

OBSOLESCENCE BY DESIGN

Halbert Centre for Canadian Studies

Pierre-Emmanuel Moyse

CIPP Director – Professor of Law (McGill Faculty)



McGill

cipp

CENTRE FOR INTELLECTUAL
PROPERTY POLICY

I – The Man With The White Suit

II – Bernard London

III – Property and Anti-property law

IV – Anthropocene and New Liability
Paradigm

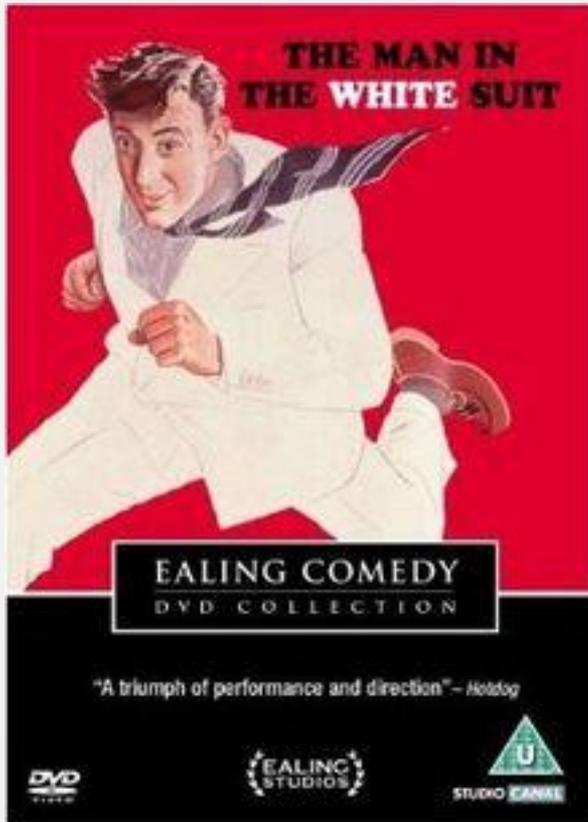
V – Apple of Discord



McGill

cipp

CENTRE FOR INTELLECTUAL
PROPERTY POLICY



progress
unexpected
trap

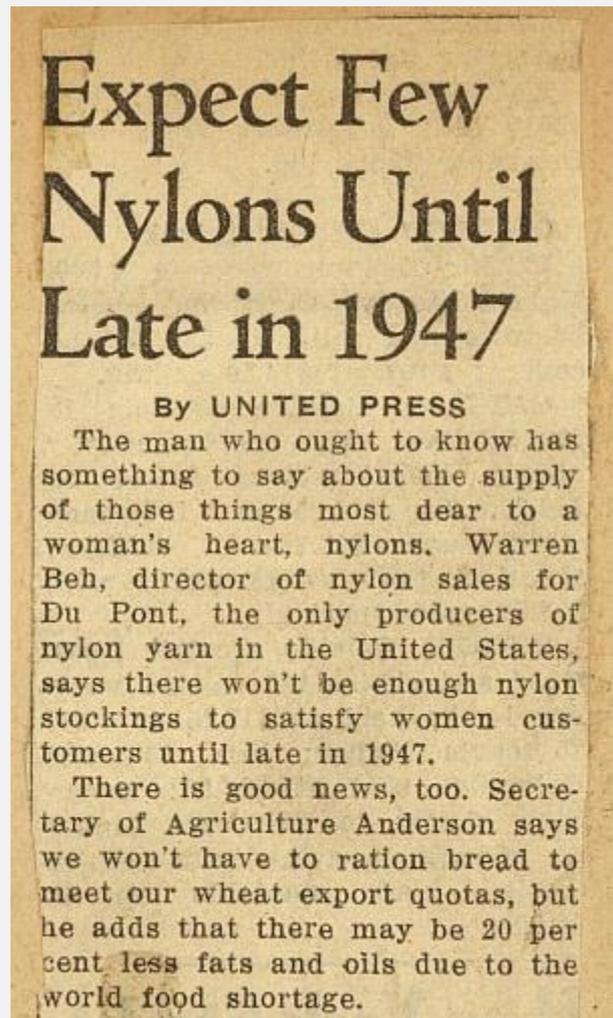


McGill

cipp

CENTRE FOR INTELLECTUAL
PROPERTY POLICY

“The invention of what was originally called fiber-66 rapidly extended its tendrils down through every facet of society. It has given rise to a world of plastics that renders our lives nearly unrecognizable from civilizations of a century ago” K. Cutlip – The Economist (2015)



- “It had a huge impact” says Matt



McGill

cipp

CENTRE FOR INTELLECTUAL
PROPERTY POLICY

the crave for new
products

“nylon riots” 1945



men showed up for this first post-war nylon sale in San Francisco, May 15, 1945. Photo from the DuPont archives.

