

UPOV

INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
GENEVA

DRAFT

EXPLANATORY NOTES ON THE
ENFORCEMENT OF BREEDERS' RIGHTS
UNDER THE UPOV CONVENTION

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Note for Draft version

Endnotes provide background information when considering the draft version, not to be retained in the approved version of the document.

Text in square brackets and **footnotes** to be retained in the published version of the document.

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EXPLANATORY NOTES ON THE ENFORCEMENT OF BREEDERS' RIGHTS
UNDER THE UPOV CONVENTION^a

PREAMBLE

1. The purpose of these Explanatory Notes is to provide information on the enforcement of breeders' rights under the International Convention for the Protection of New Varieties of Plants (UPOV Convention). The only binding obligations on members of the Union are those contained in the text of the UPOV Convention itself, and these Explanatory Notes must not be interpreted in a way that is inconsistent with the relevant Act for the member of the Union concerned.

2. Section I reproduces the relevant provisions of the 1991 Act and the 1978 Act of the UPOV Convention. Section II contains some possible measures for the enforcement of breeders' rights.

SECTION I:
PROVISIONS ON THE ENFORCEMENT OF BREEDERS' RIGHTS

1991 Act of the UPOV Convention

Article 30

Implementation of the Convention

(1) [*Measures of implementation*] Each Contracting Party shall adopt all measures necessary for the implementation of this Convention; in particular, it shall:

(i) provide for appropriate legal remedies for the effective enforcement of breeders' rights;

[...]

1978 Act of the UPOV Convention

Article 30

**Implementation of the Convention on the Domestic Level;
Contracts on the Joint Utilisation of Examination Services**

(1) Each member State of the Union shall adopt all measures necessary for the application of this Convention; in particular, it shall:

(a) provide for appropriate legal remedies for the effective defence of the rights provided for in this Convention;

[...]

SECTION II:
SOME POSSIBLE MEASURES FOR THE ENFORCEMENT
OF BREEDERS' RIGHTS

While the UPOV Convention requires members of the Union to provide for appropriate legal remedies for the effective enforcement of breeders' rights, it is a matter for breeders to enforce their rights.

The following non-exhaustive list of enforcement measures might be considered, as appropriate:

(a) Civil measures

(i) provisional measures, pending the outcome of a civil action, to prevent or stop an infringement of the breeder's right, and/or to preserve evidence (e.g. collect samples of infringing material from greenhouses);

(ii) measures to allow a civil action to prohibit the committing, or continuation of the committing, of an infringement of the breeder's right;

(iii) measures to provide adequate damages to compensate the loss suffered by the holder of the breeder's right and to constitute a deterrent to further infringements;

(iv) measures to allow destruction or disposal of infringing material;

(v) measures to provide payment by the infringer of the expenses of the holder of the breeder's right (e.g. attorney's fees);

(vi) measures to require an infringer to provide information to the holder of the breeder's right on third persons involved in the production and distribution of infringing material.

(b) Customs measures

Importation

(i) measures to allow suspension by the customs authorities of the release into free circulation, forfeiture, seizure or destruction of material which has been produced in contravention of the breeder's right;

Exportation

(ii) measures to allow the suspension by the customs authorities of the release of the infringing material destined for exportation.

(c) Administrative measures

- (i) provisional measures to prevent or stop an infringement of the breeder's right, and/or to preserve evidence (e.g. collect samples of infringing material from greenhouses);
- (ii) measures to prohibit the committing, or continuation of the committing, of an infringement of the breeder's right;
- (iii) measures to allow destruction or disposal of infringing material;
- (iv) measures to require an infringer to provide information to the holder of the breeder's right on third persons involved in the production and distribution of infringing material;
- (v) measures to allow the forfeiture, seizure of material which has been produced in contravention of the breeder's right;
- (vi) measures for authorities responsible for the testing and certification of propagating material to provide information to the holder of the breeder's right regarding propagating material of his varieties;
- (vii) administrative sanctions or fines in the case of a breach of the legislation on breeders' rights or of a non-compliance with provisions on, or misuse of, variety denominations.

(d) Criminal measures

Criminal actions and penalties in cases of [wilful] violation of the breeder's right [on a commercial scale]¹.

(e) Measures resulting from alternative dispute settlement mechanisms

Civil measures (see above (a)) obtained as a result of alternative dispute settlement mechanisms (e.g. arbitration).

(f) Specialized courts

The establishment of specialized courts for matters concerning breeders' rights.

^a Text approved by the CAJ on April 2, 2009 (documents CAJ/59/7 and UPOV/EXN/ENF Draft 2)

[End of document]

¹ Text in square brackets is intended for drafters involved in the preparation of laws and identifies, as appropriate, text to be completed or deleted.