ADDENDUM TO THE NOTE

from: Presidency

to: Working Party on Intellectual Property (Design)

No. prev. doc.: 7489/96 PI 34 CODEC 320
No. Com prop.: 5505/96 PI 11 CODEC 127

Subject: Amended proposal for a Directive of the European Parliament
and of the Council on the legal protection of designs
- Second consolidated text

This Addendum contains the changes to the second
consolidated text resulting from the meeting of the Working Party
held on 12 and 13 September 1996.
1. **Footnote 11 on page 11** should be amended to read:

"Reservations of the Danish, Spanish, Netherlands, Finnish and Swedish delegations on the visibility criterion. Scrutiny reservation by the Austrian delegation. The positions of the Austrian and Finnish delegations are linked to a satisfactory solution being found in Article 14. The position of the Danish delegation would be reviewed in the framework of an overall compromise."

2. **Footnote 13 on page 11** (see also COR 1(en) for the English text) should be amended to read:

"Reservation by the French delegation linked to the reservation on the previous paragraph. Scrutiny reservations by the Danish, Spanish, Portuguese, Finnish and Swedish delegations."

3. **Article 4 on page 12**

Delete the sentence in {} and footnote 15.

4. **Article 5(2) on page 12** should be amended to read:

"In assessing individual character, the degree of freedom of the designer in developing the design shall be taken into consideration."

5. **Footnote 18 on page 13** should be amended by the addition of the following sentence:

"Positive scrutiny reservation by the Finnish, Swedish and United Kingdom delegations on the deletion proposed by the French delegation."

6. **Article 6(3) on page 14** should be amended to read:

"The provisions of paragraph 2 shall also apply if the design has been made available to the public as a consequence of an abuse in relation to the designer or his successor in title."

Footnote 19 should be deleted.

7. **Footnote 20 on page 14** should be amended to read:

"Reservation by the French delegation on the exclusion from protection of designs of interconnections. This reservation is linked to its position on Article 14."
8. **Footnote 22 on page 15** should be amended to read:
   "Scrutiny reservation by the United Kingdom delegation pending consideration of the opinion given by the Council Legal Service."

9. **Article 9(1) on page 15** should be amended to read:
   "The scope of protection conferred by a design right shall include any design which produces on the informed user the same overall impression?".
   **Footnote 23** should be amended to read:
   "Scrutiny reservation by most delegations on this wording."

10. **Article 9(2) on page 15** should be amended to read:
    "In assessing the scope of protection, the degree of freedom of the designer in developing his design shall be taken into consideration."

11. **Footnote 24 on page 16** should be amended to read:
    "Positive scrutiny reservation by the German delegation on paragraph 1(e)."

12. **Article 11(2a), (2b) and (2c) on page 17**
    Delete the words "for refusal of registration or for invalidity" in each of those paragraphs.

13. **Article 11(2d) on page 17** should be amended to read:
    "Paragraphs 2a, 2b and 2c shall be without prejudice to the freedom of Member States to provide that the grounds provided for in paragraph 1(e) and in paragraph 2(c) may also be invoked by the appropriate authority of that Member State of its own motion."
    A new footnote 24a should be added:
    "Scrutiny reservation by the French delegation and the Commission on the reference to paragraph 1(e)."
14. Article 11(4) on page 18
Add a new footnote 24b after "paragraph 1(c)" to read:
"Following the deletion of paragraph 1(c), the Commission
services are checking whether this reference should be replaced
by a reference to paragraph 1(aa)."

15. Footnote 25 on page 18 should be amended to read:
"Scrutiny reservation by the Belgian, German, Greek, French,
Italian and Portuguese delegations on a proposal by the Chairman
to delete the words "or using of"."

16. Article 12(2) on page 19 should be amended to read:
"Where, under the law of a Member State, acts referred to in
paragraph 1 could not be prevented¹ before the date on which the
provisions necessary to comply with this Directive entered into
force, the rights conferred by the design right may not be
relied on to prevent continuation of such acts by any person who
had begun such acts prior to that date."

17. Article 14(1)(a) on page 20 should be amended by the addition of
a new footnote 27a:
"Suggestion by the Swedish delegation that it be made clear that
this provision concerns parts used for the repair of cars."

18. Article 14(1)(c) on page 20 should be amended by the addition of
a new footnote 27b:
"The Italian and United Kingdom delegations consider that the
term "public" should be clarified. The Italian delegation
suggests that it could be replaced by "consumer".
Reservation by the Belgian, French, Italian, Portuguese and
United Kingdom delegations on the use of an indelible marking.
The United Kingdom delegation proposes that this provision end
after the term "repair"."

19. Article 14(1)(d) on page 20 should be amended by the addition of
a new footnote 27c:
"The Italian and United Kingdom delegations suggest the deletion
of paragraph 1(d)."

¹ This term has been aligned on the term used in Article 12(1).
20. **Article 14(2) on page 21** should be amended by the addition, after "agreed", of a **new footnote 27d**: "Scrubity reservation by the Belgian and Italian delegations on the words "Save as otherwise agreed,".".

21. **Article 14(3) on page 21** should be amended by the addition of a **new footnote 27e**: "Reservation by the Belgian, French, Italian and Portuguese delegations on this paragraph, as they consider that the third party referred to in paragraph 1 will not normally be aware of the amount of the investment made in the development of the relevant design, and that it may not be possible to dissociate this investment from the investment made in the development of the whole vehicle."

22. **Footnote 29 on page 22** should be amended to read: "Reservation by the Belgian, Spanish, French, Netherlands, Portuguese and Swedish delegations on the principle of this Article; scrutiny reservation by the Finnish delegation; the German and United Kingdom delegations reserve their positions."

23. **Footnote 30 on page 22** should be deleted.

24. **Footnote 31 on page 22** should be amended to read as follows: "Variant proposed by the Italian delegation on the proviso that Article 14 would be deleted. The Belgian, French and Netherlands delegations were prepared to consider this variant in a positive spirit. Several delegations considered that, if a provision of this nature were to be adopted, its wording should be reviewed."

25. **Footnote 32 on page 22** should be amended to read: "Reservation by the Belgian, Spanish, French, Dutch, Italian, Netherlands and Portuguese delegations and scrutiny reservation by the Finnish, Swedish and United Kingdom delegations on the reference to Article 14."

26. **Footnote 33 on page 22** should be amended to read: "Reservation by the Belgian, Italian and Portuguese delegations and scrutiny reservation by the Finnish and Swedish delegations on this paragraph."
27. **Footnote 34 on page 24** should be amended to read:

"The Spanish, French and Swedish delegations are in favour of deleting this Article. Reservation by the Belgian and Netherlands delegations and scrutiny reservation by the Austrian delegation on this Article. Scrutiny reservations by the Danish, Spanish and French delegations on the legal basis and by the French, Portuguese and Swedish delegations on the compatibility of this Article with the European Human Rights Convention, pending consideration of the opinion given by the Council Legal Service on these issues."

28. **Article 18a on page 26** should be amended to read:

"No later than five years after the implementation date specified in Article 19, the Commission shall submit an analysis of the consequences of the provisions of this Directive for Community industry. If necessary, it shall propose to the European Parliament and the Council changes to this Directive."