D Additional Legislation

12 Copyright and Related Rights in the Information Society

Directive EC/29/01 of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,
Having regard to the Treaty establishing the European Community, and in particular Articles 47(2), 55 and 95 thereof,
Having regard to the proposal from the Commission,
Having regard to the opinion of the Economic and Social Committee,
Acting in accordance with the procedure laid down in Article 251 of the Treaty,
Whereas:
(1) The Treaty provides for the establishment of an internal market and the institution of a system ensuring that competition in the internal market is not distorted. Harmonisation of the laws of the Member States on copyright and related rights contributes to the achievement of these objectives.
(2) The European Council, meeting at Corfu on 24 and 25 June 1994, stressed the need to create a general and flexible legal framework at Community level in order to foster the development of the information society in Europe. This requires, inter alia, the existence of an internal market for new products and services. Important Community legislation to ensure such a regulatory framework is already in place or its adoption is well under way. Copyright and related rights play an important role in this context as they protect and stimulate the development and marketing of new products and services and the creation and exploitation of their creative content.
(3) The proposed harmonisation will help to implement the four freedoms of the internal market and relates to compliance with the fundamental principles of law and especially of property, including intellectual property, and freedom of expression and the public interest.
(4) A harmonised legal framework on copyright and related rights, through increased legal certainty and while providing for a high level of protection of intellectual property, will foster substantial investment in creativity and innovation, including network infrastructure, and lead in turn to growth and increased competitiveness of European industry, both in the area of content provision and information technology and more generally across a wide range of industrial and cultural sectors. This will safeguard employment and encourage new job creation.
(5) Technological development has multiplied and diversified the vectors for creation, production and exploitation. While no new concepts for the protection of intellectual property are needed, the current law on copyright and related rights should be adapted and supplemented to respond adequately to economic realities such as new forms of exploitation.
(6) Without harmonisation at Community level, legislative activities at national level which have already been initiated in a number of Member States in order to respond to

the technological challenges might result in significant differences in protection and thereby in restrictions on the free movement of services and products incorporating, or based on, intellectual property, leading to a refragmentation of the internal market and legislative inconsistency. The impact of such legislative differences and uncertainties will become more significant with the further development of the information society, which has already greatly increased transborder exploitation of intellectual property. This development will and should further increase. Significant legal differences and uncertainties in protection may hinder economies of scale for new products and services containing copyright and related rights.

(7) The Community legal framework for the protection of copyright and related rights must, therefore, also be adapted and supplemented as far as is necessary for the smooth functioning of the internal market. To that end, those national provisions on copyright and related rights which vary considerably from one Member State to another or which cause legal uncertainties hindering the smooth functioning of the internal market and the proper development of the information society in Europe should be adjusted, and inconsistent national responses to the technological developments should be avoided, whilst differences not adversely affecting the functioning of the internal market need not be removed or prevented.

(8) The various social, societal and cultural implications of the information society require that account be taken of the specific features of the content of products and services.

(9) Any harmonisation of copyright and related rights must take as a basis a high level of protection, since such rights are crucial to intellectual creation. Their protection helps to ensure the maintenance and development of creativity in the interests of authors, performers, producers, consumers, culture, industry and the public at large. Intellectual property has therefore been recognised as an integral part of property.

(10) If authors or performers are to continue their creative and artistic work, they have to receive an appropriate reward for the use of their work, as must producers in order to be able to finance this work. The investment required to produce products such as phonograms, films or multimedia products, and services such as “on-demand” services, is considerable. Adequate legal protection of intellectual property rights is necessary in order to guarantee the availability of such a reward and provide the opportunity for satisfactory returns on this investment.

(11) A rigorous, effective system for the protection of copyright and related rights is one of the main ways of ensuring that European cultural creativity and production receive the necessary resources and of safeguarding the independence and dignity of artistic creators and performers.

(12) Adequate protection of copyright works and subject-matter of related rights is also of great importance from a cultural standpoint. Article 151 of the Treaty requires the Community to take cultural aspects into account in its action.

(13) A common search for, and consistent application at European level of, technical measures to protect works and other subject-matter and to provide the necessary information on rights are essential insofar as the ultimate aim of these measures is to give effect to the principles and guarantees laid down in law.

(14) This Directive should seek to promote learning and culture by protecting works and other subject-matter while permitting exceptions or limitations in the public interest for

the purpose of education and teaching.
(15) The Diplomatic Conference held under the auspices of the World Intellectual Property Organisation (WIPO) in December 1996 led to the adoption of two new Treaties, the "WIPO Copyright Treaty" and the "WIPO Performances and Phonograms Treaty", dealing respectively with the protection of authors and the protection of performers and phonogram producers. Those Treaties update the international protection for copyright and related rights significantly, not least with regard to the so-called "digital agenda", and improve the means to fight piracy world-wide. The Community and a majority of Member States have already signed the Treaties and the process of making arrangements for the ratification of the Treaties by the Community and the Member States is under way. This Directive also serves to implement a number of the new international obligations.
(16) Liability for activities in the network environment concerns not only copyright and related rights but also other areas, such as defamation, misleading advertising, or infringement of trademarks, and is addressed horizontally in Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the internal market ("Directive on electronic commerce"), which clarifies and harmonises various legal issues relating to information society services including electronic commerce. This Directive should be implemented within a timescale similar to that for the implementation of the Directive on electronic commerce, since that Directive provides a harmonised framework of principles and provisions relevant inter alia to important parts of this Directive. This Directive is without prejudice to provisions relating to liability in that Directive.
(17) It is necessary, especially in the light of the requirements arising out of the digital environment, to ensure that collecting societies achieve a higher level of rationalisation and transparency with regard to compliance with competition rules.
(18) This Directive is without prejudice to the arrangements in the Member States concerning the management of rights such as extended collective licences.
(19) The moral rights of rightholders should be exercised according to the legislation of the Member States and the provisions of the Berne Convention for the Protection of Literary and Artistic Works, of the WIPO Copyright Treaty and of the WIPO Performances and Phonograms Treaty. Such moral rights remain outside the scope of this Directive.
(20) This Directive is based on principles and rules already laid down in the Directives currently in force in this area, in particular Directives EEC/250/91, EEC/100/92, EEC/83/93, EEC/98/93 and EC/9/96, and it develops those principles and rules and places them in the context of the information society. The provisions of this Directive should be without prejudice to the provisions of those Directives, unless otherwise provided in this Directive.
(21) This Directive should define the scope of the acts covered by the reproduction right with regard to the different beneficiaries. This should be done in conformity with the *acquis communautaire*. A broad definition of these acts is needed to ensure legal certainty within the internal market.
(22) The objective of proper support for the dissemination of culture must not be achieved by sacrificing strict protection of rights or by tolerating illegal forms of

distribution of counterfeited or pirated works.
(23) This Directive should harmonise further the author's right of communication to the public. This right should be understood in a broad sense covering all communication to the public not present at the place where the communication originates. This right should cover any such transmission or retransmission of a work to the public by wire or wireless means, including broadcasting. This right should not cover any other acts.
(24) The right to make available to the public subject-matter referred to in Article 3(2) should be understood as covering all acts of making available such subject-matter to members of the public not present at the place where the act of making available originates, and as not covering any other acts.
(25) The legal uncertainty regarding the nature and the level of protection of acts of on-demand transmission of copyright works and subject-matter protected by related rights over networks should be overcome by providing for harmonised protection at Community level. It should be made clear that all rightholders recognised by this Directive should have an exclusive right to make available to the public copyright works or any other subject-matter by way of interactive on-demand transmissions. Such interactive on-demand transmissions are characterised by the fact that members of the public may access them from a place and at a time individually chosen by them.
(26) With regard to the making available in on-demand services by broadcasters of their radio or television productions incorporating music from commercial phonograms as an integral part thereof, collective licensing arrangements are to be encouraged in order to facilitate the clearance of the rights concerned.
(27) The mere provision of physical facilities for enabling or making a communication does not in itself amount to communication within the meaning of this Directive.
(28) Copyright protection under this Directive includes the exclusive right to control distribution of the work incorporated in a tangible article. The first sale in the Community of the original of a work or copies thereof by the rightholder or with his consent exhausts the right to control resale of that object in the Community. This right should not be exhausted in respect of the original or of copies thereof sold by the rightholder or with his consent outside the Community. Rental and lending rights for authors have been established in Directive EEC/100/92. The distribution right provided for in this Directive is without prejudice to the provisions relating to the rental and lending rights contained in Chapter I of that Directive.
(29) The question of exhaustion does not arise in the case of services and on-line services in particular. This also applies with regard to a material copy of a work or other subject-matter made by a user of such a service with the consent of the rightholder. Therefore, the same applies to rental and lending of the original and copies of works or other subject-matter which are services by nature. Unlike CD-ROM or CD-I, where the intellectual property is incorporated in a material medium, namely an item of goods, every on-line service is in fact an act which should be subject to authorisation where the copyright or related right so provides.
(30) The rights referred to in this Directive may be transferred, assigned or subject to the granting of contractual licences, without prejudice to the relevant national legislation on copyright and related rights.
(31) A fair balance of rights and interests between the different categories of rightholders, as well as between the different categories of rightholders and users of protected subject-

matter must be safeguarded. The existing exceptions and limitations to the rights as set out by the Member States have to be reassessed in the light of the new electronic environment. Existing differences in the exceptions and limitations to certain restricted acts have direct negative effects on the functioning of the internal market of copyright and related rights. Such differences could well become more pronounced in view of the further development of transborder exploitation of works and cross-border activities. In order to ensure the proper functioning of the internal market, such exceptions and limitations should be defined more harmoniously. The degree of their harmonisation should be based on their impact on the smooth functioning of the internal market.
(32) This Directive provides for an exhaustive enumeration of exceptions and limitations to the reproduction right and the right of communication to the public. Some exceptions or limitations only apply to the reproduction right, where appropriate. This list takes due account of the different legal traditions in Member States, while, at the same time, aiming to ensure a functioning internal market. Member States should arrive at a coherent application of these exceptions and limitations, which will be assessed when reviewing implementing legislation in the future.
(33) The exclusive right of reproduction should be subject to an exception to allow certain acts of temporary reproduction, which are transient or incidental reproductions, forming an integral and essential part of a technological process and carried out for the sole purpose of enabling either efficient transmission in a network between third parties by an intermediary, or a lawful use of a work or other subject-matter to be made. The acts of reproduction concerned should have no separate economic value on their own. To the extent that they meet these conditions, this exception should include acts which enable browsing as well as acts of caching to take place, including those which enable transmission systems to function efficiently, provided that the intermediary does not modify the information and does not interfere with the lawful use of technology, widely recognised and used by industry, to obtain data on the use of the information. A use should be considered lawful where it is authorised by the rightholder or not restricted by law.
(34) Member States should be given the option of providing for certain exceptions or limitations for cases such as educational and scientific purposes, for the benefit of public institutions such as libraries and archives, for purposes of news reporting, for quotations, for use by people with disabilities, for public security uses and for uses in administrative and judicial proceedings.
(35) In certain cases of exceptions or limitations, rightholders should receive fair compensation to compensate them adequately for the use made of their protected works or other subject-matter. When determining the form, detailed arrangements and possible level of such fair compensation, account should be taken of the particular circumstances of each case. When evaluating these circumstances, a valuable criterion would be the possible harm to the rightholders resulting from the act in question. In cases where rightholders have already received payment in some other form, for instance as part of a licence fee, no specific or separate payment may be due. The level of fair compensation should take full account of the degree of use of technological protection measures referred to in this Directive. In certain situations where the prejudice to the rightholder would be minimal, no obligation for payment may arise.
(36) The Member States may provide for fair compensation for rightholders also when

applying the optional provisions on exceptions or limitations which do not require such compensation.
(37) Existing national schemes on reprography, where they exist, do not create major barriers to the internal market. Member States should be allowed to provide for an exception or limitation in respect of reprography.
(38) Member States should be allowed to provide for an exception or limitation to the reproduction right for certain types of reproduction of audio, visual and audio visual material for private use, accompanied by fair compensation. This may include the introduction or continuation of remuneration schemes to compensate for the prejudice to rightholders. Although differences between those remuneration schemes affect the functioning of the internal market, those differences, with respect to analogue private reproduction, should not have a significant impact on the development of the information society. Digital private copying is likely to be more widespread and have a greater economic impact. Due account should therefore be taken of the differences between digital and analogue private copying and a distinction should be made in certain respects between them.
(39) When applying the exception or limitation on private copying, Member States should take due account of technological and economic developments, in particular with respect to digital private copying and remuneration schemes, when effective technological protection measures are available. Such exceptions or limitations should not inhibit the use of technological measures or their enforcement against circumvention.
(40) Member States may provide for an exception or limitation for the benefit of certain non-profit making establishments, such as publicly accessible libraries and equivalent institutions, as well as archives. However, this should be limited to certain special cases covered by the reproduction right. Such an exception or limitation should not cover uses made in the context of on-line delivery of protected works or other subject-matter. This Directive should be without prejudice to the Member States' option to derogate from the exclusive public lending right in accordance with Article 5 of Directive EEC/100/92. Therefore, specific contracts or licences should be promoted which, without creating imbalances, favour such establishments and the disseminative purposes they serve.
(41) When applying the exception or limitation in respect of ephemeral recordings made by broadcasting organisations it is understood that a broadcaster's own facilities include those of a person acting on behalf of and under the responsibility of the broadcasting organisation.
(42) When applying the exception or limitation for non-commercial educational and scientific research purposes, including distance learning, the non-commercial nature of the activity in question should be determined by that activity as such. The organisational structure and the means of funding of the establishment concerned are not the decisive factors in this respect.
(43) It is in any case important for the Member States to adopt all necessary measures to facilitate access to works by persons suffering from a disability which constitutes an obstacle to the use of the works themselves, and to pay particular attention to accessible formats.
(44) When applying the exceptions and limitations provided for in this Directive, they should be exercised in accordance with international obligations. Such exceptions and limitations may not be applied in a way which prejudices the legitimate interests of the

rightholder or which conflicts with the normal exploitation of his work or other subject-matter. The provision of such exceptions or limitations by Member States should, in particular, duly reflect the increased economic impact that such exceptions or limitations may have in the context of the new electronic environment. Therefore, the scope of certain exceptions or limitations may have to be even more limited when it comes to certain new uses of copyright works and other subject-matter.
(45) The exceptions and limitations referred to in Article 5(2), (3) and (4) should not, however, prevent the definition of contractual relations designed to ensure fair compensation for the rightholders insofar as permitted by national law.
(46) Recourse to mediation could help users and rightholders to settle disputes. The Commission, in cooperation with the Member States within the Contact Committee, should undertake a study to consider new legal ways of settling disputes concerning copyright and related rights.
(47) Technological development will allow rightholders to make use of technological measures designed to prevent or restrict acts not authorised by the rightholders of any copyright, rights related to copyright or the sui generis right in databases. The danger, however, exists that illegal activities might be carried out in order to enable or facilitate the circumvention of the technical protection provided by these measures. In order to avoid fragmented legal approaches that could potentially hinder the functioning of the internal market, there is a need to provide for harmonised legal protection against circumvention of effective technological measures and against provision of devices and products or services to this effect.
(48) Such legal protection should be provided in respect of technological measures that effectively restrict acts not authorised by the rightholders of any copyright, rights related to copyright or the sui generis right in databases without, however, preventing the normal operation of electronic equipment and its technological development. Such legal protection implies no obligation to design devices, products, components or services to correspond to technological measures, so long as such device, product, component or service does not otherwise fall under the prohibition of Article 6. Such legal protection should respect proportionality and should not prohibit those devices or activities which have a commercially significant purpose or use other than to circumvent the technical protection. In particular, this protection should not hinder research into cryptography.
(49) The legal protection of technological measures is without prejudice to the application of any national provisions which may prohibit the private possession of devices, products or components for the circumvention of technological measures.
(50) Such a harmonised legal protection does not affect the specific provisions on protection provided for by Directive EEC/250/91. In particular, it should not apply to the protection of technological measures used in connection with computer programs, which is exclusively addressed in that Directive. It should neither inhibit nor prevent the development or use of any means of circumventing a technological measure that is necessary to enable acts to be undertaken in accordance with the terms of Article 5(3) or Article 6 of Directive EEC/250/91. Articles 5 and 6 of that Directive exclusively determine exceptions to the exclusive rights applicable to computer programs.
(51) The legal protection of technological measures applies without prejudice to public policy, as reflected in Article 5, or public security. Member States should promote voluntary measures taken by rightholders, including the conclusion and implementation

of agreements between rightholders and other parties concerned, to accommodate achieving the objectives of certain exceptions or limitations provided for in national law in accordance with this Directive. In the absence of such voluntary measures or agreements within a reasonable period of time, Member States should take appropriate measures to ensure that rightholders provide beneficiaries of such exceptions or limitations with appropriate means of benefiting from them, by modifying an implemented technological measure or by other means. However, in order to prevent abuse of such measures taken by rightholders, including within the framework of agreements, or taken by a Member State, any technological measures applied in implementation of such measures should enjoy legal protection.

