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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**

UPOV-ROM PLANT VARIETY DATABASE

Document prepared by the Office of the Union

1. The purpose of this document is to recall the developments concerning the collation of data for the UPOV-ROM Plant Variety Database (UPOV-ROM), to provide a report on progress in the program for improvements to the Plant Variety Database and to set out proposals for improvements to the Plant Variety Database.

COLLATION OF DATA FOR THE UPOV-ROM PLANT VARIETY DATABASE

2. In early 2008, the Office was contacted by the Community Plant Variety Office of the European Community (CPVO) with a view to making more substantial progress in the quantity and quality of data included in the UPOV-ROM (see documents TC/44/6, paragraphs 15 to 22 and CAJ/57/6, paragraphs 6 to 12). The CPVO offered its assistance in the collection of data for all contributors on behalf of which it does not currently provide data¹. That assistance was to include, in particular, options for providing data in various

¹ The "Memorandum of Understanding between UPOV and the CPVO" (MoU) states that:

"3.2.2 Maintenance of Data

"The responsibility for providing data would be as follows:

"(a) subject to the agreement of the countries and owners of other registers concerned, CPVO is to be responsible for variety denomination data for all official registers kept by authorities of the Member States of the European Union, official registers kept by authorities of the European Economic Area (EEA) and Switzerland, the European Union Common Catalogues and other relevant registers, such as the Dutch database PLANTSCOPE; [...]"

formats, which the CPVO would transform as required for inclusion in the UPOV-ROM, and assistance in allocating UPOV codes to all entries.

3. At its forty-fourth session, held in Geneva from April 7 to 9, 2008, the TC agreed that the proposal concerning assistance by the CPVO, made in document TC/44/6, paragraphs 15 to 22, and a draft revised “Memorandum of Understanding between UPOV and the CPVO” (MoU), based on that proposal, be prepared for consideration by the Consultative Committee at its seventy-sixth session, to be held in Geneva on October 29, 2008 (see document TC/44/13 “Report”, paragraph 165).

4. At its fifty-seventh session, held in Geneva on April 10, 2008, the Administrative and Legal Committee (CAJ) agreed that the proposal concerning assistance by the CPVO, made in document CAJ/57/6, paragraphs 8 to 11, and a draft revised MOU, based on that proposal, be prepared for consideration by the CAJ at its fifty-eighth session to be held on October 27 and 28, 2008, and by the Consultative Committee at its seventy-sixth session on October 29, 2008.

5. Subsequent to the fifty-seventh session of the CAJ, Mr. Francis Gurry, at that time, Deputy Director General (PCT and Patents, Arbitration and Mediation Center, and Global I.P. Issues) of the World Intellectual Property Organization (WIPO), and Director General-Elect of WIPO, discussed with the Office a proposal for WIPO to take on the maintenance of the UPOV-ROM, on the basis that data in the UPOV-ROM could then be included in the WIPO Patentscope® search service.

6. At its seventy-sixth session, held in Geneva on October 29, 2008, the Consultative Committee, approved an arrangement between UPOV and WIPO (UPOV-WIPO arrangement), concerning the UPOV Plant Variety Database, as follows:

(a) WIPO to undertake the collation of data for the UPOV-ROM and to provide the necessary assistance to deliver the program of improvements concerning, in particular, options for receiving data for the UPOV-ROM in various formats and assistance in allocating UPOV codes to all entries (see documents CAJ/57/6, paragraphs 3 and 8 and TC/44/6, paragraphs 12 and 17). In addition, WIPO to undertake the development of a web-based version of the UPOV Plant Variety Database, and the facility to create CD-ROM versions of that database, and to provide the necessary technical support concerning the development of a common search platform (see documents CAJ/57/6, paragraphs 18 to 21 and TC/44/6, paragraphs 27 to 30)).

(b) UPOV to agree that data in the UPOV-ROM Plant Variety Database may be included in the WIPO Patentscope® search service. In the case of data provided by parties other than members of the Union (e.g. the Organisation for Economic Co-operation and Development (OECD)), permission for the data to be used in the WIPO Patentscope® search service would be a matter for the parties concerned.

