AMENDMENT 14
by the following Members: Azzolini, Podestà and Florio, on behalf of the UPE Group

RECOMMENDATION FOR SECOND READING
by Mr Medina Ortega

LEGAL PROTECTION OF DESIGNS

Common position of the Council C4-0296/97 - 00/0464(COD)

Transaction provision

Until such time as amendments to this Directive are adopted upon proposal by the Commission in accordance with the provisions of Article 18, Member States may maintain in force or introduce any provisions affecting the use of a protected design for the purpose of permitting the repair of a complex product so as to restore its original appearance, where the product incorporating the design or to which the design is applied constitutes a component part of a complex product upon whose appearance the protected design is dependent.

Use of a design for repair purposes

1. By way of derogation from Article 12, and until such time as amendments to this Directive are adopted upon proposal by the Commission in accordance with the provisions of Article 18, the rights conferred by a design right shall not be exercised against third parties who use the design, provided that:

(a) the product incorporating the design or to which the design is applied is a component part of a complex product on whose appearance the protected design is dependent; and

(b) the purpose of such a use is to permit the repair of the complex product so as to restore its original appearance; and

(c) the public is informed as to the origin of the product used for the repair by the use of an indelible marking, such as a trade mark or a trade name, or in another appropriate form; and
(d) the third party has:

(i) notified the right holder of the intended use of the design;

(ii) agreed with the right holder a fair and reasonable remuneration for that use; and

(iii) agreed with the right holder to provide information in a regular and reliable manner as to the scale of the use made of the design under this provision.

2. The right holder shall be obliged to give his agreement, except where consumers' interests are contravened, the rules of free competition are infringed or the remuneration offered is obviously inadequate, reasons and justification being given in writing.

3. Save as otherwise agreed, the obligations mentioned in paragraph 1(d) shall be incurred by the manufacturer or, in the case of the import of a component part not manufactured in the Member State where the protection applies by the importer of the component part into which the design is to be incorporated or to which it is to be applied.

4. In calculating the remuneration, the investment made in development of the relevant design shall be the primary basis for consideration.

5. Paragraph 1 shall not apply if the right holder provides evidence to sustain a claim that the party upon whom the obligations under paragraph 1(d) are incumbent is unable or unwilling to comply with them, or to pay the remuneration offered by him.