(52) When implementing an exception or limitation for private copying in accordance with Article 5(2)(b), Member States should likewise promote the use of voluntary measures to accommodate achieving the objectives of such exception or limitation. If, within a reasonable period of time, no such voluntary measures to make reproduction for private use possible have been taken, Member States may take measures to enable beneficiaries of the exception or limitation concerned to benefit from it. Voluntary measures taken by rightholders, including agreements between rightholders and other parties concerned, as well as measures taken by Member States, do not prevent rightholders from using technological measures which are consistent with the exceptions or limitations on private copying in national law in accordance with Article 5(2)(b), taking account of the condition of fair compensation under that provision and the possible differentiation between various conditions of use in accordance with Article 5(5), such as controlling the number of reproductions. In order to prevent abuse of such measures, any technological measures applied in their implementation should enjoy legal protection.

(53) The protection of technological measures should ensure a secure environment for the provision of interactive on-demand services, in such a way that members of the public may access works or other subject-matter from a place and at a time individually chosen by them. Where such services are governed by contractual arrangements, the first and second subparagraphs of Article 6(4) should not apply. Non-interactive forms of online use should remain subject to those provisions.

(54) Important progress has been made in the international standardisation of technical systems of identification of works and protected subject-matter in digital format. In an increasingly networked environment, differences between technological measures could lead to an incompatibility of systems within the Community. Compatibility and interoperability of the different systems should be encouraged. It would be highly desirable to encourage the development of global systems.

(55) Technological development will facilitate the distribution of works, notably on networks, and this will entail the need for rightholders to identify better the work or other subject-matter, the author or any other rightholder, and to provide information about the terms and conditions of use of the work or other subject-matter in order to render easier the management of rights attached to them. Rightholders should be encouraged to use markings indicating, in addition to the information referred to above, inter alia their authorisation when putting works or other subject-matter on networks.

(56) There is, however, the danger that illegal activities might be carried out in order to remove or alter the electronic copyright-management information attached to it, or otherwise to distribute, import for distribution, broadcast, communicate to the public or

make available to the public works or other protected subject-matter from which such information has been removed without authority. In order to avoid fragmented legal approaches that could potentially hinder the functioning of the internal market, there is a need to provide for harmonised legal protection against any of these activities.
(57) Any such rights-management information systems referred to above may, depending on their design, at the same time process personal data about the consumption patterns of protected subject-matter by individuals and allow for tracing of on-line behaviour. These technical means, in their technical functions, should incorporate privacy safeguards in accordance with Directive EC/46/95 of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and the free movement of such data.
(58) Member States should provide for effective sanctions and remedies for infringements of rights and obligations as set out in this Directive. They should take all the measures necessary to ensure that those sanctions and remedies are applied. The sanctions thus provided for should be effective, proportionate and dissuasive and should include the possibility of seeking damages and/or injunctive relief and, where appropriate, of applying for seizure of infringing material.
(59) In the digital environment, in particular, the services of intermediaries may increasingly be used by third parties for infringing activities. In many cases such intermediaries are best placed to bring such infringing activities to an end. Therefore, without prejudice to any other sanctions and remedies available, rightholders should have the possibility of applying for an injunction against an intermediary who carries a third party's infringement of a protected work or other subject-matter in a network. This possibility should be available even where the acts carried out by the intermediary are exempted under Article 5. The conditions and modalities relating to such injunctions should be left to the national law of the Member States.
(60) The protection provided under this Directive should be without prejudice to national or Community legal provisions in other areas, such as industrial property, data protection, conditional access, access to public documents, and the rule of media exploitation chronology, which may affect the protection of copyright or related rights.
(61) In order to comply with the WIPO Performances and Phonograms Treaty, Directives EEC/100/92 and EEC/98/93 should be amended

CHAPTER I: OBJECTIVE AND SCOPE

Article 1: Scope

1. This Directive concerns the legal protection of copyright and related rights in the framework of the internal market, with particular emphasis on the information society.
2. Except in the cases referred to in Article 11, this Directive shall leave intact and shall in no way affect existing Community provisions relating to:
(a) the legal protection of computer programs;
(b) rental right, lending right and certain rights related to copyright in the field of intellectual property;
(c) copyright and related rights applicable to broadcasting of programmes by satellite and cable retransmission;

(d) the term of protection of copyright and certain related rights;
(e) the legal protection of databases.

CHAPTER II: RIGHTS AND EXCEPTIONS

Article 2: Reproduction right

Member States shall provide for the exclusive right to authorise or prohibit direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part:
(a) for authors, of their works;
(b) for performers, of fixations of their performances;
(c) for phonogram producers, of their phonograms;
(d) for the producers of the first fixations of films, in respect of the original and copies of their films;
(e) for broadcasting organisations, of fixations of their broadcasts, whether those broadcasts are transmitted by wire or over the air, including by cable or satellite.

Article 3: Right of communication to the public of works and right of making available to the public other subject-matter

1. Member States shall provide authors with the exclusive right to authorise or prohibit any communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access them from a place and at a time individually chosen by them.
2. Member States shall provide for the exclusive right to authorise or prohibit the making available to the public, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them:
(a) for performers, of fixations of their performances;
(b) for phonogram producers, of their phonograms;
(c) for the producers of the first fixations of films, of the original and copies of their films;
(d) for broadcasting organisations, of fixations of their broadcasts, whether these broadcasts are transmitted by wire or over the air, including by cable or satellite.
3. The rights referred to in paragraphs 1 and 2 shall not be exhausted by any act of communication to the public or making available to the public as set out in this Article.

Article 4: Distribution right

1. Member States shall provide for authors, in respect of the original of their works or of copies thereof, the exclusive right to authorise or prohibit any form of distribution to the public by sale or otherwise.
2. The distribution right shall not be exhausted within the Community in respect of the original or copies of the work, except where the first sale or other transfer of ownership in the Community of that object is made by the rightholder or with his consent.

Article 5: Exceptions and limitations

1. Temporary acts of reproduction referred to in Article 2, which are transient or incidental [and] an integral and essential part of a technological process and whose sole purpose is to enable:
(a) a transmission in a network between third parties by an intermediary, or
(b) a lawful use
of a work or other subject-matter to be made, and which have no independent economic significance, shall be exempted from the reproduction right provided for in Article 2.
2. Member States may provide for exceptions or limitations to the reproduction right provided for in Article 2 in the following cases:
(a) in respect of reproductions on paper or any similar medium, effected by the use of any kind of photographic technique or by some other process having similar effects, with the exception of sheet music, provided that the rightholders receive fair compensation;
(b) in respect of reproductions on any medium made by a natural person for private use and for ends that are neither directly nor indirectly commercial, on condition that the rightholders receive fair compensation which takes account of the application or non-application of technological measures referred to in Article 6 to the work or subject-matter concerned;
(c) in respect of specific acts of reproduction made by publicly accessible libraries, educational establishments or museums, or by archives, which are not for direct or indirect economic or commercial advantage;
(d) in respect of ephemeral recordings of works made by broadcasting organisations by means of their own facilities and for their own broadcasts; the preservation of these recordings in official archives may, on the grounds of their exceptional documentary character, be permitted;
(e) in respect of reproductions of broadcasts made by social institutions pursuing non-commercial purposes, such as hospitals or prisons, on condition that the rightholders receive fair compensation.
3. Member States may provide for exceptions or limitations to the rights provided for in Articles 2 and 3 in the following cases:
(a) use for the sole purpose of illustration for teaching or scientific research, as long as the source, including the author's name, is indicated, unless this turns out to be impossible and to the extent justified by the non-commercial purpose to be achieved;
(b) uses, for the benefit of people with a disability, which are directly related to the disability and of a non-commercial nature, to the extent required by the specific disability;
(c) reproduction by the press, communication to the public or making available of published articles on current economic, political or religious topics or of broadcast works or other subject-matter of the same character, in cases where such use is not expressly reserved, and as long as the source, including the author's name, is indicated, or use of works or other subject-matter in connection with the reporting of current events, to the extent justified by the informatory purpose and as long as the source, including the author's name, is indicated, unless this turns out to be impossible;
(d) quotations for purposes such as criticism or review, provided that they relate to a work or other subject-matter which has already been lawfully made available to the

public, that, unless this turns out to be impossible, the source, including the author's name, is indicated, and that their use is in accordance with fair practice, and to the extent required by the specific purpose;
(e) use for the purposes of public security or to ensure the proper performance or reporting of administrative, parliamentary or judicial proceedings;
(f) use of political speeches as well as extracts of public lectures or similar works or subject-matter to the extent justified by the informatory purpose and provided that the source, including the author's name, is indicated, except where this turns out to be impossible;
(g) use during religious celebrations or official celebrations organised by a public authority;
(h) use of works, such as works of architecture or sculpture, made to be located permanently in public places;
(i) incidental inclusion of a work or other subject-matter in other material;
(j) use for the purpose of advertising the public exhibition or sale of artistic works, to the extent necessary to promote the event, excluding any other commercial use;
(k) use for the purpose of caricature, parody or pastiche;
(l) use in connection with the demonstration or repair of equipment;
(m) use of an artistic work in the form of a building or a drawing or plan of a building for the purposes of reconstructing the building;
(n) use by communication or making available, for the purpose of research or private study, to individual members of the public by dedicated terminals on the premises of establishments referred to in paragraph 2(c) of works and other subject-matter not subject to purchase or licensing terms which are contained in their collections;
(o) use in certain other cases of minor importance where exceptions or limitations already exist under national law, provided that they only concern analogue uses and do not affect the free circulation of goods and services within the Community, without prejudice to the other exceptions and limitations contained in this Article.
4. Where the Member States may provide for an exception or limitation to the right of reproduction pursuant to paragraphs 2 and 3, they may provide similarly for an exception or limitation to the right of distribution as referred to in Article 4 to the extent justified by the purpose of the authorised act of reproduction.
5. The exceptions and limitations provided for in paragraphs 1, 2, 3 and 4 shall only be applied in certain special cases which do not conflict with a normal exploitation of the work or other subject-matter and do not unreasonably prejudice the legitimate interests of the rightholder.

CHAPTER III: PROTECTION OF TECHNOLOGICAL MEASURES AND RIGHTS-MANAGEMENT INFORMATION

Article 6: Obligations as to technological measures

1. Member States shall provide adequate legal protection against the circumvention of any effective technological measures, which the person concerned carries out in the knowledge, or with reasonable grounds to know, that he or she is pursuing that objective.
2. Member States shall provide adequate legal protection against the manufacture, import,

distribution, sale, rental, advertisement for sale or rental, or possession for commercial purposes of devices, products or components or the provision of services which:
(a) are promoted, advertised or marketed for the purpose of circumvention of, or
(b) have only a limited commercially significant purpose or use other than to circumvent, or
(c) are primarily designed, produced, adapted or performed for the purpose of enabling or facilitating the circumvention of,
any effective technological measures.
3. For the purposes of this Directive, the expression “technological measures” means any technology, device or component that, in the normal course of its operation, is designed to prevent or restrict acts, in respect of works or other subject-matter, which are not authorised by the rightholder of any copyright or any right related to copyright as provided for by law or the sui generis right provided for in Chapter III of Directive EC/9/96. Technological measures shall be deemed “effective” where the use of a protected work or other subject-matter is controlled by the rightholders through application of an access control or protection process, such as encryption, scrambling or other transformation of the work or other subject-matter or a copy control mechanism, which achieves the protection objective.
4. Notwithstanding the legal protection provided for in paragraph 1, in the absence of voluntary measures taken by rightholders, including agreements between rightholders and other parties concerned, Member States shall take appropriate measures to ensure that rightholders make available to the beneficiary of an exception or limitation provided for in national law in accordance with Article 5(2)(a), (2)(c), (2)(d), (2)(e), (3)(a), (3)(b) or (3)(e) the means of benefiting from that exception or limitation, to the extent necessary to benefit from that exception or limitation and where that beneficiary has legal access to the protected work or subject-matter concerned.
A Member State may also take such measures in respect of a beneficiary of an exception or limitation provided for in accordance with Article 5(2)(b), unless reproduction for private use has already been made possible by rightholders to the extent necessary to benefit from the exception or limitation concerned and in accordance with the provisions of Article 5(2)(b) and (5), without preventing rightholders from adopting adequate measures regarding the number of reproductions in accordance with these provisions.
The technological measures applied voluntarily by rightholders, including those applied in implementation of voluntary agreements, and technological measures applied in implementation of the measures taken by Member States, shall enjoy the legal protection provided for in paragraph 1.
The provisions of the first and second subparagraphs shall not apply to works or other subject-matter made available to the public on agreed contractual terms in such a way that members of the public may access them from a place and at a time individually chosen by them.
When this Article is applied in the context of Directives 92/100/EEC and 96/9/EC, this paragraph shall apply mutatis mutandis.

Article 7: Obligations concerning rights-management information

1. Member States shall provide for adequate legal protection against any person

knowingly performing without authority any of the following acts:
(a) the removal or alteration of any electronic rights-management information;
(b) the distribution, importation for distribution, broadcasting, communication or making available to the public of works or other subject-matter protected under this Directive or under Chapter III of Directive EC/9/96 from which electronic rights-management information has been removed or altered without authority,
if such person knows, or has reasonable grounds to know, that by so doing he is inducing, enabling, facilitating or concealing an infringement of any copyright or any rights related to copyright as provided by law, or of the sui generis right provided for in Chapter III of Directive EC/9/96.
2. For the purposes of this Directive, the expression "rights-management information" means any information provided by rightholders which identifies the work or other subject-matter referred to in this Directive or covered by the sui generis right provided for in Chapter III of Directive EC/9/96, the author or any other rightholder, or information about the terms and conditions of use of the work or other subject-matter, and any numbers or codes that represent such information.
The first subparagraph shall apply when any of these items of information is associated with a copy of, or appears in connection with the communication to the public of, a work or other subjectmatter referred to in this Directive or covered by the sui generis right provided for in Chapter III of Directive EC/9/96.

CHAPTER IV: COMMON PROVISIONS

Article 8: Sanctions and remedies

1. Member States shall provide appropriate sanctions and remedies in respect of infringements of the rights and obligations set out in this Directive and shall take all the measures necessary to ensure that those sanctions and remedies are applied. The sanctions thus provided for shall be effective, proportionate and dissuasive.
2. Each Member State shall take the measures necessary to ensure that rightholders whose interests are affected by an infringing activity carried out on its territory can bring an action for damages and/or apply for an injunction and, where appropriate, for the seizure of infringing material as well as of devices, products or components referred to in Article 6(2).
3. Member States shall ensure that rightholders are in a position to apply for an injunction against intermediaries whose services are used by a third party to infringe a copyright or related right.

