

The Sound of Silence

November 10, 2010 by Bob Tarantino

[Friend and colleague Simon Chester has graciously consented to our cross-posting the following item (which can also be found at slaw.ca).]

Six Canadian provinces have legislative recognition of Remembrance Day, though only two mention Two Minutes Silence, Ontario and Alberta. Nova Scotia for example says:

Every employer carrying on or engaged in an industry to which Section 3 does not apply shall, subject to Section 8, relieve the employees in the industry from duty, and suspend the operations of the industry, for a period of three minutes, at one minute before eleven o'clock in the forenoon.

This post is about silence, and the legal protection of silence. You have the right to silence. And in Quebec, a judge cannot refuse to adjudicate under pretext of the **silence**, obscurity or insufficiency **of the law**. In Britain, veterans' organizations have announced that they intend to use social media and YouTube in particular to promote remembrance with a video featuring noiseless contributions from Prime Minister David Cameron, Thom Yorke, the lead singer of Radiohead, Andy Murray, the tennis player, Martin Johnson, the England rugby coach as well as the British actors Bob Hoskins and David Tennant. The track costs £1 and has already garnered well over 25,000 followers on Facebook, who have joined a group entitled, "I'm going to get the Legion to Number 1 for Remembrance Sunday". Anyone who buys the digital single will also receive a video file, which can be downloaded and played either on a computer or on an MP3 player that has a screen, such as an iPod. It is not available as a compact disk or other physical format.

"We would love it if people watched the online video during the two minute's silence," said a spokesman. It is already on track to reach number one this Sunday, with the book maker Ladbrokes marking it down as favourite.

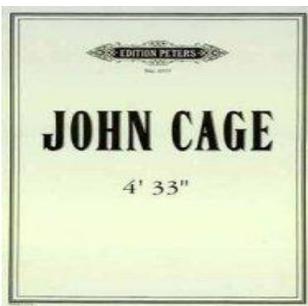
The Daily Telegraph reports from Leeds based marketers Communis that British workers may be tempted to log on this morning at 11:

A quarter of 3,000 respondents asked in the survey claimed they would continue to send emails during tomorrow's vigil, while one in eight admitted they would be happy posting status updates on Facebook and six per cent would continue to write a blog entry or post a message on the Twitter micro-blogging service. The survey was undertaken on behalf of Communis, a marketing company, which said that typing recorded an average measure of 60 decibels and a conversation between two people was not that much louder at 80 decibels. Alistair Blaxill, director at Communis, said: "The rise of social networking and online communications has created a workforce that feels the need to stay connected to their friends and colleagues whatever the circumstances. For many continuing to work and communicate despite the two minute silence will be second nature. "We hope that all of the British workforce will take a step back and stop what they are doing during the two minute silence,



ceasing all communication, both on and offline." The Royal British Legion, which organises the two minute's silence, said it was entirely up to individuals as to how they observed the tradition. "All we ask is that people stop, pause and reflect for two minutes," a spokesman said. He made it clear that emailing or tweeting would clearly fail to constitute "pausing and reflecting" but this year the charity does, in fact, want people to log onto the internet at 11 o'clock. That is because it has released a single to raise money, which can be downloaded from the internet with an accompanying video.

For intellectual property lawyers this raises the interesting - and entirely theoretical question, whether the Royal Legion video may have infringed the rights of the John Cage Estate, which has asserted rights over a musical work consisting of silence, namely 4 minutes and 33 seconds. Interestingly this work was rebroadcast this week as the choice of Ian McMillan on *Desert Island Discs*. The issues are fully canvassed by Jeffrey Richardson's *The Sounds of Silence - How Copyrights Affect Composition*, Michigan Bar Journal, Vol. 82, Issue 6 (June 2003), pp. 36-41.

