



CAJ/59/5

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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
GENEVA

ADMINISTRATIVE AND LEGAL COMMITTEE

Fifty-Ninth Session
Geneva, April 2, 2009

ELECTRONIC APPLICATION SYSTEMS

Document prepared by the Office of the Union

BACKGROUND

1. On January 18, 2007, the Office of the Union (Office) received a letter from the International Seed Federation (ISF) proposing that UPOV should consider the development of an electronic version of the UPOV model application form¹ and technical questionnaire² for use by members of the Union. It was noted that such an approach would allow a standard application form and technical questionnaire to be completed in a language of the applicant's choice and then converted electronically to the language of the member of the Union where an application was to be made. It was suggested that the individual members of the Union could have a separate appendix containing additional questions not covered by the standard application form and technical questionnaire, although ISF suggested that such appendices should be minimized. ISF clarified that the intention was to make the forms available for use by members of the Union as they considered appropriate.

2. The Office received a letter from the International Community of Breeders of Asexually Reproduced Ornamental and Fruit-Tree Varieties (CIOPORA) on January 19, 2007, supporting the proposal made by ISF. It requested, in addition, that any initiative should not lead to a result that application forms which were short and simple would become more

¹ see document TGP/5 "Experience and Cooperation in DUS Testing", Section 2/2: "UPOV Model Form for the Application for Plant Breeders' Rights"

² see document TGP/5 "Experience and Cooperation in DUS Testing", Section 3/1: "Technical Questionnaire to be Completed in Connection with an Application for Plant Breeders' Rights"

complex. The Office also received a letter from the European Seed Association (ESA) on January 30, 2007, expressing its support for the proposal made by ISF.

3. In agreement with the Chairperson of the Technical Committee (TC), ISF was invited to make a presentation on its proposal at the forty-third session of the TC, held in Geneva, from March 26 to 28, 2007.

4. At its forty-third session, the TC thanked ISF for its presentation on a proposal for the development of an electronic application form and technical questionnaire and noted that a copy of the presentation would be posted on the ISF website (www.worldseed.org). The TC noted that any developments should take into account the initiatives by a number of the members of the Union to develop on-line application facilities. The Vice Secretary-General welcomed the initiative of ISF and looked forward to investigating ways in which this matter could be taken forward in the most appropriate and beneficial way, within UPOV's resources. In that respect, the Vice Secretary-General informed the TC that, at its fifty-fifth session, to be held in Geneva on March 29, 2007, the CAJ would be considering the possibility to invite ISF to make a similar presentation to the CAJ in October 2007 (see document TC/43/13 "Report", paragraph 111).

5. The CAJ, at its fifty-fifth session, held in Geneva on March 29, 2007, agreed to invite ISF to make a presentation on its proposal for the development of an electronic application form and technical questionnaire at its fifty-sixth session in conjunction with the CAJ discussions on the revision of document TGP/5. In addition, the CAJ invited members of the Union to present their initiatives on the development of on-line application facilities.

6. At its fifty-sixth session, held in Geneva on October 22 and 23, 2007, the CAJ received presentations by a representative of ISF and by the Delegations of Brazil, Germany and the United Kingdom on experiences and initiatives for the development of electronic application forms and technical questionnaires. Those presentations (in English only) are reproduced in Annexes II to V to document CAJ/56/6 "Report", respectively, and on the UPOV website at http://www.upov.int/restrict/en/caj/index_caj56.htm.

7. The CAJ, at its fifty-sixth session (see document CAJ/56 "Report", paragraph 20), agreed that the Office should organize a meeting in order to explore possibilities:

(a) to provide a forum for exchanging information on electronic application systems and databasing of information;

(b) to investigate possibilities to facilitate harmonized electronic application systems and databasing of information, for interested members of the Union, by means of a standard electronic application form (including technical questionnaire), possibly with authority-specific annexes, to be made available for downloading from the UPOV website. Investigations would include:

(i) the development of a multilingual standard electronic application form in all languages provided by the relevant members of the Union (if not an official UPOV language);

(ii) options for transfer of data from the standard electronic application form for use in applications made with members of the Union (on-line transmission, e-mail, paper), including the sharing of software between members of the Union and the use of electronic signatures and verification;

(iii) means to facilitate the incorporation of data in electronic application systems in a format compatible with the UPOV-ROM Plant Variety Database;

(c) to identify legal and administrative aspects which should be considered in the development of electronic application systems by members of the Union.