Article 9: Continued application of other legal provisions

This Directive shall be without prejudice to provisions concerning in particular patent rights, trade marks, design rights, utility models, topographies of semi-conductor products, type faces, conditional access, access to cable of broadcasting services, protection of national treasures, legal deposit requirements, laws on restrictive practices and unfair competition, trade secrets, security, confidentiality, data protection and privacy, access to public documents, the law of contract.

Article 10: Application over time

1. The provisions of this Directive shall apply in respect of all works and other subject-matter referred to in this Directive which are, on 22 December 2002, protected by the Member States' legislation in the field of copyright and related rights, or which meet the criteria for protection under the provisions of this Directive or the provisions referred to in Article 1(2).
2. This Directive shall apply without prejudice to any acts concluded and rights acquired before 22 December 2002.

Article 11: Technical adaptations
1. Directive EEC/100/92 is hereby amended as follows:
(a) Article 7 shall be deleted;
(b) Article 10(3) shall be replaced by the following: "3. The limitations shall only be applied in certain special cases which do not conflict with a normal exploitation of the subject-matter and do not unreasonably prejudice the legitimate interests of the rightholder."
2. Article 3(2) of Directive EEC/98/93 shall be replaced by the following: "2. The rights of producers of phonograms shall expire 50 years after the fixation is made. However, if the phonogram has been lawfully published within this period, the said rights shall expire 50 years from the date of the first lawful publication. If no lawful publication has taken place within the period mentioned in the first sentence, and if the phonogram has been lawfully communicated to the public within this period, the said rights shall expire 50 years from the date of the first lawful communication to the public.
However, where through the expiry of the term of protection granted pursuant to this paragraph in its version before amendment by Directive EEC/29/2001 of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society(11) the rights of producers of phonograms are no longer protected on 22 December 2002, this paragraph shall not have the effect of protecting those rights anew."

Article 12: Final provisions

1. Not later than 22 December 2004 and every three years thereafter, the Commission shall submit to the European Parliament, the Council and the Economic and Social Committee a report on the application of this Directive, in which, inter alia, on the basis of specific information supplied by the Member States, it shal examine in particular the application of Articles 5, 6 and 8 in the light of the development of the digital market. In the case of Article 6, it shall examine in particular whether that Article confers a sufficient level of protection and whether acts which are permitted by law are being adversely affected by the use of effective technological measures. Where necessary, in particular to ensure the functioning of the internal market pursuant to Article 14 of the Treaty, it shall submit proposals for amendments to this Directive.
2. Protection of rights related to copyright under this Directive shall leave intact and shall in no way affect the protection of copyright.

3. A contact committee is hereby established. It shall be composed of representatives of the competent authorities of the Member States. It shall be chaired by a representative of the Commission and shall meet either on the initiative of the chairman or at the request of the delegation of a Member State.
4. The tasks of the committee shall be as follows:
(a) to examine the impact of this Directive on the functioning of the internal market, and to highlight any difficulties;
(b) to organise consultations on all questions deriving from the application of this Directive;
(c) to facilitate the exchange of information on relevant developments in legislation and case-law, as well as relevant economic, social, cultural and technological developments;
(d) to act as a forum for the assessment of the digital market in works and other items, including private copying and the use of technological measures.

Article 13: Implementation

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 22 December 2002. They shall forthwith inform the Commission thereof.
When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.
2. Member States shall communicate to the Commission the text of the provisions of domestic law which they adopt in the field governed by this Directive.

Article 14: Entry into force

This Directive shall enter into force on the day of its publication in the Official Journal of the European Communities.

Article 15: Addressees

This Directive is addressed to the Member States.

Done at Brussels, 22 May 2001.

For the European Parliament: The President, N. Fontaine

For the Council: The President. M. Winberg

13 Artists' Resale Rights

Directive EC/84/2001 of the European Parliament and of the Council of 27 September 2001 on the resale right for the benefit of the author of an original work of art

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,
Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,
Having regard to the proposal from the Commission,
Having regard to the opinion of the Economic and Social Committee,
Acting in accordance with the procedure laid down in Article 251 of the Treaty, and in the light of the joint text approved by the Conciliation Committee on 6 June 2001,
Whereas:
(1) In the field of copyright, the resale right is an unassignable and inalienable right, enjoyed by the author of an original work of graphic or plastic art, to an economic interest in successive sales of the work concerned.
(2) The resale right is a right of a productive character which enables the author/artist to receive consideration for successive transfers of the work. The subject-matter of the resale right is the physical work, namely the medium in which the protected work is incorporated.
(3) The resale right is intended to ensure that authors of graphic and plastic works of art share in the economic success of their original works of art. It helps to redress the balance between the economic situation of authors of graphic and plastic works of art and that of other creators who benefit from successive exploitations of their works.
(4) The resale right forms an integral part of copyright and is an essential prerogative for authors. The imposition of such a right in all Member States meets the need for providing creators with an adequate and standard level of protection.
(5) Under Article 151(4) of the Treaty the Community is to take cultural aspects into account in its action under other provisions of the Treaty.
(6) The Berne Convention for the Protection of Literary and Artistic Works provides that the resale right is available only if legislation in the country to which the author belongs so permits. The right is therefore optional and subject to the rule of reciprocity. It follows from the case-law of the Court of Justice of the European Communities on the application of the principle of non-discrimination laid down in Article 12 of the Treaty, as shown in the judgment of 20 October 1993 in Joined Cases C-92/92 and C-326/92, *Phil Collins and Others*, that domestic provisions containing reciprocity clauses cannot be relied upon in order to deny nationals of other Member States rights conferred on national authors. The application of such clauses in the Community context runs counter to the principle of equal treatment resulting from the prohibition of any discrimination on grounds of nationality.
(7) The process of internationalisation of the Community market in modern and contemporary art, which is now being speeded up by the effects of the new economy, in a regulatory context in which few States outside the EU recognise the resale right, makes it essential for the European Community, in the external sphere, to open negotiations with a view to making Article 14b of the Berne Convention compulsory.

(8) The fact that this international market exists, combined with the lack of a resale right in several Member States and the current disparity as regards national systems which recognise that right, make it essential to lay down transitional provisions as regards both entry into force and the substantive regulation of the right, which will preserve the competitiveness of the European market.
(9) The resale right is currently provided for by the domestic legislation of a majority of Member States. Such laws, where they exist, display certain differences, notably as regards the works covered, those entitled to receive royalties, the rate applied, the transactions subject to payment of a royalty, and the basis on which these are calculated. The application or non-application of such a right has a significant impact on the competitive environment within the internal market, since the existence or absence of an obligation to pay on the basis of the resale right is an element which must be taken into account by each individual wishing to sell a work of art. This right is therefore a factor which contributes to the creation of distortions of competition as well as displacement of sales within the Community.
(10) Such disparities with regard to the existence of the resale right and its application by the Member States have a direct negative impact on the proper functioning of the internal market in works of art as provided for by Article 14 of the Treaty. In such a situation Article 95 of the Treaty constitutes the appropriate legal basis.
(11) The objectives of the Community as set out in the Treaty include laying the foundations of an ever closer union among the peoples of Europe, promoting closer relations between the Member States belonging to the Community, and ensuring their economic and social progress by common action to eliminate the barriers which divide Europe. To that end the Treaty provides for the establishment of an internal market which presupposes the abolition of obstacles to the free movement of goods, freedom to provide services and freedom of establishment, and for the introduction of a system ensuring that competition in the common market is not distorted. Harmonisation of Member States' laws on the resale right contributes to the attainment of these objectives.
(12) The Sixth Council Directive of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes - common system of value added tax: uniform basis of assessment, progressively introduces a Community system of taxation applicable inter alia to works of art. Measures confined to the tax field are not sufficient to guarantee the harmonious functioning of the art market. This objective cannot be attained without harmonisation in the field of the resale right.
(13) Existing differences between laws should be eliminated where they have a distorting effect on the functioning of the internal market, and the emergence of any new differences of that kind should be prevented. There is no need to eliminate, or prevent the emergence of, differences which cannot be expected to affect the functioning of the internal market.
(14) A precondition of the proper functioning of the internal market is the existence of conditions of competition which are not distorted. The existence of differences between national provisions on the resale right creates distortions of competition and displacement of sales within the Community and leads to unequal treatment between artists depending on where their works are sold. The issue under consideration has therefore transnational aspects which cannot be satisfactorily regulated by action by Member States. A lack of Community action would conflict with the requirement of the Treaty to correct

distortions of competition and unequal treatment.
(15) In view of the scale of divergences between national provisions it is therefore necessary to adopt harmonising measures to deal with disparities between the laws of the Member States in areas where such disparities are liable to create or maintain distorted conditions of competition. It is not however necessary to harmonise every provision of the Member States' laws on the resale right and, in order to leave as much scope for national decision as possible, it is sufficient to limit the harmonisation exercise to those domestic provisions that have the most direct impact on the functioning of the internal market.
(16) This Directive complies therefore, in its entirety, with the principles of subsidiarity and proportionality as laid down in Article 5 of the Treaty.
(17) Pursuant to Council Directive EEC/98/93 of 29 October 1993 harmonising the term of protection of copyright and certain related rights, the term of copyright runs for 70 years after the author's death. The same period should be laid down for the resale right. Consequently, only the originals of works of modern and contemporary art may fall within the scope of the resale right. However, in order to allow the legal systems of Member States which do not, at the time of the adoption of this Directive, apply a resale right for the benefit of artists to incorporate this right into their respective legal systems and, moreover, to enable the economic operators in those Member States to adapt gradually to the aforementioned right whilst maintaining their economic viability, the Member States concerned should be allowed a limited transitional period during which they may choose not to apply the resale right for the benefit of those entitled under the artist after his death.
(18) The scope of the resale right should be extended to all acts of resale, with the exception of those effected directly between persons acting in their private capacity without the participation of an art market professional. This right should not extend to acts of resale by persons acting in their private capacity to museums which are not for profit and which are open to the public. With regard to the particular situation of art galleries which acquire works directly from the author, Member States should be allowed the option of exempting from the resale right acts of resale of those works which take place within three years of that acquisition. The interests of the artist should also be taken into account by limiting this exemption to such acts of resale where the resale price does not exceed EUR 10,000.
(19) It should be made clear that the harmonisation brought about by this Directive does not apply to original manuscripts of writers and composers.
(20) Effective rules should be laid down based on experience already gained at national level with the resale right. It is appropriate to calculate the royalty as a percentage of the sale price and not of the increase in value of works whose original value has increased.
(21) The categories of works of art subject to the resale right should be harmonised.
(22) The non-application of royalties below the minimum threshold may help to avoid disproportionately high collection and administration costs compared with the profit for the artist. However, in accordance with the principle of subsidiarity, the Member States should be allowed to establish national thresholds lower than the Community threshold, so as to promote the interests of new artists. Given the small amounts involved, this derogation is not likely to have a significant effect on the proper functioning of the internal market.

(23) The rates set by the different Member States for the application of the resale right vary considerably at present. The effective functioning of the internal market in works of modern and contemporary art requires the fixing of uniform rates to the widest possible extent.
(24) It is desirable to establish, with the intention of reconciling the various interests involved in the market for original works of art, a system consisting of a tapering scale of rates for several price bands. It is important to reduce the risk of sales relocating and of the circumvention of the Community rules on the resale right.
(25) The person by whom the royalty is payable should, in principle, be the seller. Member States should be given the option to provide for derogations from this principle in respect of liability for payment. The seller is the person or undertaking on whose behalf the sale is concluded.
(26) Provision should be made for the possibility of periodic adjustment of the threshold and rates. To this end, it is appropriate to entrust to the Commission the task of drawing up periodic reports on the actual application of the resale right in the Member States and on the impact on the art market in the Community and, where appropriate, of making proposals relating to the amendment of this Directive.
(27) The persons entitled to receive royalties must be specified, due regard being had to the principle of subsidiarity. It is not appropriate to take action through this Directive in relation to Member States' laws of succession. However, those entitled under the author must be able to benefit fully from the resale right after his death, at least following the expiry of the transitional period referred to above.
(28) The Member States are responsible for regulating the exercise of the resale right, particularly with regard to the way this is managed. In this respect management by a collecting society is one possibility. Member States should ensure that collecting societies operate in a transparent and efficient manner. Member States must also ensure that amounts intended for authors who are nationals of other Member States are in fact collected and distributed. This Directive is without prejudice to arrangements in Member States for collection and distribution.
(29) Enjoyment of the resale right should be restricted to Community nationals as well as to foreign authors whose countries afford such protection to authors who are nationals of Member States. A Member State should have the option of extending enjoyment of this right to foreign authors who have their habitual residence in that Member State.
(30) Appropriate procedures for monitoring transactions should be introduced so as to ensure by practical means that the resale right is effectively applied by Member States. This implies also a right on the part of the author or his authorised representative to obtain any necessary information from the natural or legal person liable for payment of royalties. Member States which provide for collective management of the resale right may also provide that the bodies responsible for that collective management should alone be entitled to obtain information.

CHAPTER I: SCOPE

Article 1: Subject matter of the resale right

1. Member States shall provide, for the benefit of the author of an original work of art, a resale right, to be defined as an inalienable right, which cannot be waived, even in advance, to receive a royalty based on the sale price obtained for any resale of the work, subsequent to the first transfer of the work by the author.
2. The right referred to in paragraph 1 shall apply to all acts of resale involving as sellers, buyers or intermediaries art market professionals, such as salesrooms, art galleries and, in general, any dealers in works of art.
3. Member States may provide that the right referred to in paragraph 1 shall not apply to acts of resale where the seller has acquired the work directly from the author less than three years before that resale and where the resale price does not exceed EUR 10000.
4. The royalty shall be payable by the seller. Member States may provide that one of the natural or legal persons referred to in paragraph 2 other than the seller shall alone be liable or shall share liability with the seller for payment of the royalty.

Article 2: Works of art to which the resale right relates

1. For the purposes of this Directive, "original work of art" means works of graphic or plastic art such as pictures, collages, paintings, drawings, engravings, prints, lithographs, sculptures, tapestries, ceramics, glassware and photographs, provided they are made by the artist himself or are copies considered to be original works of art.
2. Copies of works of art covered by this Directive, which have been made in limited numbers by the artist himself or under his authority, shall be considered to be original works of art for the purposes of this Directive. Such copies will normally have been numbered, signed or otherwise duly authorised by the artist.

CHAPTER II: PARTICULAR PROVISIONS

Article 3: Threshold

1. It shall be for the Member States to set a minimum sale price from which the sales referred to in Article 1 shall be subject to resale right.
2. This minimum sale price may not under any circumstances exceed EUR 3,000.

Article 4: Rates

1. The royalty provided for in Article 1 shall be set at the following rates:
(a) 4% for the portion of the sale price up to EUR 50,000;
(b) 3% for the portion of the sale price from EUR 50,000.01 to EUR 200,000;
(c) 1% for the portion of the sale price from EUR 200,000.01 to EUR 350,000;
(d) 0.5 % for the portion of the sale price from EUR 350,000.01 to EUR 500,000;
(e) 0.25 % for the portion of the sale price exceeding EUR 500,000.
However, the total amount of the royalty may not exceed EUR 12,500.

2. By way of derogation from paragraph 1, Member States may apply a rate of 5% for the portion of the sale price referred to in paragraph 1(a).
3. If the minimum sale price set should be lower than EUR 3,000, the Member State shall also determine the rate applicable to the portion of the sale price up to EUR 3,000; this rate may not be lower than 4%.

Article 5: Calculation basis

The sale prices referred to in Articles 3 and 4 are net of tax.

Article 6: Persons entitled to receive royalties

1. The royalty provided for under Article 1 shall be payable to the author of the work and, subject to Article 8(2), after his death to those entitled under him/her.
2. Member States may provide for compulsory or optional collective management of the royalty provided for under Article 1.