7. The current arrangements for providing data for the UPOV-ROM, as set out in the UPOV-CPVO MoU (see documents CAJ/57/6, paragraph 6 and TC/44/6, paragraph 15), will not be affected by the agreement between UPOV and WIPO.

PROGRESS REPORT ON PROGRAM FOR IMPROVEMENTS TO THE UPOV-ROM PLANT VARIETY DATABASE

8. In recognition of the importance and urgency that a number of members of the Union had attached to improvements to the UPOV-ROM, the CAJ, at its fifty-eighth session, agreed a program for delivering those improvements, as set out in Annex I to this document.

9. The CAJ was informed by the Acting Secretary-General, in his capacity as Director General of WIPO, that the Draft Program and Budget of WIPO for 2009 contained relevant human and financial resources proposals for the program set out in Annex I to this document. In the meantime, the CAJ was informed that UPOV had sufficient budgetary resources under the UPOV-ROM item to fund the initial work on the program set out in Annex I to this document until early 2009. A report of the WIPO resources allocated to the UPOV-ROM will be made at the forty-fifth session of the TC and fifty-ninth session of the CAJ.

10. The following paragraphs provide a report on progress in items (a), (b) and (c) of the program set out in Annex I to this document.

- (a) *Investigation of (potential) contributors' needs; and*
- (b) *Provision of assistance to contributors*

11. On November 25, 2008, the Office wrote to each member of the Union and contributor to the UPOV-ROM that do not currently provide data for the UPOV-ROM, do not provide data on a regular basis, or do not provide data with UPOV codes. In each case, the individual circumstances of the contributor were summarized and the recipient was invited to explain the type of assistance that would enable them to provide regular and complete data for the UPOV-ROM.

12. Annex II to this document lists the members of the Union and organizations that were contacted and summarizes the developments in each case. A number of members of the Union are in contact with the Office and a further update will be provided at the forty-fifth session of the TC and fifty-ninth session of the CAJ.

- (c) *Development of data quality checks*

13. In accordance with the approach set out in the "Program for improvements to the UPOV-ROM Plant Variety Database", item (c), Circular E-893 of November 20, 2008, was issued to the representatives to the Council of the members of the Union and copied to members and observers of the CAJ and the TC, inviting members of the Union to indicate particular data quality requirements that they would wish to be introduced.

14. Circular E-893 also made reference to the outcome of discussions in the CAJ concerning the possible introduction of fields in the UPOV-ROM to provide information on dates on which a variety was commercialized for the first time in the territory of application and other territories.

15. It is recalled that the TC, at its forty-fourth session, held in Geneva from April 7 to 9, 2008 had noted that the introduction of a field in the Plant Variety Database to indicate the dates on which a variety was commercialized for the first time in the territory of application and other territories, as provided in the UPOV Model Form for the Application

for Plant Breeders' Rights (see document TGP/5: Section 2/2, item 8.), was primarily a matter for the CAJ. The TC noted that some delegations had explained the benefits of including such information in the UPOV-ROM, whilst some delegations had expressed concerns with regard to the data which would be included. It was noted that data on commercialization would, in most cases, need to be based on information provided by the applicant and the TC agreed that this aspect should be taken into account when considering such an approach (see document TC/44/13 "Report", paragraph 173).

16. At its fifty-eighth session, held in Geneva on October 27 and 28, 2008, the CAJ agreed, in principle, to the introduction of fields in the UPOV-ROM Plant Variety Database to provide information on dates on which a variety was commercialized for the first time in the territory of application and other territories, subject to the following:

- (a) the fields would be optional;
- (b) an explanation of the status and source of the information, or how to obtain an explanation of the status (e.g. a link to an authority website); and
- (c) an explanation and disclaimer concerning the accuracy and completeness of the information, including an explanation that the absence of information would not imply that the variety had not been commercialized.

17. The CAJ agreed to proceed with that approach on the basis that it would be invited to consider specific proposals before any fields were introduced into the UPOV-ROM Plant Variety Database (see document CAJ/58/6 "Report on the Conclusions", paragraphs 19 and 20).