8. The CAJ agreed that any standard electronic application form (including technical questionnaire) would need to be based on the UPOV model forms contained in document TGP/5 “Experience and Cooperation in DUS Testing”^{1,2} and document TGP/7 “Development of Test Guidelines”³.

9. At its fifty-seventh session, held in Geneva on April 10, 2008, the CAJ considered document CAJ/57/4, in conjunction with an oral report by the Vice Secretary-General on the Electronic Applications Systems Meeting, held in Geneva on April 9, 2008. The Vice Secretary-General reported that approximately sixty participants had attended the meeting and that a presentation had been made by the Community Plant Variety Office (CPVO) of the European Community on their project on the development of an electronic application system. As agreed by the CAJ at its fifty-sixth session, held on October 22 and 23, 2007, the meeting had explored the possibilities provided under paragraph 2 of document CAJ/57/4. The Vice Secretary-General reported that two concrete proposals had resulted from the discussions:

(a) to prepare a survey on “core” questions in the UPOV Model Application Form, by requesting members of the Union to indicate which items of the Model Application Form they use and which they consider mandatory; and

(b) to develop a pilot project, for a small number of crops, consisting of a downloadable application form, with or without a technical questionnaire, for testing in cooperation with breeders’ organizations and a number of authorities.

10. In relation to the two proposals, the Vice Secretary-General noted that only very limited interest had been expressed at the meeting, which did not appear to be sufficient to justify the human and financial resources that such an exercise would entail for participating authorities and the Office of the Union.

11. After an initial discussion, the Vice Secretary-General noted that there had been very little time to reflect on the proposals discussed at the meeting and, given the substantial resource implications, suggested that it might be helpful to have more time for reflection.

12. The CAJ agreed that an item should be included on the agenda of its fifty-eighth session on October 27 and 28, 2008, in order to review the situation. The CAJ noted that, if there was support for a pilot project, the matter would need to be considered by the Consultative Committee in order to consider the impact on human and financial resources.

13. At its fifty-eighth session, held in Geneva on October 27 and 28, 2008, the CAJ considered document CAJ/58/5 and agreed that an item should be included on the agenda of its fifty-ninth session, and a document prepared by the Office of the Union on the basis of the agreed UPOV Model Application Form and further inputs from delegations and consultations thereof.

³ see document TGP/7 “Development of Test Guidelines”, Annex 1: TG Template, Section 10. Technical Questionnaire

PROPOSALS FOR CONSIDERATION

Abbreviations

UPOV Model Application Form:	UPOV Model Form for the Application for Plant Breeders' Rights (document TGP/5 "Experience and Cooperation in DUS Testing", Section 2/2: "UPOV Model Form for the Application for Plant Breeders' Rights")
UPOV Model TQ:	Generalized UPOV Model Technical Questionnaire to be Completed in Connection with an Application for Plant Breeders' Rights – document TGP/7/1, Annex 1: TG Template, Chapter 10 "Technical Questionnaire" (see document TGP/5 "Experience and Cooperation in DUS Testing", Section 3/1: "Technical Questionnaire to be Completed in Connection with an Application for Plant Breeders' Rights")
UPOV Test Guidelines TQ:	Model Technical Questionnaire specific for the relevant UPOV Test Guidelines (e.g. the Test Guidelines for Rose, document TG/11/8, contains a model Technical Questionnaire for rose)

Criteria

14. The discussions in the CAJ have confirmed that it would not be feasible to develop an electronic application form that would satisfy the requirements for making a complete application for a breeder's right with a member of the Union. Of the various aspects that would make such an approach unrealistic, the need for additional authority-specific information by individual members of the Union (i.e. in addition to the information included in the UPOV Model Application Form) and issues concerning electronic signatures have been consistently highlighted.

15. In addition to practical and resource issues, the discussions in the CAJ have indicated that it would be difficult for UPOV to develop an electronic form that contained requests for information beyond those set out in the UPOV Model Application Form and the UPOV Model TQ or UPOV Test Guidelines TQ.