Article 7: Third-country nationals entitled to receive royalties

1. Member States shall provide that authors who are nationals of third countries and, subject to Article 8(2), their successors in title shall enjoy the resale right in accordance with this Directive and the legislation of the MemberState concerned only if legislation in the country of which the author or his/her successor in title is a national permits resale right protection in that country for authors from the Member States and their successors in title.
2. On the basis of information provided by the Member States, the Commission shall publish as soon as possible an indicative list of those third countries which fulfil the condition set out in paragraph 1. This list shall be kept up to date.
3. Any Member State may treat authors who are not nationals of a Member State but who have their habitual residence in that Member State in the same way as its own nationals for the purpose of resale right protection.

Article 8: Term of protection of the resale right

1. The term of protection of the resale right shall correspond to that laid down in Article 1 of Directive EEC/98/93.
2. By way of derogation from paragraph 1, those Member States which do not apply the resale right on (the entry into force date referred to in Article 13), shall not be required, for a period expiring not later than 1 January 2010, to apply the resale right for the benefit of those entitled under the artist after his/her death.
3. A Member State to which paragraph 2 applies may have up to two more years, if necessary to enable the economic operators in that Member State to adapt gradually to the resale right system while maintaining their economic viability, before it is required to apply the resale right for the benefit of those entitled under the artist after his/her death. At least 12 months before the end of the period referred to in paragraph 2, the Member State concerned shall inform the Commission giving its reasons, so that the Commission

can give an opinion, after appropriate consultations, within three months following the receipt of such information. If the Member State does not follow the opinion of the Commission, it shall within one month inform the Commission and justify its decision. The notification and justification of the Member State and the opinion of the Commission shall be published in the Official Journal of the European Communities and forwarded to the European Parliament.
4. In the event of the successful conclusion, within the periods referred to in Article 8(2) and (3), of international negotiations aimed at extending the resale right at international level, the Commission shall submit appropriate proposals.

Article 9: Right to obtain information

The Member States shall provide that for a period of three years after the resale, the persons entitled under Article 6 may require from any art market professional mentioned in Article 1(2) to furnish any information that may be necessary in order to secure payment of royalties in respect of the resale.

CHAPTER III: FINAL PROVISIONS

Article 10: Application in time

This Directive shall apply in respect of all original works of art as defined in Article 2 which, on 1 January 2006, are still protected by the legislation of the Member States in the field of copyright or meet the criteria for protection under the provisions of this Directive at that date.

Article 11: Revision clause

1. The Commission shall submit to the European Parliament, the Council and the Economic and Social Committee not later than 1 January 2009 and every four years thereafter a report on the implementation and the effect of this Directive, paying particular attention to the competitiveness of the market in modern and contemporary art in the Community, especially as regards the position of the Community in relation to relevant markets that do not apply the resale right and the fostering of artistic creativity and the management procedures in the Member States. It shall examine in particular its impact on the internal market and the effect of the introduction of the resale right in those Member States that did not apply the right in national law prior to the entry into force of this Directive. Where appropriate, the Commission shall submit proposals for adapting the minimum threshold and the rates of royalty to take account of changes in the sector, proposals relating to the maximum amount laid down in Article 4(1) and any other proposal it may deem necessary in order to enhance the effectiveness of this Directive.
2. A Contact Committee is hereby established. It shall be composed of representatives of the competent authorities of the Member States. It shall be chaired by a representative of the Commission and shall meet either on the initiative of the Chairman or at the request of the delegation of a Member State.
3. The task of the Committee shall be as follows:

- to organise consultations on all questions deriving from application of this Directive,
- to facilitate the exchange of information between the Commission and the Member States on relevant developments in the art market in the Community.

Article 12: Implementation

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 1 January 2006. They shall forthwith inform the Commission thereof.
When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.
2. Member States shall communicate to the Commission the provisions of national law which they adopt in the field covered by this Directive.

Article 13: Entry into force

This Directive shall enter into force on the day of its publication in the Official Journal of the European Communities.

Article 14: Addressees

This Directive is addressed to the Member States.

Done at Brussels, 27 September 2001.

For the European Parliament: The President, N. Fontaine

For the Council: The President, C. Picqué

14 Community Designs

Council Regulation EC/6/02 of 12 December 2001 on Community designs

THE COUNCIL OF THE EUROPEAN UNION,
Having regard to the Treaty establishing the European Community, and in particular Article 308 thereof,
Having regard to the proposal from the Commission,
Having regard to the opinion of the European Parliament,
Having regard to the opinion of the Economic and Social Committee,
Whereas:
(1) A unified system for obtaining a Community design to which uniform protection is given with uniform effect throughout the entire territory of the Community would further the objectives of the Community as laid down in the Treaty.
(2) Only the Benelux countries have introduced a uniform design protection law. In all the other Member States the protection of designs is a matter for the relevant national law and is confined to the territory of the Member State concerned. Identical designs may be therefore protected differently in different Member States and for the benefit of different owners. This inevitably leads to conflicts in the course of trade between Member States.
(3) The substantial differences between Member States' design laws prevent and distort Community-wide competition. In comparison with domestic trade in, and competition between, products incorporating a design, trade and competition within the Community are prevented and distorted by the large number of applications, offices, procedures, laws, nationally circumscribed exclusive rights and the combined administrative expense with correspondingly high costs and fees for the applicant. Directive EC/71/98 of the European Parliament and of the Council of 13 October 1998 on the legal protection of designs contributes to remedying this situation.
(4) The effect of design protection being limited to the territory of the individual Member States whether or not their laws are approximated, leads to a possible division of the internal market with respect to products incorporating a design which is the subject of national rights held by different individuals, and hence constitutes an obstacle to the free movement of goods.
(5) This calls for the creation of a Community design which is directly applicable in each Member State, because only in this way will it be possible to obtain, through one application made to the Office for Harmonisation in the Internal Market (Trade Marks and Design) in accordance with a single procedure under one law, one design right for one area encompassing all Member States.
(6) Since the objectives of the proposed action, namely, the protection of one design right for one area encompassing all the Member States, cannot be sufficiently achieved by the Member States by reason of the scale and the effects of the creation of a Community design and a Community design authority and can therefore, and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
(7) Enhanced protection for industrial design not only promotes the contribution of

individual designers to the sum of Community excellence in the field, but also encourages innovation and development of new products and investment in their production.
(8) Consequently a more accessible design-protection system adapted to the needs of the internal market is essential for Community industries.
(9) The substantive provisions of this Regulation on design law should be aligned with the respective provisions in Directive EC/71/98.
(10) Technological innovation should not be hampered by granting design protection to features dictated solely by a technical function. It is understood that this does not entail that a design must have an aesthetic quality. Likewise, the interoperability of products of different makes should not be hindered by extending protection to the design of mechanical fittings. Consequently, those features of a design which are excluded from protection for those reasons should not be taken into consideration for the purpose of assessing whether other features of the design fulfil the requirements for protection.
(11) The mechanical fittings of modular products may nevertheless constitute an important element of the innovative characteristics of modular products and present a major marketing asset, and therefore should be eligible for protection.
(12) Protection should not be extended to those component parts which are not visible during normal use of a product, nor to those features of such part which are not visible when the part is mounted, or which would not, in themselves, fulfil the requirements as to novelty and individual character. Therefore, those features of design which are excluded from protection for these reasons should not be taken into consideration for the purpose of assessing whether other features of the design fulfil the requirements for protection.
(13) Full-scale approximation of the laws of the Member States on the use of protected designs for the purpose of permitting the repair of a complex product so as to restore its original appearance, where the design is applied to or incorporated in a product which constitutes a component part of a complex product upon whose appearance the protected design is dependent, could not be achieved through Directive EC/71/98. Within the framework of the conciliation procedure on the said Directive, the Commission undertook to review the consequences of the provisions of that Directive three years after the deadline for transposition of the Directive in particular for the industrial sectors which are most affected. Under these circumstances, it is appropriate not to confer any protection as a Community design for a design which is applied to or incorporated in a product which constitutes a component part of a complex product upon whose appearance the design is dependent and which is used for the purpose of the repair of a complex product so as to restore its original appearance, until the Council has decided its policy on this issue on the basis of a Commission proposal.
(14) The assessment as to whether a design has individual character should be based on whether the overall impression produced on an informed user viewing the design clearly differs from that produced on him by the existing design corpus, taking into consideration the nature of the product to which the design is applied or in which it is incorporated, and in particular the industrial sector to which it belongs and the degree of freedom of the designer in developing the design.
(15) A Community design should, as far as possible, serve the needs of all sectors of industry in the Community.
(16) Some of those sectors produce large numbers of designs for products frequently

having a short market life where protection without the burden of registration formalities is an advantage and the duration of protection is of lesser significance. On the other hand, there are sectors of industry which value the advantages of registration for the greater legal certainty it provides and which require the possibility of a longer term of protection corresponding to the foreseeable market life of their products.
(17) This calls for two forms of protection, one being a short-term unregistered design and the other being a longer term registered design.
(18) A registered Community design requires the creation and maintenance of a register in which will be registered all those applications which comply with formal conditions and which have been accorded a date of filing. This registration system should in principle not be based upon substantive examination as to compliance with requirements for protection prior to registration, thereby keeping to a minimum the registration and other procedural burdens on applicants.
(19) A Community design should not be upheld unless the design is new and unless it also possesses an individual character in comparison with other designs.
(20) It is also necessary to allow the designer or his successor in title to test the products embodying the design in the market place before deciding whether the protection resulting from a registered Community design is desirable. To this end it is necessary to provide that disclosures of the design by the designer or his successor in title, or abusive disclosures during a period of 12 months prior to the date of the filing of the application for a registered Community design should not be prejudicial in assessing the novelty or the individual character of the design in question.
(21) The exclusive nature of the right conferred by the registered Community design is consistent with its greater legal certainty. It is appropriate that the unregistered Community design should, however, constitute a right only to prevent copying. Protection could not therefore extend to design products which are the result of a design arrived at independently by a second designer. This right should also extend to trade in products embodying infringing designs.
(22) The enforcement of these rights is to be left to national laws. It is necessary therefore to provide for some basic uniform sanctions in all Member States. These should make it possible, irrespective of the jurisdiction under which enforcement is sought, to stop the infringing acts.
(23) Any third person who can establish that he has in good faith commenced use even for commercial purposes within the Community, or has made serious and effective preparations to that end, of a design included within the scope of protection of a registered Community design, which has not been copied from the latter, may be entitled to a limited exploitation of that design.
(24) It is a fundamental objective of this Regulation that the procedure for obtaining a registered Community design should present the minimum cost and difficulty to applicants, so as to make it readily available to small and medium-sized enterprises as well as to individual designers.
(25) Those sectors of industry producing large numbers of possibly short-lived designs over short periods of time of which only some may be eventually commercialised will find advantage in the unregistered Community design. Furthermore, there is also a need for these sectors to have easier recourse to the registered Community design. Therefore, the option of combining a number of designs in one multiple application would satisfy

that need. However, the designs contained in a multiple application may be dealt with independently of each other for the purposes of enforcement of rights, licensing, rights in rem, levy of execution, insolvency proceedings, surrender, renewal, assignment, deferred publication or declaration of invalidity.
(26) The normal publication following registration of a Community design could in some cases destroy or jeopardise the success of a commercial operation involving the design. The facility of a deferment of publication for a reasonable period affords a solution in such cases.
(27) A procedure for hearing actions concerning validity of a registered Community design in a single place would bring savings in costs and time compared with procedures involving different national courts.
(28) It is therefore necessary to provide safeguards including a right of appeal to a Board of Appeal, and ultimately to the Court of Justice. Such a procedure would assist the development of uniform interpretation of the requirements governing the validity of Community designs.
(29) It is essential that the rights conferred by a Community design can be enforced in an efficient manner throughout the territory of the Community.
(30) The litigation system should avoid as far as possible "forum shopping". It is therefore necessary to establish clear rules of international jurisdiction.
(31) This Regulation does not preclude the application to designs protected by Community designs of the industrial property laws or other relevant laws of the Member States, such as those relating to design protection acquired by registration or those relating to unregistered designs, trade marks, patents and utility models, unfair competition or civil liability.
(32) In the absence of the complete harmonisation of copyright law, it is important to establish the principle of cumulation of protection under the Community design and under copyright law, whilst leaving Member States free to establish the extent of copyright protection and the conditions under which such protection is conferred.
(33) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision EC/468/99 of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission

TITLE I: GENERAL PROVISIONS

Article 1: Community design

1. A design which complies with the conditions contained in this Regulation is hereinafter referred to as a "Community design".
2. A design shall be protected:
(a) by an "unregistered Community design", if made available to the public in the manner provided for in this Regulation;
(b) by a "registered Community design", if registered in the manner provided for in this Regulation.
3. A Community design shall have a unitary character. It shall have equal effect throughout the Community. It shall not be registered, transferred or surrendered or be the subject of a decision declaring it invalid, nor shall its use be prohibited, save in respect of

the whole Community. This principle and its implications shall apply unless otherwise provided in this Regulation.

Article 2: Office

The Office for Harmonisation in the Internal Market (Trade Marks and Designs), hereinafter referred to as "the Office", instituted by Council Regulation EC/40/94 of 20 December 1993 on the Community trade mark, hereinafter referred to as the "Regulation on the Community trade mark", shall carry out the tasks entrusted to it by this Regulation.

TITLE II: THE LAW RELATING TO DESIGNS

Section 1: Requirements for protection

Article 3: Definitions

For the purposes of this Regulation:
(a) "design" means the appearance of the whole or a part of a product resulting from the features of, in particular, the lines, contours, colours, shape, texture and/or materials of the product itself and/or its ornamentation;
(b) "product" means any industrial or handicraft item, including inter alia parts intended to be assembled into a complex product, packaging, get-up, graphic symbols and typographic typefaces, but excluding computer programs;
(c) "complex product" means a product which is composed of multiple components which can be replaced permitting disassembly and re assembly of the product.

Article 4: Requirements for protection

1. A design shall be protected by a Community design to the extent that it is new and has individual character.
2. A design applied to or incorporated in a product which constitutes a component part of a complex product shall only be considered to be new and to have individual character:
(a) if the component part, once it has been incorporated into the complex product, remains visible during normal use of the latter; and
(b) to the extent that those visible features of the component part fulfil in themselves the requirements as to novelty and individual character.
3. "Normal use" within the meaning of paragraph (2)(a) shall mean use by the end user, excluding maintenance, servicing or repair work.

Article 5: Novelty

1. A design shall be considered to be new if no identical design has been made available to the public:
(a) in the case of an unregistered Community design, before the date on which the design for which protection is claimed has first been made available to the public;

(b) in the case of a registered Community design, before the date of filing of the application for registration of the design for which protection is claimed, or, if priority is claimed, the date of priority.
2. Designs shall be deemed to be identical if their features differ only in immaterial details.

Article 6: Individual character

1. A design shall be considered to have individual character if the overall impression it produces on the informed user differs from the overall impression produced on such a user by any design which has been made available to the public:
(a) in the case of an unregistered Community design, before the date on which the design for which protection is claimed has first been made available to the public;
(b) in the case of a registered Community design, before the date of filing the application for registration or, if a priority is claimed, the date of priority.
2. In assessing individual character, the degree of freedom of the designer in developing the design shall be taken into consideration.

Article 7: Disclosure

1. For the purpose of applying Articles 5 and 6, a design shall be deemed to have been made available to the public if it has been published following registration or otherwise, or exhibited, used in trade or otherwise disclosed, before the date referred to in Articles 5(1)(a) and 6(1)(a) or in Articles 5(1)(b) and 6(1)(b), as the case may be, except where these events could not reasonably have become known in the normal course of business to the circles specialised in the sector concerned, operating within the Community. The design shall not, however, be deemed to have been made available to the public for the sole reason that it has been disclosed to a third person under explicit or implicit conditions of confidentiality.
2. A disclosure shall not be taken into consideration for the purpose of applying Articles 5 and 6 and if a design for which protection is claimed under a registered Community design has been made available to the public:
(a) by the designer, his successor in title, or a third person as a result of information provided or action taken by the designer or his successor in title; and
(b) during the 12-month period preceding the date of filing of the application or, if a priority is claimed, the date of priority.
3. 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.

