamics of a posited resource system become subject to analytic closure, whereby social, political, and cultural variables get left out of analysis in favour of the aesthetically-charged complexities of resource flow. In addition, resource management models are premised on the assumption that our experience is always-already commodified. The very construction of any resources as resources often involves discursive practices of commodification, as I understand the process. When this is the case, resource management discourses leave it very difficult for those of us concerned about the accelerative commodification of everyday life to explain the intensifications and encroachments of commodification. Such concern tends to be not only rendered politically irrelevant, but politically invisible. Such concern is further sidelined when commodification is corralled as solely an economic concern.

It has already been suggested both that discourses of "the (information) commons" tend to be dominated by resource management models of "the commons". It has also been suggested that a discursive dominance of resource management models tends to be symptomatic and constitutive of commodification and the process and practices of enclosure. If this is the case, then it makes sense that any dominance of resource management models in a particular discourse serves as an invitation to further investigation. A dominance of resource management models may be indicative not only of commodifying discourse, but of the extensions of absolute authorities and the presence of doctrine, and of the accelerative and intensifying impetus of enclosing dynamics. This is not necessarily so, but is worth checking for. It is also worth checking whether the discursive dominance of resource management notions foster and facilitate the

profoundly impactful structural blindnesses to the implications of our own participation that also tend to be symptomatic of enclosure.

It is not inevitable that resource management models be used to speak of "the (information) commons". My critique of commodification and enclosure is also, then, a critique of the use of resource management discourse as an analytic framework for the study and critique of enclosure. This brings me to an interesting place, for, as it happens, resource management models have become the dominant models both for the study of enclosure and for the promotion of notions of "the commons" or "the (information) commons". I would suggest that this is not a coincidence, but rather a deepening of the enclosing dynamics that are and have been at work in these discourses, as new orthodoxies take root and old ones are given new life through the novelties of renaming. Foucault (1972) cautioned against academic circularity, noting that our scholarly discourses and practices may well be systematically forming the objects of which we speak. In and through the "discursive feedback" identified here, I would suggest that we can systematically participate in the dynamics that we critique.

An Enclosing Commons?

"There is much about the 'information revolution' that is just business as usual (if the technologies are new, the social visions that they generate tend to be surprisingly conservative)"

Robins and Webster, 1999.

Bollier has subtly equated the "narrative of market enclosure" with the "narrative of the commons": "It is important to speak of market enclosure because it reframes the economic narrative of the market. What the market considers incidental externalities (toxic waste, species extinction, safety hazards), the narrative of the commons regards as an assault on the community" (Bollier 2002:49). In a way, as I have suggested, I agree with Bollier in this. Narratives of "the (information) commons" may indeed be read as narratives of enclosure, but not necessarily in the ways Bollier intends. Championing "the (information) commons" tends to implicate people in a series of discourses that have long been implicated in the expansionary social practices of enclosure (where enclosure might be variously understood in terms of commodification, private and collectivist propertization, marketization, globalization, and the propagation of expansionary doctrine).

Take the issue of technology for example. Discourses of "the (information) commons" tend to be always-already couched within progress doctrines of technoboosterism, technoromanticism, and technodoctrine (see MacKenzie and Wajcman, eds., 1999; Robins and Webster 1999; Coyne 1999). I take this to be more than a little ironic, given other analysis that suggests that "The development of ... new Enclosures is being massively facilitated by the

introduction of information and communications technologies" (Robins and Webster 1999:7). Heightened levels of self-awareness with regard to participation in the dynamics of enclosure is hardly to be expected in the midst of technological enthusiasm. As Langdon Winner has written: ".. the sheer dynamism of technical and economic activity in the computer industry evidently leaves its members little time to ponder the historical significance of their own activity" (1989:84). The social implications of increasingly technologized relations are hardly likely to get a lot of airtime when the use and future development of technology serve as the *sine qua non* of "(information) commons" discourses.