18. A summary of the comments received is provided in Annex III to this document, which is divided into: (a) general comments; (b) comments concerning a field for dates on which a variety was commercialized for the first time in the territory of application and other territories; and (c) comments concerning specific "fields" (data elements).

19. In response to Circular E-893 (see Annex III, (a) "General comments"), Brazil proposed that a new field (item) should be included in the Plant Variety Database, for the country of residence of the applicant and of the title holder to be provided. It noted that that information was required for the preparation of the document "Plant Variety Protection Statistics" (see document C/42/7). The TC has been informed that the CAJ will be invited to consider this proposal (see document TC/45/6, paragraph 24).

20. The CAJ is invited to consider the proposal that a new field (item) should be included in the Plant Variety Database, for the country of residence of the applicant and of the title holder to be provided, as set out in paragraph 19.

PROPOSALS FOR IMPROVEMENTS TO THE PLANT VARIETY DATABASE

21. With regard to the program for improvements to the UPOV-ROM Plant Variety Database, the TC and CAJ are invited to consider the following proposals:

1. *Title of the Plant Variety Database*

In recognition of the intention to develop a web-based version of the Plant Variety Database, no reference will be made to the “UPOV-ROM”. The full name of the Plant Variety Database will be the “VARDAT Plant Variety Database”, abbreviated to VARDAT as appropriate.

2. *Provision of assistance to contributors*

2.1 The Office will continue to contact all members of the Union and contributors to the Plant Variety Database that do not provide data for the Plant Variety Database, do not provide data on a regular basis, or do not provide data with UPOV codes. In each case, they will be invited to explain the type of assistance that would enable them to provide regular and complete data for the Plant Variety Database.

2.2 In response to the needs identified by members of the Union and contributors to the Plant Variety Database in 2.1, the designated WIPO staff, in conjunction with the Office, will seek to develop solutions for each of the Plant Variety Database contributors.

2.3 An annual report on the situation will be made to the CAJ and TC.

2.4 With regard to the assistance to be provided to contributors, the UPOV-ROM “General Notice and Disclaimer” states that “[...] All contributors to the UPOV-ROM are responsible for the correctness and completeness of the data they supply. [...]”. Thus, in cases where assistance is provided to contributors, the contributor will continue to be responsible for the correctness and completeness of the data.

3. *Data to be included in the Plant Variety Database*

3.1 *Data format*

3.1.1 In particular, the following data format options to be developed for contributing data to the Plant Variety Database:

- (a) data in XML format;
- (b) data in Excel spreadsheets or Word tables;
- (c) data contribution by on-line web form;
- (d) an option for contributors to provide only new or amended data

3.1.2 To consider, as appropriate, restructuring TAG items; for example, where parts of the field are mandatory and other parts not.

3.2 *Data quality and completeness*

The following data requirements to be introduced in the Plant Variety Database

<u>TAG</u>	<u>Description of Item</u>	<u>Current Status</u>	<u>Proposed status</u>	<u>Database developments required</u>
<000>	Start of record and record status	mandatory	start of record to be mandatory	facility to calculate record status (by comparison with previous data submission), if not provided
<190>	Country or organization providing information	mandatory	mandatory	data quality check: to verify against list of codes
<010>	Type of record and (variety) identifier	mandatory	both mandatory	(i) meaning of “(variety) identifier” to be clarified in relation to item <210>; (ii) to review whether to continue type of record “BIL”; (iii) data quality check: to check against list of types of record
<500>	Species--Latin name	mandatory until UPOV code provided	mandatory (even if UPOV code provided)	
<509>	Species--common name in English	mandatory if no common name in national language (<510>) is given.	not mandatory	
<510>	Species--common name in national language other than English	mandatory if no English common name (<509>) is given	not mandatory	
<511>	Species--UPOV Taxon Code	mandatory	mandatory	(i) if requested, the Office to provide assistance to the contributor for allocating UPOV codes; (ii) data quality check: to check UPOV codes against the list of UPOV codes; (iii) data quality check: to check for seemingly erroneous allocation of UPOV codes (e.g. wrong code for species)
DENOMINATIONS				
<540>	Date + denomination, proposed, first appearance or first entry in data base	mandatory if no breeder's reference (<600>) is given	(i) mandatory to have <540>, <541>, <542>, or <543 if <600> is not provided (ii) date not mandatory	(i) to clarify meaning and rename; (ii) data quality check: mandatory condition in relation to other items
<541>	Date + proposed denomination, published		see <540>	(i) to clarify meaning and rename (ii) data quality check: mandatory condition in relation to other items