Article 8: Designs dictated by their technical function and designs of interconnections

1. A Community design shall not subsist in features of appearance of a product which are solely dictated by its technical function.
2. A Community design shall not subsist in features of appearance of a product which must necessarily be reproduced in their exact form and dimensions in order to permit the product in which the design is incorporated or to which it is applied to be mechanically

connected to or placed in, around or against another product so that either product may perform its function.
3. Notwithstanding paragraph 2, a Community design shall under the conditions set out in Articles 5 and 6 subsist in a design serving the purpose of allowing the multiple assembly or connection of mutually interchangeable products within a modular system.

Article 9: Designs contrary to public policy or morality

A Community design shall not subsist in a design which is contrary to public policy or to accepted principles of morality.

Section 2: Scope and term of protection

Article 10: Scope of protection

1. The scope of the protection conferred by a Community design shall include any design which does not produce on the informed user a different overall impression.
2. In assessing the scope of protection, the degree of freedom of the designer in developing his design shall be taken into consideration.

Article 11: Commencement and term of protection of the unregistered Community design

1. A design which meets the requirements under Section 1 shall be protected by an unregistered Community design for a period of three years as from the date on which the design was first made available to the public within the Community.
2. For the purpose of paragraph 1, a design shall be deemed to have been made available to thepublic within the Community if it has been published, exhibited, used in trade or otherwise disclosed in such a way that, in the normal course of business, these events could reasonably have become known to the circles specialised in the sector concerned, operating within the Community. The design shall not, however, be deemed to have been made available to the public for the sole reason that it has been disclosed to a third person under explicit or implicit conditions of confidentiality.

Article 12: Commencement and term of protection of the registered Community design

Upon registration by the Office, a design which meets the requirements under Section 1 shall be protected by a registered Community design for a period of five years as from the date of the filing of the application. The right holder may have the term of protection renewed for one or more periods of five years each, up to a total term of 25 years from the date of filing.

Article 13: Renewal

1. Registration of the registered Community design shall be renewed at the request of the right holder or of any person expressly authorised by him, provided that the renewal fee has been paid.

2. The Office shall inform the right holder of the registered Community design and any person having a right entered in the register of Community designs, referred to in Article 72, hereafter referred to as the "register" in respect of the registered Community design, of the expiry of the registration in good time before the said expiry. Failure to give such information shall not involve the responsibility of the Office.
3. The request for renewal shall be submitted and the renewal fee paid within a period of six months ending on the last day of the month in which protection ends. Failing this, the request may be submitted and the fee paid within a further period of six months from the day referred to in the first sentence, provided that an additional fee is paid within this further period.
4. Renewal shall take effect from the day following the date on which the existing registration expires. The renewal shall be entered in the register.

Section 3: Right to the Community design

Article 14: Right to the Community design

1. The right to the Community design shall vest in the designer or his successor in title.
2. If two or more persons have jointly developed a design, the right to the Community design shall vest in them jointly.
3. However, where a design is developed by an employee in the execution of his duties or following the instructions given by his employer, the right to the Community design shall vest in the employer, unless otherwise agreed or specified under national law.

Article 15: Claims relating to the entitlement to a Community design

1. If an unregistered Community design is disclosed or claimed by, or a registered Community design has been applied for or registered in the name of, a person who is not entitled to it under Article 14, the person entitled to it under that provision may, without prejudice to any other remedy which may be open to him, claim to become recognised as the legitimate holder of the Community design.
2. Where a person is jointly entitled to a Community design, that person may, in accordance with paragraph 1, claim to become recognised as joint holder.
3. Legal proceedings under paragraphs 1 or 2 shall be barred three years after the date of publication of a registered Community design or the date of disclosure of an unregistered Community design. This provision shall not apply if the person who is not entitled to the Community design was acting in bad faith at the time when such design was applied for or disclosed or was assigned to him.
4. In the case of a registered Community design, the following shall be entered in the register:
(a) the mention that legal proceedings under paragraph 1 have been instituted;
(b) the final decision or any other termination of the proceedings;
(c) any change in the ownership of the registered Community design resulting from the final decision.

Article 16: Effects of a judgment on entitlement toa registered Community design

1. Where there is a complete change of ownership of a registered Community design as a result of legal proceedings under Article 15(1), licences and other rights shall lapse upon the entering in the register of the person entitled.
2. If, before the institution of the legal proceedings under Article 15(1) has been registered, the holder of the registered Community design or a licensee has exploited the design within the Community or made serious and effective preparations to do so, he may continue such exploitation provided that he requests within the period prescribed by the implementing regulation a non-exclusive licence from the new holder whose name is entered in the register. The licence shall be granted for a reasonable period and upon reasonable terms.
3. Paragraph 2 shall not apply if the holder of the registered Community design or the licensee was acting in bad faith at the time when he began to exploit the design or to make preparations to do so.

Article 17: Presumption in favour of the registered holder of the design

The person in whose name the registered Community design is registered or, prior to registration, the person in whose name the application is filed, shall be deemed to be the person entitled in any proceedings before the Office as well as in any other proceedings.

Article 18: Right of the designer to be cited

The designer shall have the right, in the same way as the applicant for or the holder of a registered Community design, to be cited as such before the Office and in the register. If the design is the result of teamwork, the citation of the team may replace the citation of the individual designers.

Section 4: Effects of the Community design

Article 19: Rights conferred by the Community design

1. A registered Community design shall confer on its holder the exclusive right to use it and to prevent any third party not having his consent from using it. The aforementioned use shall cover, in particular, the making, offering, putting on the market, importing, exporting or using of a product in which the design is incorporated or to which it is applied, or stocking such a product for those purposes.
2. An unregistered Community design shall, however, confer on its holder the right to prevent the acts referred to in paragraph 1 only if the contested use results from copying the protected design.
The contested use shall not be deemed to result from copying the protected design if it results from an independent work of creation by a designer who may be reasonably thought not to be familiar with the design made available to the public by the holder.
3. Paragraph 2 shall also apply to a registered Community design subject to deferment of publication as long as the relevant entries in the register and the file have not been made

available to the public in accordance with Article 50(4).

Article 20: Limitation of the rights conferred by a Community design

1. The rights conferred by a Community design shall not be exercised in respect of:
(a) acts done privately and for non-commercial purposes;
(b) acts done for experimental purposes;
(c) acts of reproduction for the purpose of making citations or of teaching, provided that such acts are compatible with fair trade practice and do not unduly prejudice the normal exploitation of the design, and that mention is made of the source.
2. In addition, the rights conferred by a Community design shall not be exercised in respect of:
(a) the equipment on ships and aircraft registered in a third country when these temporarily enter the territory of the Community;
(b) the importation in the Community of spare parts and accessories for the purpose of repairing such craft;
(c) the execution of repairs on such craft.

Article 21: Exhaustion of rights

The rights conferred by a Community design shall not extend to acts relating to a product in which a design included within the scope of protection of the Community design is incorporated or to which it is applied, when the product has been put on the market in the Community by the holder of the Community design or with his consent.

Article 22: Rights of prior use in respect of a registered Community design

1. A right of prior use shall exist for any third person who can establish that before the date of filing of the application, or, if a priority is claimed, before the date of priority, he has in good faith commenced use within the Community, or has made serious and effective preparations to that end, of a design included within the scope of protection of a registered Community design, which has not been copied from the latter.
2. The right of prior use shall entitle the third person to exploit the design for the purposes for which its use had been effected, or for which serious and effective preparations had been made, before the filing or priority date of the registered Community design.
3. The right of prior use shall not extend to granting a licence to another person to exploit the design.
4. The right of prior use cannot be transferred except, where the third person is a busines, along with that part of the business in the course of which the act was done or the preparations were made.

Article 23: Government use

Any provision in the law of a Member State allowing use of national designs by or for the government may be applied to Community designs, but only to the extent that the use is

necessary for essential defence or security needs.

Section 5: Invalidity

Article 24: Declaration of invalidity

1. A registered Community design shall be declared invalid on application to the Office in accordance with the procedure in Titles VI and VII or by a Community design court on the basis of a counterclaim in infringement proceedings.
2. A Community design may be declared invalid even after the Community design has lapsed or has been surrendered.
3. An unregistered Community design shall be declared invalid by a Community design court on application to such a court or on the basis of a counterclaim in infringement proceedings.

Article 25: Grounds for invalidity

1. A Community design may be declared invalid only in the following cases:
(a) if the design does not correspond to the definition under Article 3(a);
(b) if it does not fulfil the requirements of Articles 4 to 9;
(c) if, by virtue of a court decision, the right holder is not entitled to the Community design under Article 14;
(d) if the Community design is in conflict with a prior design which has been made available to the public after the date of filing of the application or, if a priority is claimed, the date of priority of the Community design, and which is protected from a date prior to the said date by a registered Community design or an application for such a design, or by a registered design right of a Member State, or by an application for such a right;
(e) if a distinctive sign is used in a subsequent design, and Community law or the law of the Member State governing that sign confers on the right holder of the sign the right to prohibit such use;
(f) if the design constitutes an unauthorised use of a work protected under the copyright law of a Member State;
(g) if the design constitutes an improper use of any of the items listed in Article 6ter of the Paris Convention for the Protection of Industrial Property, hereafter referred to as the "Paris Convention", or of badges, emblems and escutcheons other than those covered by the said Article 6ter and which are of particular public interest in a Member State.
2. The ground provided for in paragraph (1)(c) may be invoked solely by the person who is entitled to the Community design under Article 14.
3. The grounds provided for in paragraph (1)(d), (e) and (f) may be invoked solely by the applicant for or holder of the earlier right.
4. The ground provided for in paragraph (1)(g) may be invoked solely by the person or entity concerned by the use.
5. Paragraphs 3 and 4 shall be without prejudice to the freedom of Member States to provide that the grounds provided for in paragraphs 1(d) and (g) may also be invoked by the appropriate authority of the Member State in question on its own initiative.
6. A registered Community design which has been declared invalid pursuant to paragraph

(1)(b), (e), (f) or (g) may be maintained in an amended form, if in that form it complies with the requirements for protection and the identity of the design is retained. "Maintenance" in an amended form may include registration accompanied by a partial disclaimer by the holder of the registered Community design or entry in the register of a court decision or a decision by the Office declaring the partial invalidity of the registered Community design.

Article 26: Consequences of invalidity

1. A Community design shall be deemed not to have had, as from the outset, the effects specified in this Regulation, to the extent that it has been declared invalid.
2. Subject to the national provisions relating either to claims for compensation for damage caused by negligence or lack of good faith on the part of the holder of the Community design, or to unjust enrichment, the retroactive effect of invalidity of the Community design shall not affect:
(a) any decision on infringement which has acquired the authority of a final decision and been enforced prior to the invalidity decision;
(b) any contract concluded prior to the invalidity decision, in so far as it has been performed before the decision; however, repayment, to an extent justified by the circumstances, of sums paid under the relevant contract may be claimed on grounds of equity.

TITLE III: COMMUNITY DESIGNS AS OBJECTS OF PROPERTY

Article 27: Dealing with Community designs as national design rights

1. Unless Articles 28, 29, 30, 31 and 32 provide otherwise, a Community design as an object of property shall be dealt with in its entirety, and for the whole area of the Community, as a national design right of the Member State in which:
(a) the holder has his seat or his domicile on the relevant date; or
(b) where point (a) does not apply, the holder has an establishment on the relevant date.
2. In the case of a registered Community design, paragraph 1 shall apply according to the entries in the register.
3. In the case of joint holders, if two or more of them fulfil the condition under paragraph 1, the Member State referred to in that paragraph shall be determined:
(a) in the case of an unregistered Community design, by reference to the relevant joint holder designated by them by common agreement;
(b) in the case of a registered Community design, by reference to the first of the relevant joint holders in the order in which they are mentioned in the register.
4. Where paragraphs 1, 2 and 3 do not apply, the Member State referred to in paragraph 1 shall be the Member State in which the seat of the Office is situated.

Article 28: Transfer of the registered Community design

The transfer of a registered Community design shall be subject to the following provisions:

(a) at the request of one of the parties, a transfer shall be entered in the register and published;
(b) until such time as the transfer has been entered in the register, the successor in title may not invoke the rights arising from the registration of the Community design;
(c) where there are time limits to be observed in dealings with the Office, the successor in title may make the corresponding statements to the Office once the request for registration of the transfer has been received by the Office;
(d) all documents which by virtue of Article 66 require notification to the holder of the registered Community design shall be addressed by the Office to the person registered as holder or his representative, if one has been appointed.

Article 29: Rights in rem on a registered Community design

1. A registered Community design may be given as security or be the subject of rights in rem.
2. On request of one of the parties, the rights mentioned in paragraph 1 shall be entered in the register and published.

Article 30: Levy of execution

1. A registered Community design may be levied in execution.
2. As regards the procedure for levy of execution in respect of a registered Community design, the courts and authorities of the Member State determined in accordance with Article 27 shall have exclusive jurisdiction.
3. On request of one of the parties, levy of execution shall be entered in the register and published.

Article 31: Insolvency proceedings

1. The only insolvency proceedings in which a Community design may be involved shall be those opened in the Member State within the territory of which the centre of a debtor's main interests is situated.
2. In the case of joint proprietorship of a Community design, paragraph 1 shall apply to the share of the joint proprietor.
3. Where a Community design is involved in insolvency proceedings, on request of the competent national authority an entry to this effect shall be made in the register and published in the Community Designs Bulletin referred to in Article 73(1).

Article 32: Licensing

1. A Community design may be licensed for the whole or part of the Community. A licence may be exclusive or non-exclusive.
2. Without prejudice to any legal proceedings based on the law of contract, the holder may invoke the rights conferred by the Community design against a licensee who contravenes any provision in his licensing contract with regard to its duration, the form in which the design may be used, the range of products for which the licence is granted and

the quality of products manufactured by the licensee.
3. Without prejudice to the provisions of the licensing contract, the licensee may bring proceedings for infringement of a Community design only if the right holder consents thereto. However, the holder of an exclusive licence may bring such proceedings if the right holder in the Community design, having been given notice to do so, does not himself bring infringement proceedings within an appropriate period.
4. A licensee shall, for the purpose of obtaining compensation for damage suffered by him, be entitled to intervene in an infringement action brought by the right holder in a Community design.
5. In the case of a registered Community design, the grant or transfer of a licence in respect of such right shall, at the request of one of the parties, be entered in the register and published.

Article 33: Effects vis-à-vis third parties

1. The effects vis-à-vis third parties of the legal acts referred to in Articles 28, 29, 30 and 32 shall be governed by the law of the Member State determined in accordance with Article 27.
2. However, as regards registered Community designs, legal acts referred to in Articles 28, 29 and 32 shall only have effect vis-à-vis third parties in all the Member States after entry in the register. Nevertheless, such an act, before it is so entered, shall have effect vis-à-vis third parties who have acquired rights in the registered Community design after the date of that act but who knew of the act at the date on which the rights were acquired.
3. Paragraph 2 shall not apply to a person who acquires the registered Community design or a right concerning the registered Community design by way of transfer of the whole of the undertaking or by any other universal succession.
4. Until such time as common rules for the Member States in the field of insolvency enter into force, the effects vis-à-vis third parties of insolvency proceedings shall be governed by the law of the Member State in which such proceedings are first brought under the national law or the regulations applicable in this field.

Article 34: The application for a registered Community design as an object of property

1. An application for a registered Community design as an object of property shall be dealt with in its entirety, and for the whole area of the Community, as a national design right of the Member State determined in accordance with Article 27.
2. Articles 28, 29, 30, 31, 32 and 33 shall apply mutatis mutandis to applications for registered Community designs. Where the effect of one of these provisions is conditional upon an entry in the register, that formality shall be performed upon registration of the resulting registered Community design.