Phoebus and other **Nylon** conspiracy



McGill

cipp

CENTRE FOR INTELLECTUAL
PROPERTY POLICY



McGill

cipp

CENTRE FOR INTELLECTUAL
PROPERTY POLICY

BERNARD LONDON



McGill

cipp

CENTRE FOR INTELLECTUAL
PROPERTY POLICY

“In the present inadequate economic organization of society, far too much is staked on the unpredictable whims and caprices of the consumer”

“...people generally, in a frightened and hysterical mood, are using everything that they own longer than was their custom before the depression”



McGill

cipp

People are today **disobeying** the law of
obsolescence



McGill

cipp

CENTRE FOR INTELLECTUAL
PROPERTY POLICY

THE PLAN

I would have the Government assign a lease of life to shoes and homes and machines

After the allotted time had expired, these things would be legally “dead”



McGill

cipp

CENTRE FOR INTELLECTUAL
PROPERTY POLICY

creative
destruction



McGill

cipp

CENTRE FOR INTELLECTUAL
PROPERTY POLICY

III - property and anti-property



McGill

cipp

CENTRE FOR INTELLECTUAL
PROPERTY POLICY

property = value



McGill

cipp

CENTRE FOR INTELLECTUAL
PROPERTY POLICY

934. Things **without an owner** are things that belong to no one or that have been abandoned.

Movables of **slight value** or in a **very deteriorated** condition that are left in a public place, ..., are deemed abandoned things.



McGill

cipp

CENTRE FOR INTELLECTUAL
PROPERTY POLICY

936. An immovable without an owner belongs to the State.



McGill

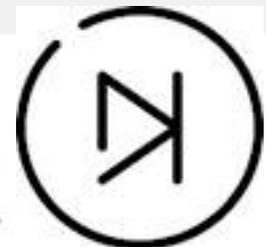
cipp

CENTRE FOR INTELLECTUAL
PROPERTY POLICY

the law of **unexpected**
consequences



McGill



CENTRE FOR INTELLECTUAL
PROPERTY POLICY

theoretical consequences

1 - property being a social construct, treating waste as non-property removes the issue from law and society all together

2 – Intervention *à la carte* and various special laws to deal with the consequences 1 (safety, certification, etc)



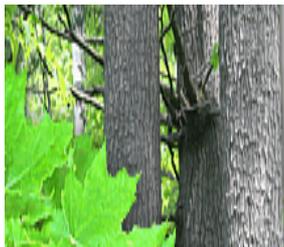
McGill

cipp

CENTRE FOR INTELLECTUAL
PROPERTY POLICY

practical consequence

Orphaned or abandoned mines are those mines for which the owner cannot be found or for which the owner is financially unable or unwilling to carry out clean-up. They pose environmental, health, safety and economic problems to communities, the mining industry and governments in many countries, including Canada.



National
Orphaned/Abandoned
Mines Initiative



Initiative nationale pour
les mines orphelines
ou abandonnées

The federal and Yukon governments say they are on track to begin the Faro mine remediation project in 2022. It will be a massive effort to deal with millions of tonnes of tailings and waste rock, and likely cost more than half a billion dollars.



McGill

cipp

CENTRE FOR INTELLECTUAL
PROPERTY POLICY

Anthropocene

relating to or denoting the current geological age, viewed as the period during which human activity has been the dominant influence on climate and the environment.

IV - **Anthro**pocene



McGill

cipp

CENTRE FOR INTELLECTUAL
PROPERTY POLICY



“The modern miracle of that first pair of nylon stockings represented the epitome of **human superiority over nature...**

- Kimbra Cutlip



McGill

cipp

CENTRE FOR INTELLECTUAL
PROPERTY POLICY

“Much so-called planned obsolescence is the working of the competitive and technological forces in a free society—forces that lead to ever-improving goods and services.” – P. Kotler

REALLY?