A similar structure is at play with regard to intellectual property issues. For example, it is not the legislative enclosure of the expansionary discourses and practices of intellectual property that are challenged. No, rather, the legal-literary doctrines of Anglo-American law, copyright, patent law, and intellectual property rights are acknowledged as necessary and beneficial. This is despite long-standing scholarly recognition of the role of intellectual property in commodification and expansionary enclosure. For many, the analysis of "corporate enclosure" specifically concerns resources, intellectual property, and "the commons" (see, again, Goldsmith et al. 1992; Brush 1996; Gudeman 1996; Shiva et al. 1997; Frow 1997; May 2000). The term "enclosure", in this sense, refers to more recent developments concerning the appropriation of genetic resources and scientific or indigenous knowledge by opportunistic researchers in and through the application of intellectual property rights. This new understanding of the term "enclosure" speaks to major ethical issues that have arisen in the last twenty or thirty years. "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). Although at one point David Bollier, for example, seems to align himself with such analysis, asserting that "… copyright imperialism has blossomed into brazen rapaciousness" (Bollier 2002:123), the analogy with imperialism, the apparent alignment with broad critiques of the discourses and practices of intellectual property, is misleading. To extend the analogy in line with Bollier's own stated position elsewhere, the principles and politics of imperialism are not problematic but rather it's the aggressive application of them that is. A subtler, more regulated imperialism is fine. As Frederick Emrich writes on info-commons.org:

> "To sound a call in support of the information commons does not mean calling for
> the end of intellectual property. Commercial uses of information serve a vital role
> in ensuring that new ideas are produced. So long as commercial uses of
> information are balanced with effective public access to information, there is
> good reason to see the information commons and information commerce as

mutually beneficial aspects of one system of managing ideas" (Info-commons 2002).

Apologists of "the (information) commons" also tend to support optimistic assumptions of Anglo-American neo-liberal consensus with regard to the benefits of the free market, the free flow of resources, our roles and duties as consumers, the existence of a 'public sphere', and the promise of mainly American versions of democracy. Many of these notions are often silent partners in "(information) commons" debates, but they are no less powerful for the silence. This reminds me of a critique that James Brook and Iain Boal levelled against the "corporate libertarianism" of groups such as Computer Professionals for Social Responsibility and the Electronic Freedom Foundation who, they suggest, "see no essential contradiction between social progress and corporate profits. While they are energetic defenders of on-line "privacy" and "open access" to information, their advocacy of civil rights in cyberspace is tempered by their industry affiliations; for example, they rarely challenge the assumptions that more computerization is necessarily a good thing and that "the free market" needs to be protected from "big government" (Brook and Boal, eds. 1995:xi)." A similar critique, I would suggest, can be levelled against many proponents of "the (information) commons".

The case for "the (information) commons" offered by David Bollier and others runs as follows:

- The process of enclosure is driven by market concerns, that is, with concerns of people who explicitly privilege economic criteria as the most important elements of discussion.
- The process of protecting "the (information) commons" is identified with "non-market" concerns, that is, with concerns of people who do not privilege economic criteria as the most important elements of discussion.
- American legislative development and more equitable governance within American public-policy regulation are identified as the primary means whereby the protection of the information commons will occur.

This argument overlooks a number of key issues, however. Among them, it ignores the interdependence of legal and economic concerns within Anglo-American Common Law. This has very direct implications for "(information) commons" discourse. For example, it's okay for apologists of the "commons" or "information commons" to talk about "enclosure" as commodification, privatization, marketization, or the encroachment of economic values, but to talk about enclosure as propertization would draw attention to a central confusion within their rhetoric - that the notion of the "commons" they are working with is based on a commodifying, marketized, economic, *property* framework. This is also why their claims about legislative enclosure ring a

little hollow – property is also a legal concept. Economic and legislative enclosure has always-already taken place within their discourse of "the (information) commons".

The place of American democratic governance in the discourse is also in question. American constitutional principles (e.g. First Amendment rights) and the principles of (American) "democracy" are identified as the discursive basis for justifications with regard to the protection of the "information commons". Nevertheless, proponents of these discourses tend to ignore the many ways in which political structures and practices in the United States, in particular those underpinned by neo-liberal rhetorics of "democracy", are suffused by free-market ideologies, and very much implicated in the enclosures of corporate expansion worldwide. This is of particular concern in the current political climate, given critique of "… the contemporary expansion of American imperial rule through the mechanisms of economic, political, and cultural domination often concealed behind a façade of democratic structures and discourses" (Boggs 2003:2). An increasingly coherent body of theory is often allowed to assume the unquestionable positivity of classic anti-enclosure "commons" rhetoric, sounding like globally oriented concern while also declaring support of the central principles of an historically expansionary American polity. Would that the separation of doctrines of democracy and corporate economics were so easy.