TITLE IV: APPLICATION FOR A REGISTERED COMMUNITY DESIGN

Section 1: Filing of applications and the conditions which govern them

Article 35: Filing and forwarding of applications

1. An application for a registered Community design shall be filed, at the option of the applicant:
(a) at the Office; or
(b) at the central industrial property office of a Member State; or
(c) in the Benelux countries, at the Benelux Design Office.
2. Where the application is filed at the central industrial property office of a Member State or at the Benelux Design Office, that office shall take all steps to forward the application to the Office within two weeks after filing. It may charge the applicant a fee which shall not exceed the administrative costs of receiving and forwarding the application.
3. As soon as the Office has received an application which has been forwarded by a central industrial property office of a Member State or by the Benelux Design Office, it shall inform the applicant accordingly, indicating the date of its receipt at the Office.
4. No less than 10 years after the entry into force of this Regulation, the Commission shall draw up a report on the operation of the system of filing applications for registered Community designs, accompanied by any proposals for revision that it may deem appropriate.

Article 36: Conditions with which applications must comply

1. An application for a registered Community design shall contain:
(a) a request for registration;
(b) information identifying the applicant;
(c) a representation of the design suitable for reproduction. However, if the object of the application is a two-dimensional design and the application contains a request for deferment of publication in accordance with Article 50, the representation of the design may be replaced by a specimen.
2. The application shall further contain an indication of the products in which the design is intended to be incorporated or to which it is intended to be applied.
3. In addition, the application may contain:
(a) a description explaining the representation or the specimen;
(b) a request for deferment of publication of the registration in accordance with Article 50;
(c) information identifying the representative if the applicant has appointed one;
(d) the classification of the products in which the design is intended to be incorporated or to which it is intended to be applied according to class;
(e) the citation of the designer or of the team of designers or a statement under the applicant's responsibility that the designer or the team of designers has waived the right to be cited.
4. The application shall be subject to the payment of the registration fee and the publication fee. Where a request for deferment under paragraph 3(b) is filed, the publication fee shall be replaced by the fee for deferment of publication.
5. The application shall comply with the conditions laid down in the implementing regulation.
6. The information contained in the elements mentioned in paragraph 2 and in paragraph

3(a) and (d) shall not affect the scope of protection of the design as such.

Article 37: Multiple applications

1. Several designs may be combined in one multiple application for registered Community designs. Except in cases of ornamentation, this possibility is subject to the condition that the products in which the designs are intended to be incorporated or to which they are intended to be applied all belong to the same class of the International Classification for Industrial Designs.
2. Besides the fees referred to in Article 36(4), the multiple application shall be subject to payment of an additional registration fee and an additional publication fee. Where the multiple application contains a request for deferment of publication, the additional publication fee shall be replaced by the additional fee for deferment of publication. The additional fees shall correspond to a percentage of the basic fees for each additional design.
3. The multiple application shall comply with the conditions of presentation laid down in the implementing regulation.
4. Each of the designs contained in a multiple application or registration may be dealt with separately from the others for the purpose of applying this Regulation. It may in particular, separately from the others, be enforced, licensed, be the subject of a right in rem, a levy of execution or insolvency proceedings, be surrendered, renewed or assigned, be the subject of deferred publication or be declared invalid. A multiple application or registration may be divided into separate applications or registrations only under the conditions set out in the implementing regulation.

Article 38: Date of filing

1. The date of filing of an application for a registered Community design shall be the date on which documents containing the information specified in Article 36(1) are filed with the Office by the applicant, or, if the application has been filed with the central industrial property office of a Member State or with the Benelux Design Office, with that office.
2. By derogation from paragraph 1, the date of filing of an application filed with the central industrial property office of a Member State or with the Benelux Design Office and reaching the Office more than two months after the date on which documents containing the information specified in Article 36(1) have been filed shall be the date of receipt of such documents by the Office.

Article 39: Equivalence of Community filing with national filing

An application for a registered Community design which has been accorded a date of filing shall, in the Member States, be equivalent to a regular national filing, including where appropriate the priority claimed for the said application.

Article 40: Classification

For the purpose of this Regulation, use shall be made of the Annex to the Agreement

establishing an International Classification for Industrial Designs, signed at Locarno on 8 October 1968.

Section 2: Priority

Article 41: Right of priority

1. A person who has duly filed an application for a design right or for a utility model in or for any State party to the Paris Convention for the Protection of Industrial Property, or to the Agreement establishing the World Trade Organisation, or his successors in title, shall enjoy, for the purpose of filing an application for a registered Community design in respect of the same design or utility model, a right of priority of six months from the date of filing of the first application.
2. Every filing that is equivalent to a regular national filing under the national law of the State where it was made or under bilateral or multilateral agreements shall be recognised as giving rise to a right of priority.
3. "Regular national filing" means any filing that is sufficient to establish the date on which the application was filed, whatever may be the outcome of the application.
4. A subsequent application for a design which was the subject of a previous first application, and which is filed in or in respect of the same State, shall be considered as the first application for the purpose of determining priority, provided that, at the date of the filing of the subsequent application, the previous application has been withdrawn, abandoned or refused without being open to public inspection and without leaving any rights outstanding, and has not served as a basis for claiming priority. The previous application may not thereafter serve as a basis for claiming a right of priority.
5. If the first filing has been made in a State which is not a party to the Paris Convention, or to the Agreement establishing the World Trade Organisation, paragraphs 1 to 4 shall apply only in so far as that State, according to published findings, grants, on the basis of a filing made at the Office and subject to conditions equivalent to those laid down in this Regulation, a right of priority having equivalent effect.

Article 42: Claiming priority

An applicant for a registered Community design desiring to take advantage of the priority of a previous application shall file a declaration of priority and a copy of the previous application. If the language of the latter is not one of the languages of the Office, the Office may require a translation of the previous application in one of those languages.

Article 43: Effect of priority right

The effect of the right of priority shall be that the date of priority shall count as the date of the filing of the application for a registered Community design for the purpose of Articles 5, 6, 7, 22, 25(1)(d) and 50(1).

Article 44: Exhibition priority

1. If an applicant for a registered Community design has disclosed products in which the design is incorporated, or to which it is applied, at an official or officially recognised international exhibition falling within the terms of the Convention on International Exhibitions signed in Paris on 22 November 1928 and last revised on 30 November 1972, he may, if he files the application within a period of six months from the date of the first disclosure of such products, claim a right of priority from that date within the meaning of Article 43.
2. An applicant who wishes to claim priority pursuant to paragraph 1, under the conditions laid down in the implementing regulation, must file evidence that he has disclosed at an exhibition the products in or to which the design is incorporated or applied.
3. An exhibition priority granted in a Member State or in a third country does not extend the period of priority laid down in Article 41.

TITLE V: REGISTRATION PROCEDURE

Article 45: Examination as to formal requirements for filing

1. The Office shall examine whether the application complies with the requirements laid down in Article 36(1) for the accordance of a date of filing.
2. The Office shall examine whether:
(a) the application complies with the other requirements laid down in Article 36(2), (3), (4) and (5) and, in the case of a multiple application, Article 37(1) and (2);
(b) the application meets the formal requirements laid down in the implementing regulation for the implementation of Articles 36 and 37;
(c) the requirements of Article 77(2) are satisfied;
(d) the requirements concerning the claim to priority are satisfied, if a priority is claimed.
3. The conditions for the examination as to the formal requirements for filing shall be laid down in the implementing regulation.

Article 46: Remediable deficiencies

1. Where, in carrying out the examination under Article 45, the Office notes that there are deficiencies which may be corrected, the Office shall request the applicant to remedy them within the prescribed period.
2. If the deficiencies concern the requirements referred to in Article 36(1) and the applicant complies with the Office's request within the prescribed period, the Office shall accord as the date of filing the date on which the deficiencies are remedied. If the deficiencies are not remedied within the prescribed period, the application shall not be dealt with as an application for a registered Community design.
3. If the deficiencies concern the requirements, including the payment of fees, as referred to in Article 45(2)(a), (b) and (c) and the applicant complies with the Office's request within the prescribed period, the Office shall accord as the date of filing the date on which the application was originally filed. If the deficiencies or the default in payment are not remedied within the prescribed period, the Office shall refuse the application.

4. If the deficiencies concern the requirements referred to in Article 45(2)(d), failure to remedy them within the prescribed period shall result in the loss of the right of priority for the application.

Article 47: Grounds for non-registrability

1. If the Office, in carrying out the examination pursuant to Article 45, notices that the design for which protection is sought:
(a) does not correspond to the definition under Article 3(a); or
(b) is contrary to public policy or to accepted principles of morality, it shall refuse the application.
2. The application shall not be refused before the applicant has been allowed the opportunity of withdrawing or amending the application or of submitting his observations.

Article 48: Registration

If the requirements that an application for a registered Community design must satisfy have been fulfilled and to the extent that the application has not been refused by virtue of Article 47, the Office shall register the application in the Community design Register as a registered Community design. The registration shall bear the date of filing of the application referred to in Article 38.

Article 49: Publication

Upon registration, the Office shall publish the registered Community design in the Community Designs Bulletin as mentioned in Article 73(1). The contents of the publication shall be set out in the implementing regulation.

Article 50: Deferment of publication

1. The applicant for a registered Community design may request, when filing the application, that the publication of the registered Community design be deferred for a period of 30 months from the date of filing the application or, if a priority is claimed, from the date of priority.
2. Upon such request, where the conditions set out in Article 48 are satisfied, the registered Community design shall be registered, but neither the representation of the design nor any file relating to the application shall, subject to Article 74(2), be open to public inspection.
3. The Office shall publish in the Community Designs Bulletin a mention of the deferment of the publication of the registered Community design. The mention shall be accompanied by information identifying the right holder in the registered Community design, the date of filing the application and any other particulars prescribed by the implementing regulation.
4. At the expiry of the period of deferment, or at any earlier date on request by the right holder, the Office shall open to public inspection all the entries in the register and the file

relating to the application and shall publish the registered Community design in the Community Designs Bulletin, provided that, within the time limit laid down in the implementing regulation:
(a) the publication fee and, in the event of a multiple application, the additional publication fee are paid;
(b) where use has been made of the option pursuant to Article 36(1)(c), the right holder has filed with the Office a representation of the design.
If the right holder fails to comply with these requirements, the registered Community design shall be deemed from the outset not to have had the effects specified in this Regulation.
5. In the case of multiple applications, paragraph 4 need only be applied to some of the designs included therein.
6. The institution of legal proceedings on the basis of a registered Community design during the period of deferment of publication shall be subject to the condition that the information contained in the register and in the file relating to the application has been communicated to the person against whom the action is brought.

TITLE VI: SURRENDER AND INVALIDITY OF THE REGISTERED COMMUNITY DESIGN

Article 51: Surrender

1. The surrender of a registered Community design shall be declared to the Office in writing by the right holder. It shall not have effect until it has been entered in the register.
2. If a Community design which is subject to deferment of publication is surrendered it shall be deemed from the outset not to have had the effects specified in this Regulation.
3. A registered Community design may be partially surrendered provided that its amended form complies with the requirements for protection and the identity of the design is retained.
4. Surrender shall be registered only with the agreement of the proprietor of a right entered in the register. If a licence has been registered, surrender shall be entered in the register only if the right holder in the registered Community design proves that he has informed the licensee of his intention to surrender. This entry shall be made on expiry of the period prescribed by the implementing regulation.
5. If an action pursuant to Article 14 relating to the entitlement to a registered Community design has been brought before a Community design court, the Office shall not enter the surrender in the register without the agreement of the claimant.

Article 52: Application for a declaration of invalidity

1. Subject to Article 25(2), (3), (4) and (5), any natural or legal person, as well as a public authority empowered to do so, may submit to the Office an application for a declaration of invalidity of a registered Community design.
2. The application shall be filed in a written reasoned statement. It shall not be deemed to have been filed until the fee for an application for a declaration of invalidity has been paid.

3. An application for a declaration of invalidity shall not be admissible if an application relating to the same subject matter and cause of action, and involving the same parties, has been adjudicated on by a Community design court and has acquired the authority of a final decision.

Article 53: Examination of the application

1. If the Office finds that the application for a declaration of invalidity is admissible, the Office shall examine whether the grounds for invalidity referred to in Article 25 prejudice the maintenance of the registered Community design.
2. In the examination of the application, which shall be conducted in accordance with the implementing regulation, the Office shall invite the parties, as often as necessary, to file observations, within a period to be fixed by the Office, on communications from the other parties or issued by itself.
3. The decision declaring the registered Community design invalid shall be entered in the register upon becoming final.

Article 54: Participation in the proceedings of the alleged infringer

1. In the event of an application for a declaration of invalidity of a registered Community design being filed, and as long as no final decision has been taken by the Office, any third party who proves that proceedings for infringement of the same design have been instituted against him may be joined as a party in the invalidity proceedings on request submitted within three months of the date on which the infringement proceedings were instituted.
The same shall apply in respect of any third party who proves both that the right holder of the Community design has requested that he cease an alleged infringement of the design and that he has instituted proceedings for a court ruling that he is not infringing the Community design.
2. The request to be joined as a party shall be filed in a written reasoned statement. It shall not be deemed to have been filed until the invalidity fee, referred to in Article 52(2), has been paid. Thereafter the request shall, subject to any exceptions laid down in the implementing regulation, be treated as an application for a declaration of invalidity.

TITLE VII: APPEALS

Article 55: Decisions subject to appeal

1. An appeal shall lie from decisions of the examiners, the Administration of Trade Marks and Designs and Legal Division and Invalidity Divisions. It shall have suspensive effect.
2. A decision which does not terminate proceedings as regards one of the parties can only be appealed together with the final decision, unless the decision allows separate appeal.

Article 56: Persons entitled to appeal and to be parties to appeal proceedings

Any party to proceedings adversely affected by a decision may appeal. Any other parties to the proceedings shall be parties to the appeal proceedings as of right.

Article 57: Time limit and form of appeal

Notice of appeal must be filed in writing at the Office within two months after the date of notification of the decision appealed from. The notice shall be deemed to have been filed only when the fee for appeal has been paid. Within four months after the date of notification of the decision, a written statement setting out the grounds of appeal must be filed.

Article 58: Interlocutory revision

1. If the department whose decision is contested considers the appeal to be admissible and well founded, it shall rectify its decision. This shall not apply where the appellant is opposed by another party to the proceedings.
2. If the decision is not rectified within one month after receipt of the statement of grounds, the appeal shall be remitted to the Board of Appeal without delay and without comment as to its merits.

Article 59: Examination of appeals

1. If the appeal is admissible, the Board of Appeal shall examine whether the appeal is to be allowed.
2. In the examination of the appeal, the Board of Appeal shall invite the parties, as often as necessary, to file observations, within a period to be fixed by the Board of Appeal, on communications from the other parties or issued by itself.

Article 60: Decisions in respect of appeals

1. Following the examination as to the merits of the appeal, the Board of Appeal shall decide on the appeal. The Board of Appeal may either exercise any power within the competence of the department which was responsible for the decision appealed against or remit the case to that department for further prosecution.
2. If the Board of Appeal remits the case for further prosecution to the department whose decision was appealed, that department shall be bound by the ratio decidendi of the Board of Appeal, in so far as the facts are the same.
3. The decisions of the Boards of Appeal shall take effect only from the date of expiry of the period referred to in Article 61(5) or, if an action has been brought before the Court of Justice within that period, from the date of rejection of such action.

Article 61: Actions before the Court of Justice

1. Actions may be brought before the Court of Justice against decisions of the Boards of Appeal on appeals.

2. The action may be brought on grounds of lack of competence, infringement of an essential procedural requirement, infringement of the Treaty, of this Regulation or of any rule of law relating to their application or misuse of power.
3. The Court of Justice has jurisdiction to annul or to alter the contested decision.
4. The action shall be open to any party to proceedings before the Board of Appeal adversely affected by its decision.
5. The action shall be brought before the Court of Justice within two months of the date of notification of the decision of the Board of Appeal.
6. The Office shall be required to take the necessary measures to comply with the judgment of the Court of Justice.