<542>	Date + denomination, approved	mandatory if protected or listed	see <540>	(i) to clarify meaning and rename; (ii) to allow for more than one approved denomination for a variety (i.e. where a denomination is approved but then replaced) (iii) data quality check: mandatory condition in relation to other items
<543>	Date + denomination, rejected or withdrawn		see <540>	(i) to clarify meaning and rename (ii) data quality check: mandatory condition in relation to other items
<600>	Breeder's reference	mandatory if existing	not mandatory	
<601>	Synonym of variety denomination		not mandatory	
<602>	Trade name		not mandatory	(i) to clarify meaning (ii) to allow multiple entries
<210>	Application number	mandatory if application exists	mandatory if application exists	to be considered in conjunction with <010>
<220>	Application/filing date	mandatory if application exists	not mandatory	
<400>	Publication date of data regarding the application (protection)/filing (listing)		not mandatory	
<111>	Grant number (protection)/registration number (listing)	mandatory if existing	(i) mandatory to have <111> / <151> / <610> or <620> if granted or registered (ii) date not mandatory	(i) data quality check: mandatory condition in relation to other items
<151>	Publication date of data regarding the grant (protection) / registration (listing)		see <111> (note)	data quality check: mandatory condition in relation to other items
<610>	Start date--grant (protection)/registration (listing)	mandatory if existing	see <111>	(i) data quality check: mandatory condition in relation to other items; (ii) data quality check: date cannot be earlier than <220>
<620>	Start date--renewal of registration (listing)		see <111>	(i) data quality check: mandatory condition in relation to other items: (ii) data quality check: date cannot be earlier than <610> (iii) to clarify meaning

(note) US: This data element is not currently listed as mandatory; however, the USPTO feels the publication dates of all grants should be mandatory to supply, particularly if the publication of the grant represents notice to the public of the protected plant variety. In some cases this date may be important to the examination of new US plant patent applications, because the date could establish the date as of when the document could be used as prior art.

<665>	Calculated future expiration date	mandatory if grant/listing	not mandatory	
<666>	Type of date followed by "End date"	mandatory if existing	not mandatory	
	PARTIES CONCERNED			
<730>	Applicant's name	mandatory if application exists	mandatory if application exists	
<731>	Breeder's name	mandatory	mandatory	to clarify meaning of "breeder" according to document TGP/5 (see <733>)
<732>	Maintainer's name	mandatory if listed	not mandatory	to be accompanied by start and end date (maintainer can change)
<733>	Title holder's name	mandatory if protected	mandatory if protected	(i) to clarify meaning of "title holder" according to document TGP/5 (see <731>) (ii) to be accompanied by start and end date (title holder can change)
<740>	Type of other party followed by party's name		not mandatory	
	INFORMATION REGARDING EQUIVALENT APPLICATIONS IN OTHER TERRITORIES			
<300>	Priority application: country, type of record, date of application, application number		not mandatory	
<310>	Other applications: country, type of record, date of application, application number		not mandatory	
<320>	Other countries: Country, denomination if different from denomination in application		not mandatory	
<330>	Other countries: Country, breeder's reference if different from breeder's reference in application		not mandatory	
<900>	Other relevant information (phrase indexed)		not mandatory	
<910>	Remarks (word indexed)		not mandatory	
<920>	Tags of items of information which have changed since last transmission (optional)		not mandatory	to develop option to generate automatically (see 2.1.1.(a))
<998>	FIG		not mandatory	
<999>	Image identifier (for future use)		not mandatory	to create possibility to provide hyperlink to image (e.g. an authority's webpage)

3.3 Mandatory “items”

3.3.1 With respect to items that are indicated as “mandatory” in Section 3.2, data will not be excluded from the Plant Variety Database if that item is absent. However, a report of the non-compliances will be provided to the contributor.