16. On the basis of the above, the following proposals have been developed for consideration by the CAJ. It should be noted that these proposals would be entirely optional, i.e. it would be a matter for each member of the Union to decide whether to take advantage of the proposed scheme. In addition, the proposals are not mutually exclusive.

Proposal 1: Standardized reference by authorities to the UPOV Model Application Form, UPOV Model TQ and/or UPOV Test Guidelines TQ

17. This proposal is based on members of the Union making reference in the relevant fields of their application forms and technical questionnaires to the corresponding item in the UPOV Model Application Form and UPOV Model TQ or UPOV Test Guidelines TQ.

Requirements for the authority

18. The individual members of the Union would, as appropriate, include in their applications forms and technical questionnaires a standardized reference to indicate the corresponding item in the UPOV Model Application Form, UPOV Model TQ or UPOV Test Guidelines TQ. A similar approach has already been established in relation to document TGP/5, Section 6 “UPOV Variety Description”, where item 15 “Characteristics Included in the UPOV Test Guidelines or Reporting Authority’s Test Guidelines”, column “UPOV No.”, requests the characteristic number in the UPOV Test Guidelines that corresponds to the characteristic number in the Reporting Authority’s Test Guidelines.

19. It would be a matter for each authority to decide if the field in the individual authority form corresponded sufficiently precisely to a field in the UPOV Model Application Form, UPOV Model TQ or UPOV Test Guidelines TQ such that a reference could be made. For example, if there were any substantial differences in the information being requested in the UPOV model, compared to the individual authority form, it would not be appropriate to indicate a reference to the UPOV model.

Requirements for UPOV

20. In order to provide a precise reference for all elements of information corresponding to the UPOV Model Application Form, it would be necessary to provide a detailed reference to document TGP/5 “Experience and Cooperation in DUS Testing”, Section 2/2: “UPOV Model Form for the Application for Plant Breeders’ Rights”. For example, item 1 of that document might be referenced as follows:

<u>Reference to be quoted in the application form of the authority</u>	<u>Item in UPOV Model Application Form</u> <i>(document TGP/5 “Experience and Cooperation in DUS Testing”, Section 2/2: “UPOV Model Form for the Application for Plant Breeders’ Rights”)</i>
^(note) (A1)UPOV 1(a)(Name)	1.(a) Applicant(s) Name(s)
(A1)UPOV 1(a)(Address)	1.(a) Applicant(s) Address(es)
(A1)UPOV 1(a)(Tel)	1.(a) Applicant(s) Telephone No.(s)
(A1)UPOV 1(a)(Fax)	1.(a) Applicant(s) Fax No.(s)
(A1)UPOV 1(a)(Email)	1.(a) Applicant(s) E-mail address(es)
(A1)UPOV 1(b)	1.(b) Applicant(s) nationality(ies):
(A1)UPOV 1(c)	1.(c) Applicant(s) residence (State)
(A1)UPOV 1(d)	1.(d) Applicant(s) registered offices for legal entities (State)
(A1)UPOV 1(e)(Y)	1.(e) Applicant(s) A procedural representative/agent/ proxy will be used: Yes
(A1)UPOV 1(a)(N)	1.(e) Applicant(s) A procedural representative/agent/ proxy will be used: No

^(note)
“A” is the abbreviation of TGP/5 “Experience and Cooperation in DUS Testing”, Section 2: “UPOV Model Form for the Application for Plant Breeders’ Rights”; “1” indicates the version of TGP/5 Section 2 (if TGP/5 Section 2/2 is revised, the reference would need to change to “A2”)

21. If this approach were agreed, the Office would prepare a complete set of references for all sections in the UPOV Model Application Form and UPOV Model TQ.

22. With regard to the UPOV Test Guidelines TQs, it is anticipated that the use of standard references for all parts of the TQ would be feasible for all future adopted, or revised, Test Guidelines. Referencing of previously adopted Test Guidelines might also be feasible for those Test Guidelines covering varieties for which there are many applications in several members of the Union. In the case of Test Guidelines, in the same way as for the UPOV Model Application Form, it would be necessary for the UPOV reference to indicate the version of the Test Guidelines to which the reference referred, particularly as Test Guidelines can be revised on a regular basis.