Simply declaring the existence or the desired existence of an "(information) commons" does not suddenly sweep away the political baggage that comes along with each of these issues. But it is not uncommon, consistent with the wonderful dynamics that any condition of hegemony tends to imply, that such issues are often conveniently swept under the carpet, shrouded in the mists of denial, or immunised against criticism by the blinding light of the best of intentions. Discourses of "the (information) commons" allow people to purport that they are focusing attention on the fundamental political implications of new technologies, intellectual property laws, free market economics, and American democracy without ever really taking any of those implications seriously enough to challenge them at base.

Conclusion

Insofar as "(information) commons" models monopolize discussion about notions of both enclosure and the commons, they also potentially diminish the power of these notions to provide a focus for truly radical political critique. It would seem that their notion of "enclosure" is little more than rhetorical posturing, presenting a threat to "the commons" that must be countered, while also working from a position, that cannot be acknowledged, that they are part and parcel of the threat they identify. Hence their earnestness in countering the identified threat can hardly be taken seriously. The "information commons" tends to be primarily a rhetorical play, one that muddies the waters of political analysis while at the same time suggesting that paddling around in there actually makes the waters clearer.

With discourses of the "(information) commons" a rhetoric of social critique has been made synonymous with the promotional rhetoric of a positive cause. There are three key points to be made here. The first is that the rhetoric of social critique rarely rises above description and emotive response– this is what is happening, it's getting worse, and we don't like it. The second is that those who find themselves going along with the rhetoric of social critique can easily find themselves becoming co-opted into the promotion of positive values that they may not share. The third point to be made is that the rhetorical shift of focus from critique to espousing a positive response to critique tends to allow people who espouse the rhetoric of promotion to remain immune from a critique similar to that which they have undertaken themselves – "we are working against enclosure by protecting the information commons therefore we cannot be involved in enclosure". While this may have rhetorical force as a declaration, it is of little analytic use. Not only this, but it tends to actively limit the future possibilities of sustained, helpful social and political analysis by placing the consequences of one's own participation beyond debate. This is a classic dynamic in the discursive maintenance of absolute authorities and hegemonic environments.

What seems to be of greatest concern within "(information) commons" discourse isn't so much that commodification, privatization, marketization, or the spread of economic values is happening, but that it is happening coercively: "A discussion of the commons and enclosure helps bring into sharp focus a dramatic but largely unexamined phenomenon of contemporary American society: the forced privatization and marketization of large swaths of shared wealth and social life" (Bollier 2002b:2).

What's of greater concern to me is "enclosure" (commodification, privatization, marketization, the spread of economic values etc.) that happens not due to coercion, but on account of acquiescence and (often enthusiastic) participation. Coercive enclosure is easy to identify, and likely to be met with, one would hope, high-profile resistance. It's the creeping commodification of everyday life that I would think is of greatest concern, and this tends to happen because either we don't realise that resistance is even an option or we don't care to resist. When it comes to the creeping commodifications of technological, political, economic, and legislative enclosure, it would seem that the apologists of "the (information) commons" don't care to resist. That makes them profoundly and actively complicit in the expansionary dynamics of enclosure, if and when we consider enclosure to be a broader social process than Bollier and his colleagues present it as being.

The championing of an "information commons" (or even a "public domain") might be interpreted as a series of concerted efforts to carve out a space of what Marcuse (1965) might have referred to as "repressive tolerance": "within a repressive society, even progressive movements threaten to turn into their opposite to the degree to which they accept the rules of the game."[19] It would seem to be a decent enough first step as a defensive measure, but the rhetoric

tends to freeze beyond the aspiration of an efficiently utopian "(information) commons", and, at any rate, appearances can be deceptive. Such efforts tend to succeed admirably in inverse proportion to the challenge they offer to the hegemonic assumptions upon which they are built and in which they nestle, or, to ground it a little more in day to day realities, in inverse proportion to the radically political challenges that people offer themselves or others. "Success", then, is not necessarily to be welcomed. Be careful what you wish for.

If there are indeed such fundamental paradoxes, if not outright contradictions within "(information) commons" theory, then a re-evaluation of "information commons" developments is called for. I would suggest that the enthusiasm with which notions of the "information commons" have been greeted is misplaced. It would be more helpful, I would suggest, to keep an eye to the critique, concentrating on the implications of enclosure and commodification for the ways in which we relate to each other. Taking the focus away from resource management will leave us not only with less misrepresentative analyses. We will have less limiting theoretical perspectives with which to undertake assessments of our own engagement as discursive participants in the very fields of our inquiry, that is, with which to undertake more helpful participatory analysis to supplement and inform other descriptive and explanatory explorations.