3.4.2 A summary of non-compliances will be reported to the TC and CAJ on an annual basis.

3.4 Dates of commercialization

3.4.1 An item will be created in the Plant Variety Database to allow for information to be provided on dates on which a variety was commercialized for the first time in the territory of application and other territories, on the following basis:

Item <XXX>: dates on which a variety was commercialized for the first time in the territory of application and other territories (not mandatory)

	<u>Comment</u>
(i) Authority providing the [following] information	ISO two letter code
(ii) Territory of commercialization	ISO two letter code
(iii) Date on which the variety was commercialized* for the first time in the territory (* The term “commercialization” is used to cover “sold or otherwise disposed of to others, by or with the consent of the breeder, for purposes of exploitation of the variety” (Article 6(1) of the 1991 Act of the UPOV Convention) or “offered for sale or marketed, with the agreement of the breeder” (Article 6(1)(b) of the 1978 Act of the UPOV Convention), as appropriate.	according to the format YYYY[MMDD] (Year[MonthDay]): month and day will not be mandatory if not available
(iv) Source of information	mandatory for each entry in item <XXX>
(v) Status of information	mandatory for each entry in item <XXX> (to provide an explanation or a reference to where an explanation is provided (e.g. the website of the authority providing the data for this item))
<i>Note: for the same application, the authority in (i) could provide more than one entry for items (ii) to (v). In particular, it could provide information on commercialization in the “territory of application”, but also “other territories”</i>	

3.4.2 The following disclaimer would appear alongside the title of the item in the database:

“The absence of information in [item XXX] does not indicate that a variety has not been commercialized. With regard to any information provided, attention is drawn to the source and status of the information as set out in the fields ‘Source of information’ and ‘Status of information’. However, it should also be noted that the information provided might not be complete and accurate.”

4. *Frequency of data submission*

The Plant Variety Database will be developed in such a way as to allow updating at any frequency determined by the members of the Union. Prior to completion and publication of the web-based version of the Plant Variety Database, no change is proposed to the frequency of updating, i.e. contributors will be requested to update their data on a bimonthly basis. Once that stage is complete, the CAJ and TC will be invited to consider whether to create possibilities for data to be updated on a more frequent basis.

5. *Discontinuation of inclusion of general information documents in UPOV-ROM*

On the basis that such information is readily available on the UPOV website, the following general information documents will no longer be included in the UPOV-ROM:

Addresses of Plant Variety Protection Offices
List of members of the Union
Cover with some useful information
UPOV: What it is, what it does (“UPOV flyer”)
List of UPOV publications

6. *Web-based version of the Plant Variety Database*

6.1 A web-based version of the Plant Variety Database will be developed. The possibility to create CD-ROM versions of the Plant Variety Database, without the need for the services of Jouve, will be developed in parallel to the web-based version of the database.

6.2 An update on the planned timetable for development of a web-based version of the Plant Variety Database will be provided at the forty-fifth session of the TC and the fifty-ninth session of the CAJ.

7. *Common search platform*

A report on developments concerning the development of a common search platform will be made to the CAJ and TC. Any proposals concerning a common search platform will be put forward for consideration by the TC and CAJ.

22. The conclusions of the TC, at its forty-fifth session, will be reported to the CAJ for consideration at its at its fifty-ninth session.

23. The CAJ is invited to consider the proposals for improvements to the Plant Variety Database, as set out in paragraph 21, in conjunction with the conclusions of the TC at its forty-fifth session.

[Annex I follows]

ANNEX I

Program for improvements to the UPOV-ROM Plant Variety Database

(presented to the Administrative and Legal Committee (CAJ),
at its fifty-eighth session, held in Geneva on October 27 and 28, 2008)

(a) Investigation of (potential) contributors' needs

As a first step in the program, in November 2008, the Office of the Union will contact all members of the Union and contributors to the UPOV-ROM which do not currently provide data for the UPOV-ROM, do not provide data on a regular basis, or do not provide data with UPOV codes. In each case, they will be invited to explain the type of assistance which would enable them to provide regular and complete data for the UPOV-ROM.