McGill

cipp

CENTRE FOR INTELLECTUAL
PROPERTY POLICY

coded will, coded life span?



McGill

cipp

CENTRE FOR INTELLECTUAL
PROPERTY POLICY



an Act of God?



McGill

cipp

CENTRE FOR INTELLECTUAL
PROPERTY POLICY

American Home Assurance Company v. Canadian Pacific Railway Company, 2004 ABQB 758 (Alberta)

The Y2K problem arose because many computer systems that used the two-digit date recognition code would not be able to handle dates beyond December 31, 1999, correctly because they would interpret the year 2000 and beyond as the year 1900 and following. Since the early programs were based on the assumption that the first two digits of the year would always be “19,” and this date code methodology was perpetuated thereafter, the two-digit data recognition code turned out to be an unfortunate programming choice that limited the way dates are compared, calculated, and stored in computer code. While this problem was recognized as early as the 1970s, it was not until the mid-1990s that the Y2K problem was notoriously known throughout the Information Technology (“IT”) and business worlds. By this time, however, there were billions of lines of programming code worldwide and an immeasurable amount of data that used the two-digit date recognition code.



McGill

cipp

CENTRE FOR INTELLECTUAL
PROPERTY POLICY

...of rats and of obsolescence

(b) insects vermin, rodents, **inherent vice**,



McGill

cipp

CENTRE FOR INTELLECTUAL
PROPERTY POLICY

2004

- the two-digit date recognition code is **not** a faulty design or design defect
- Rather, the Y2K problem is more accurately understood as a **planned obsolescence** without taking into consideration the consequences of the decision, and is an inherent vice rather than a design defect



McGill

cipp

CENTRE FOR INTELLECTUAL
PROPERTY POLICY

forced or planned obsolescence?



McGill

cipp

CENTRE FOR INTELLECTUAL
PROPERTY POLICY

MICRO SOFT

"technological tying"
to **code manipulation**

When IBM refused to abate the promotion of those of its own products that competed with Windows and Office, Microsoft punished the IBM PC Company with higher prices, a late license for Windows 95, and the withholding of technical and marketing support. Findings ¶ 116.



McGill

cipp

VI -



McGill

cipp

CENTRE FOR INTELLECTUAL
PROPERTY POLICY

Bill n° 2015-992 August 17th, 2015 entitled
“Energy Transition for Green Development” (L [412](#)
Consumer Code)

- criminal offence
- 2 years imprisonment
- 300 000 €



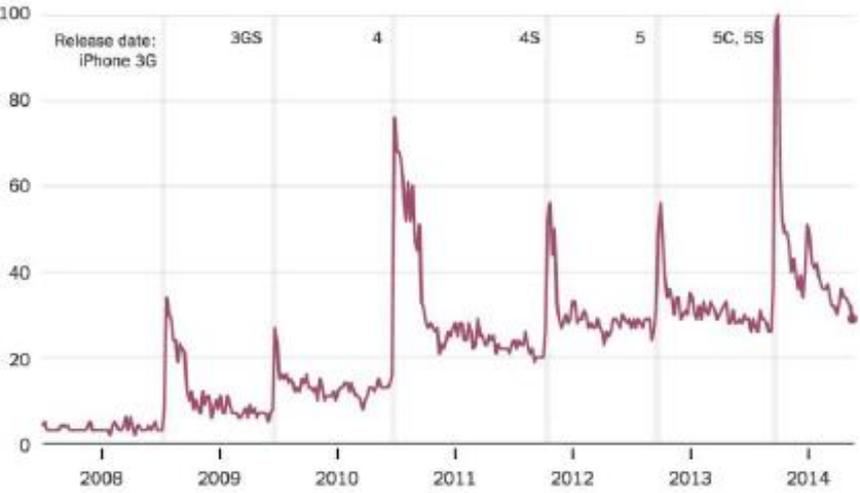
McGill

cipp

CENTRE FOR INTELLECTUAL
PROPERTY POLICY

Searches for "iPhone slow"