TITLE VIII: PROCEDURE BEFORE THE OFFICE

Section 1: General provisions

Article 62: Statement of reasons on which decisions are based

Decisions of the Office shall state the reasons on which they are based. They shall be based only on reasons or evidence on which the parties concerned have had an opportunity to present their comments.

Article 63: Examination of the facts by the Office of its own motion

1. In proceedings before it the Office shall examine the facts of its own motion. However, in proceedings relating to a declaration of invalidity, the Office shall be restricted in this examination to the facts, evidence and arguments provided by the parties and the relief sought.
2. The Office may disregard facts or evidence which are not submitted in due time by the parties concerned.

Article 64: Oral proceedings

1. If the Office considers that oral proceedings would be expedient, they shall be held either at the instance of the Office or at the request of any party to the proceedings.
2. Oral proceedings, including delivery of the decision, shall be public, unless the department before which the proceedings are taking place decides otherwise in cases where admission of the public could have serious and unjustified disadvantages, in particular for a party to the proceedings.

Article 65: Taking of evidence

1. In any proceedings before the Office the means of giving or obtaining evidence shall include the following:
(a) hearing the parties;
(b) requests for information;
(c) the production of documents and items of evidence;

(d) hearing witnesses;
(e) opinions by experts;
(f) statements in writing, sworn or affirmed or having a similar effect under the law of the State in which the statement is drawn up.
2. The relevant department of the Office may commission one of its members to examine the evidence adduced.
3. If the Office considers it necessary for a party, witness or expert to give evidence orally, it shall issue a summons to the person concerned to appear before it.
4. The parties shall be informed of the hearing of a witness or expert before the Office. They shall have the right to be present and to put questions to the witness or expert.

Article 66: Notification

The Office shall, as a matter of course, notify those concerned of decisions and summonses and of any notice or other communication from which a time limit is reckoned, or of which those concerned must be notified under other provisions of this Regulation or of the implementing regulation, or of which notification has been ordered by the President of the Office.

Article 67: Restitutio in integrum

1. The applicant for or holder of a registered Community design or any other party to proceedings before the Office who, in spite of all due care required by the circumstances having been taken, was unable to observe a time limit vis-à-vis the Office shall, upon application, have his rights re-established if the non-observance in question has the direct consequence, by virtue of the provisions of this Regulation, of causing the loss of any rights or means of redress.
2. The application must be filed in writing within two months of the removal of the cause of non-compliance with the time limit. The omitted act must be completed within this period. The application shall only be admissible within the year immediately following the expiry of the unobserved time limit. In the case of non-submission of the request for renewal of registration or of non-payment of a renewal fee, the further period of six months provided for in the second sentence of Article 13(3) shall be deducted from the period of one year.
3. The application must state the grounds on which it is based and must set out the facts on which it relies. It shall not be deemed to be filed until the fee for the re-establishment of rights has been paid.
4. The department competent to decide on the omitted act shall decide upon the application.
5. The provisions of this Article shall not be applicable to the time limits referred to in paragraph 2 and Article 41(1).
6. Where the applicant for or holder of a registered Community design has his rights re-established, he may not invoke his rights vis-à-vis a third party who, in good faith, in the course of the period between the loss of rights in the application for or registration of the registered Community design and publication of the mention of re-establishment of those rights, has put on the market products in which a design included within the scope of

protection of the registered Community design is incorporated or to which it is applied.
7. A third party who may avail himself of the provisions of paragraph 6 may bring third party proceedings against the decision re-establishing the rights of the applicant for or holder of the registered Community design within a period of two months as from the date of publication of the mention of re-establishment of those rights.
8. Nothing in this Article shall limit the right of a Member State to grant restitutio in integrum in respect of time limits provided for in this Regulation and to be complied with vis-à-vis the authorities of such State.

Article 68: Reference to general principles

In the absence of procedural provisions in this Regulation, the implementing regulation, the fees regulation or the rules of procedure of the Boards of Appeal, the Office shall take into account the principles of procedural law generally recognised in the Member States.

Article 69: Termination of financial obligations

1. Rights of the Office to the payment of fees shall be barred four years from the end of the calendar year in which the fee fell due.
2. Rights against the Office for the refunding of fees or sums of money paid in excess of a fee shall be barred after four years from the end of the calendar year in which the right arose.
3. The periods laid down in paragraphs 1 and 2 shall be interrupted, in the case covered by paragraph 1, by a request for payment of the fee and, in the case covered by paragraph 2, by a reasoned claim in writing. On interruption it shall begin again immediately and shall end at the latest six years after the end of the year in which it originally began, unless in the meantime judicial proceedings to enforce the right have begun. In this case the period shall end at the earliest one year after the judgment has acquired the authority of a final decision.

Section 2: Costs

Article 70: Apportionment of costs

1. The losing party in proceedings for a declaration of invalidity of a registered Community design or appeal proceedings shall bear the fees incurred by the other party as well as all costs incurred by him essential to the proceedings, including travel and subsistence and the remuneration of an agent, adviser or advocate, within the limits of scales set for each category of costs under the conditions laid down in the implementing regulation.
2. However, where each party succeeds on some and fails on other heads, or if reasons of equity so dictate, the Invalidity Division or Board of Appeal shall decide a different apportionment of costs.
3. A party who terminates the proceedings by surrendering the registered Community design or by not renewing its registration or by withdrawing the application for a declaration of invalidity or the appeal, shall bear the fees and the costs incurred by the

other party as stipulated in paragraphs 1 and 2.
4. Where a case does not proceed to judgment, the costs shall be at the discretion of the Invalidity Division or Board of Appeal.
5. Where the parties conclude before the Invalidity Division or Board of Appeal a settlement of costs differing from that provided for in paragraphs 1, 2, 3 and 4, the body concerned shall take note of that agreement.
6. On request, the registry of the Invalidity Division or Board of Appeal shall fix the amount of the costs to be paid pursuant to the preceding paragraphs. The amount so determined may be reviewed by a decision of the Invalidity Division or Board of Appeal on a request filed within the period prescribed by the implementing regulation.

Article 71: Enforcement of decisions fixing the amount of costs

1. Any final decision of the Office fixing the amount of costs shall be enforceable.
2. Enforcement shall be governed by the rules of civil procedure in force in the State in the territory of which it is carried out. The order for its enforcement shall be appended to the decision, without any other formality than verification of the authenticity of the decision, by the national authority which the government of each Member State shall designate for this purpose and shall make known to the Office and to the Court of Justice.
3. When these formalities have been completed on application by the party concerned, the latter may proceed to enforcement in accordance with the national law, by bringing the matter directly before the competent authority.
4. Enforcement may be suspended only by a decision of the Court of Justice. However, the courts of the Member State concerned shall have jurisdiction over complaints that enforcement is being carried out in an irregular manner.

Section 3: Informing the public and the official authorities of the Member States

Article 72: Register of Community designs

The Office shall keep a register to be known as the register of Community designs, which shall contain those particulars of which the registration is provided for by this Regulation or by the implementing regulation. The register shall be open to public inspection, except to the extent that Article 50(2) provides otherwise.

Article 73: Periodical publications

1. This Office shall periodically publish a Community Designs Bulletin containing entries open to public inspection in the register as well as other particulars the publication of which is prescribed by this Regulation or by the implementing regulation.
2. Notices and information of a general character issued by the President of the Office, as well as any other information relevant to this Regulation or its implementation, shall be published in the Official Journal of the Office.

Article 74: Inspection of files

1. The files relating to applications for registered Community designs which have not yet been published or the files relating to registered Community designs which are subject to deferment of publication in accordance with Article 50 or which, being subject to such deferment, have been surrendered before or on the expiry of that period, shall not be made available for inspection without the consent of the applicant for or the right holder in the registered Community design.
2. Any person who can establish a legitimate interest may inspect a file without the consent of the applicant for or holder of the registered Community design prior to the publication or after the surrender of the latter in the case provided for in paragraph 1. This shall in particular apply if the interested person proves that the applicant for or the holder of the registered Community design has taken steps with a view to invoking against him the right under the registered Community design.
3. Subsequent to the publication of the registered Community design, the file may be inspected on request.
4. However, where a file is inspected pursuant to paragraph 2 or 3, certain documents in the file may be withheld from inspection in accordance with the provisions of the implementing regulation.

Article 75: Administrative cooperation

Unless otherwise provided in this Regulation or in national laws, the Office and the courts or authorities of the Member States shall on request give assistance to each other by communicating information or opening files for inspection.
Where the Office opens files to inspection by courts, public prosecutors' offices or central industrial property offices, the inspection shall not be subject to the restrictions laid down in Article 74.

Article 76: Exchange of publications

1. The Office and the central industrial property offices of the Member States shall despatch to each other on request and for their own use one or more copies of their respective publications free of charge.
2. The Office may conclude agreements relating to the exchange or supply of publications.

Section 4: Representation

Article 77: General principles of representation

1. Subject to paragraph 2, no person shall be compelled to be represented before the Office.
2. Without prejudice to the second subparagraph of paragraph 3, natural or legal persons not having either their domicile or their principal place of business or a real and effective industrial or commercial establishment in the Community must be represented before the

Office in accordance with Article 78(1) in all proceedings before the Office established by this Regulation, other than in filing an application for a registered Community design; the implementing regulation may permit other exceptions.
3. Natural or legal persons having their domicile or principal place of business or a real and effective industrial or commercial establishment in the Community may be represented before the Office by one of their employees, who must file with it a signed authorisation for inclusion in the files, the details of which are set out in the implementing regulation.
An employee of a legal person to which this paragraph applies may also represent other legal persons which have economic connections with the first legal person, even if those other legal persons have neither their domicile nor their principal place of business nor a real and effective industrial or commercial establishment within the Community.

Article 78: Professional representation

1. Representation of natural or legal persons in proceedings before the Office under this Regulation may only be undertaken by:
(a) any legal practitioner qualified in one of the Member States and having his place of business within the Community, to the extent that he is entitled, within the said State, to act as a representative in industrial property matters; or
(b) any professional representatives whose name has been entered on the list of professional representatives referred to in Article 89(1)(b) of the Regulation on the Community trade mark; or
(c) persons whose names are entered on the special list of professional representatives for design matters referred to in paragraph 4.
2. The persons referred to in paragraph 1(c) shall only be entitled to represent third persons in proceedings on design matters before the Office.
3. The implementing regulation shall provide whether and under what conditions representatives must file with the Office a signed authorisation for insertion on the files.
4. Any natural person may be entered on the special list of professional representatives in design matters, if he fulfils the following conditions:
(a) he must be a national of one of the Member States;
(b) he must have his place of business or employment in the Community;
(c) he must be entitled to represent natural or legal persons in design matters before the central industrial property office of a Member State or before the Benelux Design Office. Where, in that State, the entitlement to represent in design matters is not conditional upon the requirement of special professional qualifications, persons applying to be entered on the list must have habitually acted in design matters before the central industrial property office of the said State for at least five years. However, persons whose professional qualification to represent natural or legal persons in design matters before the central industrial property office of one of the Member States is officially recognised in accordance with the regulations laid by such State shall not be subject to the condition of having exercised the profession.
5. Entry on the list referred to in paragraph 4 shall be effected upon request, accompanied by a certificate furnished by the central industrial property office of the Member State concerned, which must indicate that the conditions laid down in the said paragraph are

fulfilled.
6. The President of the Office may grant exemption from:
(a) the requirement of paragraph 4(a) in special circumstances;
(b) the requirement of paragraph 4(c), second sentence, if the applicant furnishes proof that he has acquired the requisite qualification in another way.
7. The conditions under which a person may be removed from the list shall be laid down in the implementing regulation.

TITLE IX: JURISDICTION AND PROCEDURE IN LEGAL ACTIONS RELATING TO COMMUNITY DESIGNS

Section 1: Jurisdiction and enforcement

Article 79: Application of the Convention on Jurisdiction and Enforcement

1. Unless otherwise specified in this Regulation, the Convention on Jurisdiction and the Enforcement of Judgements in Civil and Commercial Matters, signed in Brussels on 27 September 1968(7), hereinafter referred to as the "Convention on Jurisdiction and Enforcement", shall apply to proceedings relating to Community designs and applications for registered Community designs, as well as to proceedings relating to actions on the basis of Community designs and national designs enjoying simultaneous protection.
2. The provisions of the Convention on Jurisdiction and Enforcement which are rendered applicable by the paragraph 1 shall have effect in respect of any Member State solely in the text which is in force in respect of that State at any given time.
3. In the event of proceedings in respect of the actions and claims referred to in Article 85:
(a) Articles 2, 4, 5(1), (3), (4) and (5), 16(4) and 24 of the Convention on Jurisdiction and Enforcement shall not apply;
(b) Articles 17 and 18 of that Convention shall apply subject to the limitations in Article 82(4) of this Regulation;
(c) the provisions of Title II of that Convention which are applicable to persons domiciled in a Member State shall also be applicable to persons who do not have a domicile in any Member State but have an establishment therein.
4. The provisions of the Convention on Jurisdiction and Enforcement shall not have effect in respect of any Member State for which that Convention has not yet entered into force. Until such entry into force, proceedings referred to in paragraph 1 shall be governed in such a Member State by any bilateral or multilateral convention governing its relationship with another Member State concerned, or, if no such convention exists, by its domestic law on jurisdiction, recognition and enforcement of decisions.

Section 2: Disputes concerning the infringement and validity of Community designs

Article 80: Community design courts

1. The Member States shall designate in their territories as limited a number as possible of national courts and tribunals of first and second instance (Community design courts)

which shall perform the functions assigned to them by this Regulation.
2. Each Member State shall communicate to the Commission not later than 6 March 2005 a list of Community design courts, indicating their names and their territorial jurisdiction.
3. Any change made after communication of the list referred to in paragraph 2 in the number, names or territorial jurisdiction of the Community design courts shall be notified without delay by the Member State concerned to the Commission.
4. The information referred to in paragraphs 2 and 3 shall be notified by the Commission to the Member States and published in the Official Journal of the European Communities.
5. As long as a Member State has not communicated the list as stipulated in paragraph 2, jurisdiction for any proceedings resulting from an action covered by Article 81 for which the courts of that State have jurisdiction pursuant to Article 82 shall lie with that court of the State in question which would have jurisdiction ratione loci and ratione materiae in the case of proceedings relating to a national design right of that State.

Article 81: Jurisdiction over infringement and validity

The Community design courts shall have exclusive jurisdiction:
(a) for infringement actions and - if they are permitted under national law - actions in respect of threatened infringement of Community designs;
(b) for actions for declaration of non-infringement of Community designs, if they are permitted under national law;
(c) for actions for a declaration of invalidity of an unregistered Community design;
(d) for counterclaims for a declaration of invalidity of a Community design raised in connection with actions under (a).

Article 82: International jurisdiction

1. Subject to the provisions of this Regulation and to any provisions of the Convention on Jurisdiction and Enforcement applicable by virtue of Article 79, proceedings in respect of the actions and claims referred to in Article 81 shall be brought in the courts of the Member State in which the defendant is domiciled or, if he is not domiciled in any of the Member States, in any Member State in which he has an establishment.
2. If the defendant is neither domiciled nor has an establishment in any of the Member States, such proceedings shall be brought in the courts of the Member State in which the plaintiff is domiciled or, if he is not domiciled in any of the Member States, in any Member State in which he has an establishment.
3. If neither the defendant nor the plaintiff is so domiciled or has such an establishment, such proceedings shall be brought in the courts of the Member State where the Office has its seat.
4. Notwithstanding paragraphs 1, 2 and 3:
(a) Article 17 of the Convention on Jurisdiction and Enforcement shall apply if the parties agree that a different Community design court shall have jurisdiction;
(b) Article 18 of that Convention shall apply if the defendant enters an appearance before a different Community design court.
5. Proceedings in respect of the actions and claims referred to in Article 81(a) and (d) may also be brought in the courts of the Member State in which the act of infringement

has been committed or threatened.

