EU Plant Variety Rights in the 21st Century

Conference on the outcome of the evaluation of the Community Plant Variety Rights Regime

The UPOV Convention: an International Standard

Peter Button (Vice Secretary-General, UPOV)

Brussels, October 11, 2011
1. Overview of UPOV

2. Some key provisions of the 1991 Act of the UPOV Convention

3. International harmonization
1. Overview of UPOV

2. Some key provisions of the 1991 Act of the UPOV Convention

3. International harmonization
UPOV: INDEPENDENT INTERGOVERNMENTAL ORGANIZATION

The International Convention for the Protection of New Varieties of Plants established in 1961

The International Union for the Protection of New Varieties of Plants

Union internationale pour la protection des obtentions végétales
Members of UPOV (green): 70
Initiating States (15)
& organizations (1) (brown)
European Union perspective

Number of PBR applications in European Union

- **EU Total (including CPVO)**
- **CPVO**

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<th>CPVO</th>
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European Union perspective

Number of PBR applications in European Union

- EU Total (including CPVO)
- Projection with CPVO titles multiplied by 2.5
- Linear (Projection with CPVO titles multiplied by 2.5)

Projected CPVO effect
European Union accession to UPOV

UPOV Press Release No. 65

Geneva, June 29, 2005

EUROPEAN COMMUNITY BECOMES FIRST INTERGOVERNMENTAL ORGANIZATION TO JOIN UPOV

The European Community (EC) became the first intergovernmental organization to join the International Union for the Protection of New Varieties of Plants (UPOV) when it deposited its instrument of accession with the Secretary-General of UPOV, Dr. Kamel Idir, on June 29, 2005. UPOV is an independent intergovernmental organization based in Geneva which administers an international treaty that governs the granting of intellectual property rights to plant breeders to encourage the development of new varieties of plants.

The accession of the EC is a milestone in the history of UPOV and promises to help strengthen the system of plant variety protection around the world and to broaden international cooperation in this area.

Community plant variety rights within the EC are administered by the Community Plant Variety Office (CPVO) in Angers, France. With more than 2,600 applications per year, the CPVO receives the highest number of requests for variety protection among the 59 members of UPOV. The CPVO provides for one application, one examination and one title of protection that is valid and enforceable in all 25 members of the European Union.
Number of Titles Granted (2009)

- CPVO 24%
- JP 14%
- US 12%
- CN 9%

Other countries:
- RU 5%
- NL 5%
- KR 4%
- UA 3%
- CA 2%
- AU 3%
- ZA 2%
- AR 2%
- DE 1%
- TR 1%
- BR 1%
- IT 1%
- IL 1%
- CO 1%
- ES 1%
- CH 1%
- PL 1%
- CL 1%
- CZ 0%
- PY 0%
- MX 0%
- BY 0%
- GB 0%
- RO 0%
- NO 0%
- SK 0%
- DK 0%
- HU 0%
- TN 0%
- BG 0%
- KE 0%
- MD 0%
- AZ 0%
- LV 0%
- MA 0%
- FI 0%
- IE 0%
- SE 0%
- UZ 0%
- BO 0%
- GE 0%
- EE 0%
- DO 0%
- LT 0%
- AT 0%
- BE 0%
- KG 0%
UPOV MISSION STATEMENT

“To provide and promote an effective system of plant variety protection, with the aim of encouraging the development of new varieties of plants, for the benefit of society”
International Symposium (Seoul, KR)

UPOV Impact Study

Canada: 10 Year Review

Second World Seed Conference (FAO, Rome)
1. Overview of UPOV

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SOME KEY PROVISIONS OF THE UPOV CONVENTION (1991 Act)

(a) Conditions of protection
(b) Breeder’s right
(c) Exceptions to the breeder’s right
CONDITIONS FOR GRANTING A BREEDER’S RIGHT

Criteria to be satisfied

- Novelty
- Distinctness
- Uniformity
- Stability
- Variety Denomination
- Formalities
- Payment of Fees

No other conditions!
SOME KEY PROVISIONS OF THE UPOV CONVENTION (1991 Act)

(a) Conditions of protection
(b) Breeder’s right
(c) Exceptions to the breeder’s right
Authorization of breeder required for:

- Production or reproduction (multiplication)
- Conditioning for the purpose of propagation
- Offering for sale
- Selling or marketing
- Exporting
- Importing
- Stocking for any of the above purposes

.... for any protected variety
MATERIAL COVERED

• All propagating material

• Harvested material under certain conditions

• Certain products (optional)
MATERIAL COVERED

- All propagating material
- Harvested material

if obtained through unauthorized use of propagating material unless reasonable opportunity for breeder to exercise his right

- Certain products (optional)
VARIETIES COVERED

VARIETIES:
• not clearly distinguishable from the protected variety
• whose production requires the repeated use of the protected variety  
  *e.g. hybrids*
• which are essentially derived from the protected variety
  …
PURPOSE:

- providing effective protection for the breeder and
- encouraging cooperation between breeders and developers of new technologies such as genetic modification

ESSENTIAL DERIVATION

VARIETIES COVERED
Essentially Derived Varieties

*May be obtained for example by:*

- **selection** of a natural or induced **mutant**
- **selection** of a **somaclonal variant**
- **selection** of a **variant individual** from plants of the initial variety
- **back-crossing**
- transformation by **genetic engineering**
VARIE TIES COVERED

...a variety shall be deemed to be essentially derived from another variety (“the initial variety”) when

(i) it is predominantly derived from the initial variety, or from a variety that is itself predominantly derived from the initial variety, while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety,