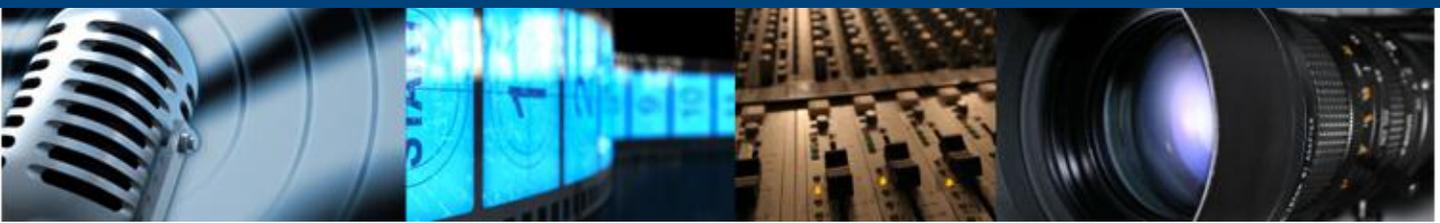


The Planets' album Classical Graffiti contained a track entitled "A One Minute Silence", consisting of one minute of silence. In August 1952, however, John Cage had published a piano piece called 4'33", which also consisted entirely of silent notes. Mike Batt, the man who composed and arranged The Planets' album, was accused of plagiarism from Cage's music publishers. While the case on silence copyright was seen as a potential test for establishing what a "musical work" could be if litigated, it was settled out of court with a reported six figure settlement. Batt had credited the piece initially to Batt/Cage just for a laugh. Batt justified his position

But my silence is original silence, not a quotation from his silence. My piece was qualitatively different because the recorded silence consists of the absence of noise, rather than the presence of ambient silence. I certainly wasn't quoting his silence. I claim my silence is original silence... Our's is better silence", he said, "it's digital. Their's is only analogue. Mine is a much better silent piece. I have been able to say in one minute what Cage could only say in four minutes and 33 seconds.

The *Guardian* Arts Section review compares a performance of the two works:

First, the Planets perform A One Minute Silence. Batt conducts, waving his hands contemplatively as though like he is stroking a cat in slow motion. The spangly people look at him intently. They all hold their instruments in the ready position, apart from the violinist.



He must be the one that rebellious teenagers identify with. Let us call him Uranus. The "silence" constitutes these ambient noises: the hum of an air-conditioner, the swooshing of polyester trouser material, a jangle of keys, and a deep nasal exhalation. A minute later, it's all over. We applaud enthusiastically. Cage's 4'33" is performed next, by Marc Dooley, a clarinetist and employee of Peters Edition. He warms up with a few burbling arpeggios, and adjusts the sheet music. Then he solemnly inserts the clarinet into his mouth and begins. It becomes clear that this is a very different piece. Batt's work did not feature, for example, the rustling of paper as people followed the printed score (thoughtfully handed out beforehand), nor the footsteps of wandering camcorderists, nor the unzipping of a bag. The live performance of Batt's A One Minute Silence was actually unfaithful to the original CD version, which is simply one minute's-worth of the absence of any digital signal. Cage's 4'33", on the other hand, has always been meant to be an ambient soundwork, rather than a pure silence. In the post-performance discussion, Batt says: "Ours is better silence: it's digital. Theirs is only analogue." Let us, too, compare the scores. Cage's score consists merely of vertical ruled lines marked with timings. Batt's piece, on the other hand, is clearly in the key of G major (or E minor), and is more structurally complex, finishing with a flourish of metre-switching from five-eight to three-eight to four-four. These are obviously quite different pieces of music.

I predict that the Legion will go to number 1 on this week's charts, and the Cage Estate will decide to sit the infringement route out - sometimes even litigants with rights would look ridiculous to sue. Of course we've been down this road before. The British techno group Orbital (Phil and Paul Hartnoll) released the video below to protest against a statute which clamped down on the rave scene in England: Are We Here? (Criminal Justice and Public Order Act 1994?)

The Parliamentary draftsman had fun trying to describe a rave which is according to section 63:

a gathering on land in the open air of or more persons (whether or not trespassers) at which amplified music is played during the night (with or without intermissions) and is such as, by reason of its loudness and duration and the time at which it is played, is likely to cause serious distress to the inhabitants of the locality; and for this purpose— (a) such a gathering continues during intermissions in the music and, where the gathering extends over several days, throughout the period during which amplified music is played at night (with or without intermissions); and (b) "music" includes sounds wholly or predominantly characterized by the emission of a succession of repetitive beats.

And Remembrance Day may be marked by the Last Post, too, rather than silence.

Eric Wong will be at Dundas Square at 11 AM in Toronto.

Please follow this link to view attached videos: [The Sound of Silence](#)

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