Article 83: Extent of jurisdiction on infringement

1. A Community design court whose jurisdiction is based on Article 82(1), (2) (3) or (4) shall have jurisdiction in respect of acts of infringement committed or threatened within the territory of any of the Member States.
2. A Community design court whose jurisdiction is based on Article 82(5) shall have jurisdiction only in respect of acts of infringement committed or threatened within the territory of the Member State in which that court is situated.

Article 84: Action or counterclaim for a declaration of invalidity of a Community design

1. An action or a counterclaim for a declaration of invalidity of a Community design may only be based on the grounds for invalidity mentioned in Article 25.
2. In the cases referred to in Article 25(2), (3), (4) and (5) the action or the counterclaim may be brought solely by the person entitled under those provisions.
3. If the counterclaim is brought in a legal action to which the right holder of the Community design is not already a party, he shall be informed thereof and may be joined as a party to the action in accordance with the conditions set out in the law of the Member State where the court is situated.
4. The validity of a Community design may not be put in issue in an action for a declaration of non-infringement.

Article 85: Presumption of validity - defence as to the merits

1. In proceedings in respect of an infringement action or an action for threatened infringement of a registered Community design, the Community design court shall treat the Community design as valid. Validity may be challenged only with a counterclaim for a declaration of invalidity. However, a plea relating to the invalidity of a Community design, submitted otherwise than by way of counterclaim, shall be admissible in so far as the defendant claims that the Community design could be declared invalid on account of an earlier national design right, within the meaning of Article 25(1)(d), belonging to him.
2. In proceedings in respect of an infringement action or an action for threatened infringement of an unregistered Community design, the Community design court shall treat the Community design as valid if the right holder produces proof that the conditions laid down in Article 11 have been met and indicates what constitutes the individual character of his Community design. However, the defendant may contest its validity by way of a plea or with a counterclaim for a declaration of invalidity.

Article 86: Judgments of invalidity

1. Where in a proceeding before a Community design court the Community design has been put in issue by way of a counterclaim for a declaration of invalidity:
(a) if any of the grounds mentioned in Article 25 are found to prejudice the maintenance of the Community design, the court shall declare the Community design invalid;

(b) if none of the grounds mentioned in Article 25 is found to prejudice the maintenance of the Community design, the court shall reject the counterclaim.
2. The Community design court with which a counterclaim for a declaration of invalidity of a registered Community design has been filed shall inform the Office of the date on which the counterclaim was filed. The latter shall record this fact in the register.
3. The Community design court hearing a counterclaim for a declaration of invalidity of a registered Community design may, on application by the right holder of the registered Community design and after hearing the other parties, stay the proceedings and request the defendant to submit an application for a declaration of invalidity to the Office within a time limit which the court shall determine. If the application is not made within the time limit, the proceedings shall continue; the counterclaim shall be deemed withdrawn. Article 91(3) shall apply.
4. Where a Community design court has given a judgment which has become final on a counterclaim for a declaration of invalidity of a registered Community design, a copy of the judgment shall be sent to the Office. Any party may request information about such transmission. The Office shall mention the judgment in the register in accordance with the provisions of the implementing regulation.
5. No counterclaim for a declaration of invalidity of a registered Community design may be made if an application relating to the same subject matter and cause of action, and involving the same parties, has already been determined by the Office in a decision which has become final.

Article 87: Effects of the judgement on invalidity

When it has become final, a judgment of a Community design court declaring a Community design invalid shall have in all the Member States the effects specified in Article 26.

Article 88: Applicable law

1. The Community design courts shall apply the provisions of this Regulation.
2. On all matters not covered by this Regulation, a Community design court shall apply its national law, including its private international law.
3. Unless otherwise provided in this Regulation, a Community design court shall apply the rules of procedure governing the same type of action relating to a national design right in the Member State where it is situated.

Article 89: Sanctions in actions for infringement

1. Where in an action for infringement or for threatened infringement a Community design court finds that the defendant has infringed or threatened to infringe a Community design, it shall, unless there are special reasons for not doing so, order the following measures:
(a) an order prohibiting the defendant from proceeding with the acts which have infringed or would infringe the Community design;
(b) an order to seize the infringing products;

(c) an order to seize materials and implements predominantly used in order to manufacture the infringing goods, if their owner knew the effect for which such use was intended or if such effect would have been obvious in the circumstances;
(d) any order imposing other sanctions appropriate under the circumstances which are provided by the law of the Member State in which the acts of infringement or threatened infringement are committed, including its private international law.
2. The Community design court shall take such measures in accordance with its national law as are aimed at ensuring that the orders referred to in paragraph 1 are complied with.

Article 90: Provisional measures, including protective measures

1. Application may be made to the courts of a Member State, including Community design courts, for such provisional measures, including protective measures, in respect of a Community design as may be available under the law of that State in respect of national design rights even if, under this Regulation, a Community design court of another Member State has jurisdiction as to the substance of the matter.
2. In proceedings relating to provisional measures, including protective measures, a plea otherwise than by way of counterclaim relating to the invalidity of a Community design submitted by the defendant shall be admissible. Article 85(2) shall, however, apply mutatis mutandis.
3. A Community design court whose jurisdiction is based on Article 82(1), (2), (3) or (4) shall have jurisdiction to grant provisional measures, including protective measures, which, subject to any necessary procedure for recognition and enforcement pursuant to Title III of the Convention on Jurisdiction and Enforcement, are applicable in the territory of any Member State. No other court shall have such jurisdiction.

Article 91: Specific rules on related actions

1. A Community design court hearing an action referred to in Article 81, other than an action for a declaration of non-infringement, shall, unless there are special grounds for continuing the hearing, of its own motion after hearing the parties, or at the request of one of the parties and after hearing the other parties, stay the proceedings where the validity of the Community design is already in issue before another Community design court on account of a counterclaim or, in the case of a registered Community design, where an application for a declaration of invalidity has already been filed at the Office.
2. The Office, when hearing an application for a declaration of invalidity of a registered Community design, shall, unless there are special grounds for continuing the hearing, of its own motion after hearing the parties, or at the request of one of the parties and after hearing the other parties, stay the proceedings where the validity of the registered Community design is already in issue on account of a counterclaim before a Community design court. However, if one of the parties to the proceedings before the Community design court so requests, the court may, after hearing the other parties to these proceedings, stay the proceedings. The Office shall in this instance continue the proceedings pending before it.
3. Where the Community design court stays the proceedings it may order provisional measures, including protective measures, for the duration of the stay.

Article 92: Jurisdiction of Community design courts of second instance - further appeal

1. An appeal to the Community design courts of second instance shall lie from judgments of the Community design courts of first instance in respect of proceedings arising from the actions and claims referred to in Article 81.
2. The conditions under which an appeal may be lodged with a Community design court of second instance shall be determined by the national law of the Member State in which that court is located.
3. The national rules concerning further appeal shall be applicable in respect of judgments of Community design courts of second instance.

Section 3: Other disputes concerning Community designs

Article 93: Supplementary provisions on the jurisdiction of national courts other than Community design courts

1. Within the Member State whose courts have jurisdiction under Article 79(1) or (4), those courts shall have jurisdiction for actions relating to Community designs other than those referred to in Article 81 which would have jurisdiction ratione loci and ratione materiae in the case of actions relating to a national design right in that State.
2. Actions relating to a Community design, other than those referred to in Article 81, for which no court has jurisdiction pursuant to Article 79(1) and (4) and paragraph 1 of this Article may be heard before the courts of the Member State in which the Office has its seat.

Article 94: Obligation of the national court

A national court which is dealing with an action relating to a Community design other than the actions referred to in Article 81 shall treat the design as valid. Articles 85(2) and 90(2) shall, however, apply mutatis mutandis.

TITLE X: EFFECTS ON THE LAWS OF THE MEMBER STATES

Article 95: Parallel actions on the basis of Community designs and national design rights

1. Where actions for infringement or for threatened infringement involving the same cause of action and between the same parties are brought before the courts of different Member States, one seized on the basis of a Community design and the other seized on the basis of a national design right providing simultaneous protection, the court other than the court first seized shall of its own motion decline jurisdiction in favour of that court. The court which would be required to decline jurisdiction may stay its proceedings if the jurisdiction of the other court is contested.
2. The Community design court hearing an action for infringement or threatened infringement on the basis of a Community design shall reject the action if a final judgment on the merits has been given on the same cause of action and between the same

parties on the basis of a design right providing simultaneous protection.
3. The court hearing an action for infringement or for threatened infringement on the basis of a national design right shall reject the action if a final judgment on the merits has been given on the same cause of action and between the same parties on the basis of a Community design providing simultaneous protection.
4. Paragraphs 1, 2 and 3 shall not apply in respect of provisional measures, including protective measures.

Article 96: Relationship to other forms of protection under national law

1. The provisions of this Regulation shall be without prejudice to any provisions of Community law or of the law of the Member States concerned relating to unregistered designs, trade marks or other distinctive signs, patents and utility models, typefaces, civil liability and unfair competition.
2. A design protected by a Community design shall also be eligible for protection under the law of copyright of Member States as from the date on which the design was created or fixed in any form. The extent to which, and the conditions under which, such a protection is conferred, including the level of originality required, shall be determined by each Member State.

TITLE XI: SUPPLEMENTARY PROVISIONS CONCERNING THE OFFICE

Section 1: General provisions

Article 97: General provision

Unless otherwise provided in this Title, Title XII of the Regulation on the Community trade mark shall apply to the Office with regard to its tasks under this Regulation.

Article 98: Language of proceedings

1. The application for a registered Community design shall be filed in one of the official languages of the Community.
2. The applicant must indicate a second language which shall be a language of the Office the use of which he accepts as a possible language of proceedings before the Office.
If the application was filed in a language which is not one of the languages of the Office, the Office shall arrange to have the application translated into the language indicated by the applicant.
3. Where the applicant for a registered Community design is the sole party to proceedings before the Office, the language of proceedings shall be the language used for filing the application. If the application was made in a language other then the languages of the Office, the Office may send written communications to the applicant in the second language indicated by the applicant in his application.
4. In the case of invalidity proceedings, the language of proceedings shall be the language used for filing the application for a registered Community design if this is one of the languages of the Office. If the application was made in a language other than the

languages of the Office, the language of proceedings shall be the second language indicated in the application.
The application for a declaration of invalidity shall be filed in the language of proceedings.
Where the language of proceedings is not the language used for filing the application for a registered Community design, the right holder of the Community design may file observations in the language of filing. The Office shall arrange to have those observations translated into the language of proceedings.
The implementing regulation may provide that the translation expenses to be borne by the Office may not, subject to a derogation granted by the Office where justified by the complexity of the case, exceed an amount to be fixed for each category of proceedings on the basis of the average size of statements of case received by the Office. Expenditure in excess of this amount may be allocated to the losing party in accordance with Article 70.
5. Parties to invalidity proceedings may agree that a different official language of the Community is to be the language of the proceedings.

Article 99: Publication and register

1. All information the publication of which is prescribed by this Regulation or the implementing regulation shall be published in all the official languages of the Community.
2. All entries in the Register of Community designs shall be made in all the official languages of the Community.
3. In cases of doubt, the text in the language of the Office in which the application for a registered Community design was filed shall be authentic. If the application was filed in an official language of the Community other than one of the languages of the Office, the text in the second language indicated by the applicant shall be authentic.

Article 100: Supplementary powers of the President

In addition to the functions and powers conferred on the President of the Office by Article 119 of the Regulation on the Community trade mark, the President may place before the Commission any proposal to amend this Regulation, the implementing regulation, the fees regulation and any other rule to the extent that they apply to registered Community designs, after consulting the Administrative Board and, in the case of the fees regulation, the Budget Committee.

Article 101: Supplementary powers of the Administrative Board

In addition to the powers conferred on it by Article 121 et seq of the Regulation on the Community trade mark or by other provisions of this Regulation, the Administrative Board:
(a) shall set the date for the first filing of applications for registered Community designs pursuant to Article 111(2);
(b) shall be consulted before adoption of the guidelines for examination as to formal requirements, examination as to grounds for refusal of registration and invalidity

proceedings in the Office and in the other cases provided for in this Regulation.

Section 2: Procedures

Article 102: Competence

For taking decisions in connection with the procedures laid down in this Regulation the following shall be competent:
(a) examiners;
(b) the Administration of Trade Marks and Designs and Legal Division;
(c) Invalidity Divisions;
(d) Boards of Appeal.

Article 103: Examiners

An examiner shall be responsible for taking decisions on behalf of the Office in relation to an application for a registered Community design.

Article 104: The Administration of Trade Marks and Designs and Legal Division

1. The Administration of Trade Marks and Legal Division provided for by Article 128 of the Regulation on the Community trade mark shall become the Administration of Trade Marks and Designs and Legal Division.
2. In addition to the powers conferred upon it by the Regulation on the Community trade mark, it shall be responsible for taking those decisions required by this Regulation which do not fall within the competence of an examiner or an Invalidity Division. It shall in particular be responsible for decisions in respect of entries in the register.

Article 105: Invalidity Divisions

1. An Invalidity Division shall be responsible for taking decisions in relation to applications for declarations of invalidity of registered Community designs.
2. An Invalidity Division shall consist of three members. At least one of the members must be legally qualified.

Article 106: Boards of Appeal

In addition to the powers conferred upon it by Article 131 of the Regulation on the Community trade mark, the Boards of Appeal instituted by that Regulation shall be responsible for deciding on appeals from decisions of the examiners, the Invalidity Divisions and from the decisions of the Administration of Trade Marks and Designs and Legal Division as regards their decisions concerning Community designs.

TITLE XII: FINAL PROVISIONS

Article 107: Implementing regulation

1. The rules implementing this Regulation shall be adopted in an implementing regulation.
2. In addition to the fees already provided for in this Regulation, fees shall be charged, in accordance with the detailed rules of application laid down in the implementing regulation and in a fees regulation, in the cases listed below:
(a) late payment of the registration fee;
(b) late payment of the publication fee;
(c) late payment of the fee for deferment of publication;
(d) late payment of additional fees for multiple applications;
(e) issue of a copy of the certificate of registration;
(f) registration of the transfer of a registered Community design;
(g) registration of a licence or another right in respect of a registered Community design;
(h) cancellation of the registration of a licence or another right;
(i) issue of an extract from the register;
(j) inspection of the files;
(k) issue of copies of file documents;
(l) communication of information in a file;
(m) review of the determination of the procedural costs to be refunded;
(n) issue of certified copies of the application.
3. The implementing regulation and the fees regulation shall be adopted and amended in accordance with the procedure laid down in Article 109(2).

Article 108: Rules of procedure of the Boards of Appeal

The rules of procedure of the Boards of Appeal shall apply to appeals heard by those Boards under this Regulation, without prejudice to any necessary adjustment or additional provision, adopted in accordance with the procedure laid down in Article 109(2).

Article 109: Committee

1. The Commission shall be assisted by a Committee.
2. Where reference is made to this paragraph, Articles 5 and 7 of Decision EC/468/99 shall apply.
The period laid down in Article 5(6) of Decision EC/468/99 shall be set at three months.
3. The Committee shall adopt its rules of procedure

Article 110: Transitional provision

1. Until such time as amendments to this Regulation enter into force on a proposal from the Commission on this subject, protection as a Community design shall not exist for a design which constitutes a component part of a complex product used within the meaning of Article 19(1) for the purpose of the repair of that complex product so as to restore its

original appearance.
2. The proposal from the Commission referred to in paragraph 1 shall be submitted together with, and take into consideration, any changes which the Commission shall propose on the same subject pursuant to Article 18 of Directive EC/71/98.

Article 111: Entry into force

1. This Regulation shall enter into force on the 60th day following its publication in the Official Journal of the European Communities.
2. Applications for registered Community designs may be filed at the Office from the date fixed by the Administrative Board on the recommendation of the President of the Office.
3. Applications for registered Community designs filed within three months before the date referred to in paragraph 2 shall be deemed to have been filed on that date.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 12 December 2001.

For the Council: The President, M. Aelvoet