(ii) it is clearly distinguishable from the initial variety and

(iii) except for the differences which result from the act of derivation, it conforms to the initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety.
SOME KEY PROVISIONS OF THE UPOV CONVENTION (1991 Act)

(a) Conditions of protection
(b) Breeder’s right
(c) Exceptions to the breeder’s right
EXCEPTIONS TO THE BREEDER’S RIGHT

Compulsory
Acts done:
• privately and for non-commercial purposes
• for experimental purposes
• breeding other varieties (breeder’s exemption”)

Optional
Farm-saved seed
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REQUIREMENT TO BECOME A MEMBER OF UPOV

State/Intergovernmental Organization must:

- Have a law which conforms to the UPOV Convention
- Ask advice of the Council of UPOV
- If advice positive: deposit instrument of accession
Development of Plant Variety Protection

PBR Titles in Force: All UPOV

- Titles in Force: All UPOV
- Number of UPOV members

Graph showing the development of PBR titles in force from 1974 to 2010. The number of titles in force has increased significantly over time, along with the number of UPOV members.
Global perspective

Number of Applications by Non-Residents

- EU: 52%
- US: 21%
- CH: 8%
- JP: 5%
- AU: 3%
- Other: 3%
- IL: 2%
- NZ: 2%
- AR: 1%
- KR: 1%
- BR: 1%
- CA: 0%
- RU: 0%
- PA: 0%
- HR: 0%
- ZA: 0%
- CR: 0%
- CN: 0%
- CO: 0%
- PY: 0%
- TR: 0%
- MD: 0%
- UA: 0%
- CL: 0%
- JO: 0%
- NO: 0%
- UY: 0%

etc.
UPOV Collection
(launch in connection with 50th Anniversary)

(a) UPOV Convention
(b) UPOV/INF document series
(c) Explanatory notes on the UPOV Convention
(d) General Introduction
(e) TGP documents
(f) Test Guidelines (website link)
(g) UPOV Collection of Laws and Treaties (website link)
(h) List of UPOV members (website link)
(i) Addresses of Plant Variety Protection Offices (website link)
(j) UPOV Organigram (website link)
(k) Databases and information (website link)
  – List of the Taxa Protected by the Members of the Union
  – Cooperation in Examination
  – List of Species in which practical technical knowledge has been acquired or for which National Guidelines have been established
(l) Plant Variety Database (website link)
(m) GENIE Database (website link)
UPOV Collection

• UPOV Convention

• UPOV/INF document series
  (e.g. INF/6 Guidance for the preparation of laws
  INF/12 Variety denominations)

• Explanatory notes on the UPOV Convention
UPOV Collection

DUS Examination

• General Introduction

• TGP documents

• Test Guidelines

– 267 Test Guidelines adopted
UPOV Test Guidelines: CPVO Technical protocols

INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
GENEVA

MAIZE
UPOV Code: ZEAAA_MAY
Zea mays L.

GUIDELINES
FOR THE CONDUCT OF TESTS
FOR DISTINCTNESS, UNIFORMITY AND STABILITY

Alternative Names:

<table>
<thead>
<tr>
<th>English</th>
<th>French</th>
<th>German</th>
<th>Spanish</th>
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<tbody>
<tr>
<td>Maize</td>
<td>Maïs</td>
<td>Mais</td>
<td>Maíz</td>
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The purpose of these guidelines ("Test Guidelines") is to harmonize the principles contained in the General Introduction (document TG/18), and in monitored TGJ documents, and to provide practical guidance for the harmonized execution of distinctness, uniformity and stability (DUS) tests, in particular, to identify appropriate characteristics for the examination of DUS and production of harmonized variety descriptions.

ASSOCIATED DOCUMENTS
These Test Guidelines should be used in conjunction with the General Introduction and the TGJ document.

PROTOCOL FOR DISTINCTNESS, UNIFORMITY AND STABILITY TESTS

Zea mays L.

MAIZE

UPOV Species Code: ZEAAA_MAY

Adopted on 11/03/2010

Entry into force on 01/01/2010
Test Guidelines

• 267 Test Guidelines adopted

but…

• 3,000 genera and species with varieties examined for PBR
Number of plant genera and species for which protection sought (UPOV Members)

Year

Species with protected varieties

Number of plant genera and species with PBR entries in the UPOV-ROM Plant Variety Database
Organization of the DUS Examination

Cooperation between Authorities

can involve:

• **purchase of DUS Test Reports** from other Authorities

• **bilateral arrangements** to remove the need for duplication of DUS Tests

• **centralized DUS testing** at regional or global level
COOPERATION

Number of genera/species for which varieties protected by members of the Union: > 3,000

 (>10,000 titles granted /annum)

Practical DUS experience offered for >2,600 genera and species

Agreements for cooperation between members of the Union: > 1,400
Article 2
Where the Council of UPOV has adopted Guidelines for the Conduct of Tests for Distinctness, Uniformity and Stability ("Test Guidelines") for a genus or species covered by this Agreement, the examination shall be conducted according to those Test Guidelines. …
UPOV Collection

Databases and information
- List of the Taxa Protected by the Members of the Union
- Cooperation in Examination
- List of Species in which practical technical knowledge has been acquired or for which National Guidelines have been established

• GENIE Database
UPOV Collection

- Plant Variety Database
Data checking, collation and processing (UPOV)

Jouve

Available to UPOV members

Data not provided by CPVO

UPOV-ROM

Plantscope (not included in UPOV-ROM)

EU Common Catalogues

Switzerland

Member States of the EU

European Economic Area (EEA)

CPVO (UPOV-CPVO MoU)

UPOV members not those covered by UPOV-CPVO MoU)

UPOV members not those covered by UPOV-CPVO MoU)

OECD
SUMMARY

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THANK YOU