Why is this important? We do well to focus again on the critique offered by apologists of the "information commons". It's important because of the expansionary dynamic of enclosure, because of the accelerative dynamics of commodification. If we aren't more aware of how we may or may not be helping with relation to such expansion and commodification, then we are likely to contribute to a long-term worsening of the enclosing dynamics we are often seeking to ameliorate, even if our short term intentions may frequently seem to be realized. The more appropriate, sensitive, fluid, dynamic, and flexible the methodologies we employ and deploy, the more appropriate, sensitive, fluid, dynamic, and flexible will be our participation as scholars and activists. This paper, then, is an invitation to less partial renderings of what happens, more analysis of the consequences of our own participation, and more adequate understandings of power, agency, expansion, and commodification as they relate to discourses of the "information commons".

Enclosing characters of social change don't happen by way of humungous invisible hands that sweep us into an inevitable further stage of commodifying existence. Enclosure happens when people interact with people, when attitudes have consequences, as they only ever do, when the smallest rhetorical layerings of absolutism, domination, oppression, coercion, and violence are anointed with stealth and blessed with the silent pull of gravity on account of their banal humanity. What in the long term will be a pretty big deal is often in the short term left unnoticed. Such ways of thinking are not better or Darwinistically superior. For those of us who are uneasy about them they can be simply different, but the consequences of that difference are where the possibilities of critique and transformation lie. Whether or not such ideas become more

influential depends on *politics*, on how energetic, persuasive, or coercive people become with regard to their propagation, with how acquiescent or participatory we become with regard to their acceptance. Enclosure tends to be a process in which we ourselves often engage and participate, often regardless of or on account of our oppositional rhetoric. As such, our greatest contribution in our encounters with the dynamics of enclosure may well be to consider that there is nothing more political, personal, or relevant than the character of our own attitude. This would implicate us in the continual clarification of our own priorities of importance with regard to what we value, and evaluation of the dissonances between our values and what we find ourselves being expected to concede to, or, often, what we find ourselves conceding to.

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[1] 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?* (May 2000).

[2] "... Luddism, the real Luddism, was not the cry of the empty gut against innovations which inexplicably (at least to the victims) threw people out of work. It was an answer from many ordinary working people to changes imposed from above which had repercussions on their whole way of life, notably through the 'mobilisation' of women's and children's labour in place of that of skilled men. Luddism was above all else an attempt by working people to exert some control over changes that were felt to be fundamentally against their interests and mode of life. It was a protest, in the days before the existence of any organised trade union movement, against new modes of accountancy, employment patterns, work rhythms, and industrial discipline" (Robins and Webster 1999:46).

[3] See http://www.biodev.org/archives/000494.php.

[4] Apologists of parliamentary enclosure almost invariably criticised "the commons", "common rights" or "common property" as negatives. The privileged criterion was 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).

[5] In passing, most of the "collectively-owned resources" that Bollier mentions I might potentially identify as environments of enclosure, depending on the particulars of circumstance.

6 Bollier at one point suggests, without a shred of irony that: "The idea that human beings share a moral and civic inheritance that cannot be alienated, commodified, or sold is part of an American tradition that has its roots in the Declaration of Independence" (Bollier 2002b:16).

7 Nevertheless, resource management notions of "the commons" have provided a shining beacon for many people during anxious times, a clear focus for active and purposeful attitudes in the face of crisis. Visit reclaimthecommons.net, for example, and you will find "a movement of people who "want to teach and demonstrate sustainable, life-affirming alternatives to biotechnology and corporate power in general" (http://www.reclaimthecommons.net/article.php?list=type&type=6). The Global Commons Institute (gci.org.uk) declares that its mission is "to globally shrink and share future greenhouse gas emissions to avert dangerous rates of global climate change". The Chaordic Commons (http://www.chaordic.org) seeks "to develop, disseminate and implement new concepts of organization that result in more equitable sharing of power and wealth, improved health, and greater compatability with the human spirit and biosphere". The Caribou Commons Project (http://www.cariboucommons.com) is "an international effort to permanently protect the calving grounds of the Porcupine caribou herd, located in Alaska's Artic National Wildlife Refuge." The "Cultural Commons" project of the Center for Arts and Culture in Washington DC (http://www.culturalcommons.org), the title referring to a "think tank that seeks to inform and improve the decisions that affect our cultural life".