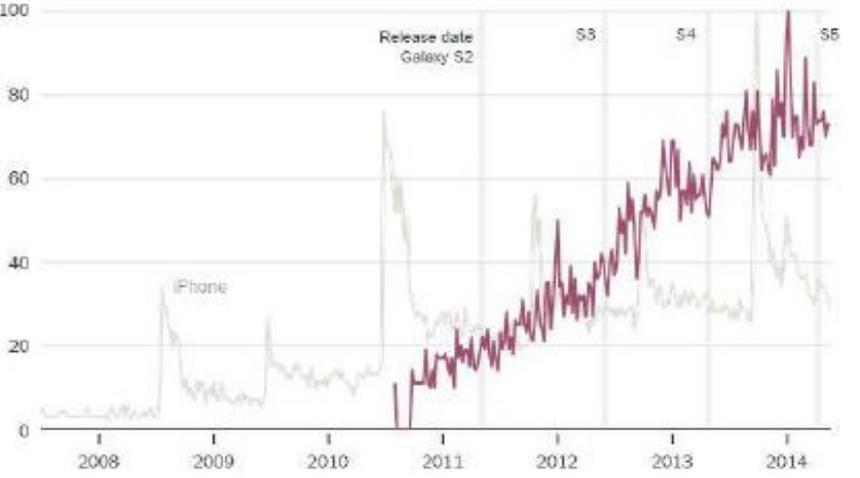
Searches for "iPhone slow"



Sources: Google Trends, Laura Trucco

Searches for "Samsung Galaxy slow"

Searches for "Samsung Galaxy slow"



Sources: Google Trends, Laura Trucco

act of God ?



McGill



CENTRE FOR INTELLECTUAL PROPERTY POLICY

L 412 : “Is prohibited the practice of programmed obsolescence defined as the use of techniques (1) whereby the person responsible for commercialization of a product aims to intentionally (2) reduce its lifespan in order to increase the **replacement rate (3)**.”



McGill

cipp

CENTRE FOR INTELLECTUAL
PROPERTY POLICY

- software obsolescence (forced updates)
- technical obsolescence (reduced the efficiency of the device)
- functional obsolescence (aesthetic obsolescence)



McGill

cipp

CENTRE FOR INTELLECTUAL
PROPERTY POLICY

conclusions



McGill

cipp

CENTRE FOR INTELLECTUAL
PROPERTY POLICY

Law is about memory, memory of our relation with the world. Obsolescence should not be understood as a technical phenomenon, as there is not such thing. It is an ontological & epistemological matter.



McGill

cipp

CENTRE FOR INTELLECTUAL
PROPERTY POLICY

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on copyright in the Digital Single Market

Member States should ..be required to provide for an exception to permit cultural heritage institutions to reproduce works and other subject-matter permanently in their collections for preservation purposes, for example to address **technological obsolescence** ..

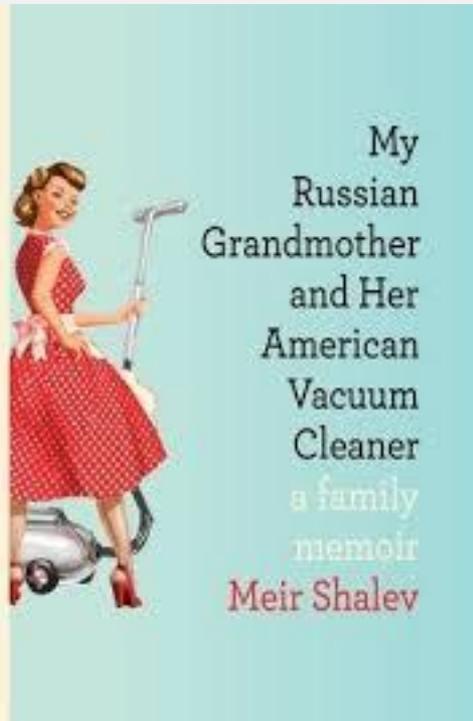
Brussels, 14.9.2016
COM(2016) 593 final
2016/0280 (COD)



McGill

cipp

CENTRE FOR INTELLECTUAL
PROPERTY POLICY



thank you



McGill

cipp

CENTRE FOR INTELLECTUAL
PROPERTY POLICY