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## **THE ROLE OF UPOV IN PLANT BREEDING**

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### **ABSTRACT**

Plant breeders' rights are now being granted by a large number of states throughout the world to protect breeders and encourage plant breeding. Most states that have plant breeders' rights are members of UPOV — the International Union for the Protection of New Varieties of Plants. UPOV acts as international spokesman on plant breeders' rights and as a co-ordinating body for member states. The structure and activity of UPOV are outlined in this paper.

### **KEYWORDS**

Plant breeders' rights, plant varieties, UPOV Convention.

### **INTRODUCTION**

For some decades now, a large number of states throughout the world have been granting plant breeders' rights for new varieties of plants. Plant breeders' rights give the breeder of a new plant variety the exclusive right, for a limited number of years, to produce his variety for commercial marketing of the propagating material or to market the propagating material.

The introduction of plant breeders' rights, or plant variety protection, pursued a twofold aim. Firstly, protection was to give the breeder well-deserved remuneration for his investments in creativity, labour, and money; it was to prevent others, that had not made such investments, from harvesting the fruits of the breeder's work. Secondly, plant breeders' rights were to serve as an incentive for plant breeding or for increased plant breeding and were thus to benefit agriculture. Plant breeders' rights are granted either in the form of a special title of protection or of a plant patent. They are granted, on the basis of national legislation, by government authorities.

### **MEMBER STATES AND UPOV STRUCTURE**

Most countries that have introduced a plant breeders' rights system are members of an intergovernmental organization, the International Union for the Protection of New Varieties of Plants, commonly known by its French abbreviation, UPOV. UPOV was established by an

international convention signed in 1961 that has been revised twice since then, in 1972 and in 1978. It has its seat in Geneva, Switzerland. The present member states of that Convention, and thus of UPOV, are: Belgium, Denmark, France, Germany (Federal Republic of), Hungary, Ireland, Israel, Italy, Japan, Netherlands, New Zealand, Sweden, South Africa, Spain, Switzerland, United Kingdom, and the United States of America. UPOV comprises two main organs: the Council, in which each member state is represented by one representative and one alternate; and the Office, or secretariat, of UPOV. The Council usually meets once a year in ordinary session and occasionally in extraordinary session. It has established a number of committees and working parties consisting of experts from the member states. The main committees are the Consultative Committee, the Administrative and Legal Committee, and the Technical Committee. The Technical Committee has formed five subordinate bodies: the Technical Working Parties for Agricultural Crops, for Fruit Trees, for Vegetables, for Ornamentals and for Forest Trees, and for Automation and Computer Programmes. In the field of the Administrative and Legal Committee, a subgroup on biotechnology was recently established.

The Office of the Union is a permanent institution. It consists of a small number of professional and secretarial staff. For reasons of economy, the Office of UPOV cooperates with the secretariat of a specialised agency of the United Nations, the World Intellectual Property Organization (WIPO). The Director General of WIPO is also the Secretary-General of UPOV. The author of this article is his representative.

### **ACTIVITIES**

- The activities of UPOV can be divided as follows:
- UPOV is the worldwide spokesman on plant breeders' rights at the intergovernmental level.
  - UPOV serves as a forum where those questions of plant breeders' rights that are of international concern may be discussed. In particular, it assumes the task of explaining the advantages of plant breeders' rights and spreading the idea underlying those rights, with the ultimate aim of encouraging further states to join UPOV. It also endeavours to eradicate misunderstandings concerning UPOV activities and aims, and the economic and other effects of plant

breeders' rights.

- Among its members, UPOV acts to harmonise the plant breeders' rights system and to maintain harmony, mainly in the interest of those breeders who wish to obtain protection outside their home country. The aim is for them to meet the same, or at least similar, conditions in all member states of UPOV. UPOV also organises cooperation between the authorities of its member states in the testing of new varieties for which applications have been filed in more than one country, and the examination of variety denominations as to their suitability for registration. In the long term, UPOV wishes to prevent one and the same variety being examined as to its protectability more than once, where climatic or other differences do not prevent centralisation of the examination work. Not only could time and money be saved, but centralisation would also avoid diverging decisions on the same variety being taken by governmental authorities of different states.

The first version of the UPOV Convention laid the foundation for harmonisation of national legislation since it not only obliged the member states to recognise plant breeders' rights but also laid down the basic features of plant breeders' rights, particularly the conditions for plant variety protection and the scope of protection.

## MATERIAL PROTECTED

To correct a common misunderstanding about the contents of the UPOV Convention, plant breeders' rights are concerned with seed and other propagating material, and not normally with consumer products. When a wheat variety is protected, it is not the wheat produced and sold for milling that enjoys the protection, but only those quantities of wheat produced as seed and sold for sowing on the farm. Plant breeders' rights must be respected by those who trade in seed, and these people do not normally interfere with the farmer in his daily activities or with the consumer. Nor do plant breeders' rights have negative effects on the exchange or general availability of genetic resources. Even protected plant varieties may be used as sources of variation for future breeding work, except where they are permanently and repeatedly used, as for instance the parent line in the production of a hybrid variety.

Plant breeders' rights are granted for new varieties, this means for varieties which can be distinguished by one or more important characteristics from any other commonly known variety, and varieties which are new in the sense that they have not yet been marketed or, at least, have not been marketed for longer than certain periods fixed in the Convention. They must also be sufficiently homogeneous (uniform) and stable. Varieties must be given a denomination which is chosen by the applicant himself but examined by the authority. The authorities of most member states examine varieties as to distinctness,

homogeneity (uniformity), and stability, in growing tests in their own trial fields. A small number of member states base their decisions on testing carried out, under their supervision, by the breeders themselves.

## PUBLICATIONS AND EXTENSION

UPOV's practical work is best reflected in its publications:

- A periodical appearing four to five times yearly, called 'Plant Variety Protection, the UPOV Gazette and Newsletter', contains official UPOV announcements and current information on its activities and those of its member states.
- A 'Collection of Important Texts and Documents' consisting of five loose-leaf binders. It contains the texts of the UPOV Convention, a number of models for the national authorities, guidelines for the conduct of tests to be performed by the authorities of the member states (the General Introduction and Test Guidelines for about 100 genera and species), Recommendations on Variety Denominations, and some documents concerned with the administration of UPOV.
- A General Information Brochure which explains the reasons for plant variety protection, gives a concise survey of the principles established by the UPOV Convention, describes the structure of the Union and gives an account of its activities.
- A flyer containing summarised information.
- A brochure containing the Convention.

All publications are in English, French and German, many are also in Spanish and the brochures containing the Convention further exist in Arabic, Dutch, Italian, Japanese, Portuguese, and Russian.

Annually, or at least every second year, a Symposium is held on a topic of general interest connected with plant breeders' rights. The lectures and a report on the discussions are reproduced in Records which are published in English, French, German, and Spanish.

## SYMPOSIUM DISCUSSION

Dr W. Bushuk, University of Manitoba

A Californian company has apparently developed a gene which gives a plant resistance to the herbicide Roundup. If they get a patent for this gene eventually we could have most important genes in any significant crop being held by patents by major companies. It certainly offers ammunition for supporters of Mooney.

Mast

There is a separate reservation allowed for the USA. This may allow them to grant patents to the degree you suggest — it is a problem that has not been discussed.