[8] Little wonder, then, that many of the "(information) commons" apologists characterize their "commons" within victimizing frameworks, whereby a static, threatened, feminized pool of resources "(information) commons" is under threat from a dynamic, aggressive, masculinist process of enclosure. This, again, is a classic rhetorical position taken by people in favour of enclosure (and by colonizers ad empire builders, as it happens).

[9] Sometimes "the (information) commons" is not enclosure; sometimes "the (information) commons" is the opposite of enclosure; sometimes "the (information) commons" works with enclosure; sometimes "the (information) commons" is enclosure.

10 Enforcement of the property right of copyright can be exercised by other persons by licence or assignment (WIPO 1997:5). 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). IMRO agents are granted a right of free entry, for monitoring purposes, to any premises which has been licensed.

Licensing constituted 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). The performance royalty licensing 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. This blanket licence10 runs from year to year, until such time as the licence is cancelled. 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. Nevertheless, licensing is 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. 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.

11 According to the Irish 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". 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 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 1997:155). This 'performance' is often assumed (without much discussion) to be at least 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).

12 A developed theoretical perspective on the commodifying and expansionary qualities of the process of enclosure did not exist, at least not exactly. What did exist were various sociological critiques of political processes that seem to affect us in our everyday lives. In developing the tone and colour of my own understanding of the concept of "enclosure" I drew on the spirit of Tönnies and his critique of *gesellschaft*, and on Marx's critiques of objectification, alienation, and commodity relations. I kept in mind Lukács' critiques of reification and totalization, and Simmel's critique of the relational implications of abstraction and reification as found within works such as *The Philosophy of Money* (1978). I also drew upon the spirit of Weber's extended critique of rationalization, and his typologies of authority, in particular his analyses of legal, institutional, and bureaucratic relationship structures (I am indebted here to the Weberian work of Raymond Murphy (1988) on 'social closure'). I also consider this work to be resonant with much counter-enlightenment critique, among which I would include certain strands of postmodernisms, poststructuralisms, feminisms, critical theory and the Frankfurt School, and Holocaust Studies. I think it's also hard to underestimate the influence of the spirit of Michel Foucault in the thinking outlined here. While in a general fashion Foucault's work allowed me to consider that I never needed permission to think for myself, more particularly I find his work on disciplinary power provides me with a kindred critique.

[13] Understanding the characteristic features of enclosure in this way, I am as happy to identify practices of enclosure at work in Hitler's Germany, an abusive relationship, a gambling casino, or the corporate logic of an organisation, as I am to identify them in the historical narratives of parliamentary enclosures in eighteenth-century England.

[14] I understand "disposition" as a consistency of relationship to uncertainty (for more on this see McCann 2003).

[15] While acknowledging that there is a broad literature available concerning the notion of "discourse" (see, for example, Jaworski and Coupland, eds. 1999; Mills 2003), in simple terms, my approach to discursive analysis involves asking the following questions:

• What do people, including myself, say and think about what happens?
• What actually happens?

- How might we increase the discrepancies between what we say happens and what actually happens, and thereby come to more misrepresentative renderings of our experience?
- How might we reduce the discrepancies between what we say happens and what actually happens, and thereby come to less partial renderings of our experience?

[16] Following this line of thought has, of course, profound implications for the analysis and critique of many scientific methodologies that are still deployed in a classic Baconian or Newtonian mode, which are often explicitly founded on aspirations to the "elimination" of uncertainty and the drive towards the certitude of verifiable knowledge. Scholars such as John Dewey (1929), Richard Rorty (1979), Jane Flax (1992), Donald N. McCloskey (1994), Edward S. Reed (1996), and F. David Peat (2002), among others, have drawn attention to this "quest for certainty" insofar as it underpins the dominant trends of European and American philosophical thought.

[17] In my dissertation I present 'framing' as the coupling of these strategies (McCann 2003: Ch 9).

[18] It seems helpful to suggest that there might be degrees of commodification, depending on the circumstances. For example, the more formal, rigid, or rule-bound the situation in which you find yourself, the more commodifying the environment. Or, the more unquestioned and unchallengeable authorities, roles, positions, icons, or symbols in your experience, the more commodifying may be your environment.

[19] http://grace.evergreen.edu/~arunc/texts/frankfurt/marcuse/tolerance.pdf