23. The provision of standard referencing in the UPOV Test Guidelines TQ could be included in the current revision of document TGP/7/1 “Development of Test Guidelines”.

Requirements / benefits for the applicant

24. An obvious benefit of this proposal is to minimize linguistic difficulties for applicants. However, this approach might potentially have some efficiency benefits for applicants making multiple applications. For example, if working with several electronic application forms, the applicant could complete a single UPOV Model Application Form or UPOV Test Guidelines TQ and then transfer that information by “copy/paste” to the relevant fields of the relevant authority forms. If such benefits were of real interest to applicants, consideration could be given to developing an electronic version of the UPOV Model Application Form and UPOV Test Guidelines TQs that would facilitate use of the form in that way, for example by having a simpler, linear design.

Proposal 2: Use of information provided in an electronic version of the UPOV Model Application Form (and possibly the UPOV Model TQ or UPOV Test Guidelines TQ)

25. This proposal is based on an approach whereby the applicant would use the UPOV Model Application Form, and possibly the UPOV Model TQ or UPOV Test Guidelines TQ, to provide information to an authority as a part of an application for plant breeder’s right. It would be a matter for each authority to decide if it could accept such information as a part of the application and, if appropriate, the procedure to be followed (see “Requirements for the authority”).

Requirements for the authority

26. The authority would need to develop a procedure to accept the information “requested” in the UPOV Model Application Form (and possibly the UPOV Model TQ or UPOV Test Guidelines TQ) as a part of its application. That information could, for example, be requested to be transmitted to the authority in electronic form (e.g. data in XML format), in the form of a Word document transmitted by e-mail, or as a hard copy by post. However, for applicants using this route, the authority would also need to develop a procedure for the applicant to provide any additional information by a separate action, e.g. a supplementary form. It would also need to ensure that both sets of information could be combined in a reliable way to form the single application.

Requirements for UPOV

27. UPOV would need to develop an electronic version of the UPOV Model Application Form (and possibly the UPOV Model TQ or UPOV Test Guidelines TQ) and post those on the UPOV website for downloading and completion by applicants. Those forms would not be

designed to be completed on-line. To facilitate the electronic transmission of data to authorities, the forms would be designed to allow the completed information to be transmitted in XML format, although they would also be designed to enable completion and transmission in Word format.

28. As a first step, the electronic versions of the UPOV Model Application Form (and possibly the UPOV Model TQ or UPOV Test Guidelines TQ) would be provided in English, French, German and Spanish. Thereafter, consideration could be given to the development of versions of the UPOV Model Application Form (and possibly the UPOV Model TQ or UPOV Test Guidelines TQ) in other languages, for example on the basis of translations provided by relevant members of the Union.

29. The resource implications of such an approach for the Office of the Union would be as follows:

(a) initially, to develop electronic versions (in English, French, German, Spanish and possibly other languages) of the:

- (i) UPOV Model Application Form; and, if considered appropriate;
- (ii) UPOV Model TQ; and
- (iii) UPOV Test Guidelines TQ

(b) thereafter, to update those versions according to future developments and revisions.

30. It is apparent that the resource implications for developing electronic versions of the UPOV Model Application Form and the UPOV Model TQ are quite different from those for developing electronic versions of the UPOV Test Guidelines TQ. At the end of 2008, UPOV had adopted almost 250 Test Guidelines, each with a unique Technical Questionnaire. In addition, there is a total of around 20 Test Guidelines that are either newly adopted or revised each year.

31. With regard to UPOV Test Guidelines TQ, it might be appropriate to consider if there are certain crops or species where the number of applications with several members of the Union might justify the investment of resources in developing specific UPOV Test Guidelines TQs.

32. Proposals 1 and 2, as set out in paragraphs 17 to 24 and 25 to 31, respectively, will be presented to the TC, at its forty-fifth session, and to the CAJ, at its fifty-ninth session. The conclusions of the TC, at its forty-fifth session, will be reported to the CAJ for consideration at its fifty-ninth session.

33. The CAJ is invited to consider Proposals 1 and 2, as set out in paragraphs 17 to 24 and 25 to 31, respectively, in conjunction with the conclusions of the TC at its forty-fifth session.

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