

December 6, 2004

In response to requests for clarification concerning the breeder's exemption in the 1978 and 1991 Acts of the UPOV Convention, UPOV has issued the following explanation.

The relevant provisions of the 1978 Act and of the 1991 Act of the UPOV Convention are reproduced and explained as follows:

1978 ACT

*Article 5: Rights Protected; Scope of Protection*

“(3) Authorisation by the breeder shall not be required either for the utilisation of the variety as an initial source of variation for the purpose of creating other varieties or for the marketing of such varieties. Such authorisation shall be required, however, when the repeated use of the variety is necessary for the commercial production of another variety.”

1991 ACT

*Article 15: Exceptions to the Breeder's Right*

“(1) [*Compulsory exceptions*] The breeder's right shall not extend to

[...]

“(iii) acts done for the purpose of breeding other varieties, and, except where the provisions of Article 14(5) apply, acts referred to in Article 14(1) to (4) in respect of such other varieties.”

Thus, with regard to the use of a protected variety for breeding “other” varieties, the authorization of the breeder of the protected variety is not required in either the 1978 Act (“Authorisation by the breeder shall not be required ... for the utilisation of the variety as an initial source of variation for the purpose of creating other varieties ...”) or the 1991 Act (“The breeder's right shall not extend to ... acts done for the purpose of breeding other varieties”).

In addition, acts done with the “other” varieties (e.g. marketing), do not require the authorization of the breeder of the protected variety except for the circumstances specified in the 1978 Act and the 1991 Act. Article 5(3) of the 1978 Act (see above) specifies that the “authorisation shall be required ... when the repeated use of the variety is necessary for the commercial production of another variety”. The 1991 Act specifies that the authorization of the breeder is required, where the provisions of Article 14(5) (essentially derived and certain other varieties) apply, in respect of the acts for material covered under Article 14(1) to (4).

The explanation is intended to clarify that the authorization of the breeder for the use of protected varieties for breeding purposes is required neither under the 1978 Act nor under the 1991 Act.