(b) Provision of assistance to contributors

In response to the survey of needs, the designated WIPO staff (once in post) would start to develop solutions for each of the UPOV-ROM contributors.

(c) Development of data quality checks

At present, UPOV does not have the necessary tools to perform meaningful checks on the quality of data submitted for the UPOV-ROM. However, as a part of the arrangement with WIPO, electronic data quality checking systems would be introduced to check the submitted data before incorporation in the database. Those systems would be able to identify, for example, missing data (in mandatory fields, e.g. UPOV code), unexpected dates for a field, inconsistent formats, etc. As a first step, it would be necessary for the quality requirements to be defined. In that respect, a circular would be issued in November 2008, inviting members of the Union to indicate particular data quality requirements which they would wish to be introduced. On the basis of the responses received, the Office of the Union would prepare a proposal for consideration by the Administrative and Legal Committee (CAJ) and Technical Committee (TC) at their respective sessions in April 2009. That proposal would also present options for addressing situations where data did not meet the agreed quality standards.

(d) Frequency of data submission

In conjunction with the development of a web-based version of the UPOV Plant Variety Database (see (f) below), the CAJ and TC will be invited to consider whether to create possibilities for data to be updated on a more frequent basis.

(e) Discontinuation of inclusion of general information documents in UPOV-ROM

In order to maximize efficiency, the various general information documents which are currently provided and regularly updated in the UPOV-ROM would no longer be included, on the basis that that information is now readily available elsewhere, for example from the UPOV website and the UPOV Gazette and Newsletter. Those general information documents are as follows:

Addresses of Plant Variety Protection Offices
List of members of the Union
Cover with some useful information
UPOV: What it is, what it does (“UPOV flyer”)
List of UPOV publications

(f) Web-based version of UPOV Plant Variety Database

At their respective sessions in April 2009, the CAJ and TC will be invited to consider a schedule for launching a web-based version of the UPOV Plant Variety Database. In conjunction with that work, it is anticipated that it will be possible to create CD-ROM versions of the UPOV Plant Variety Database without the need for the services of Jouve.

(g) Common search platform

A report on developments concerning the development of a common search platform will be made to the CAJ and TC at their respective sessions in April 2009.

[Annex II follows]

ANNEX II

REPORT ON THE USE OF UPOV CODES BY MEMBERS OF THE UNION
AND OTHER CONTRIBUTORS

Contributor	Number of new contributions to the UPOV-ROM in 2007 ²	UPOV Coding of data	Contacted Nov. 25, 2008	Reply	Office response
Albania	—		yes	-	reminder sent ³
Argentina	0	-	yes	-	reminder sent ³
Australia	6	Yes	no		
*Austria	4	Yes			
Azerbaijan	—		yes	-	reminder sent ³
Belarus	—		yes	-	reminder sent ³
*Belgium	6	<i>Part</i>			
Bolivia	—		yes	-	reminder sent ³
Brazil	2	No	yes	-	reminder sent ³
*Bulgaria	4	Yes			
Canada	6	Yes	no		
Chile	3	No	yes	-	reminder sent ³
China	—		yes	-	reminder sent ³
Colombia	1	No	yes	-	reminder sent ³
Costa Rica				new UPOV member	none
Croatia	—		yes	-	reminder sent ³
*Czech Republic	4	Yes			
*Denmark	5	Yes			
Dominican Republic	—		yes	-	reminder sent ³
Ecuador	—		yes	-	reminder sent ³
*Estonia	4	Yes			
*European Community	6	Yes			
*Finland	1	Yes			
*France	5	<i>Part</i>			
Georgia			yes	data will be provided	
*Germany	6	Yes			
*Hungary	6	Yes			

² 6 indicates that new data were submitted for all six (6) new versions of the UPOV-ROM issued in 2007.

- Do not currently provide data for the UPOV-ROM.

³ update will be provided at the TC and CAJ sessions

* Data provided via the CPVO.

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Contributor	Number of new contributions to the UPOV-ROM in 2007 ²	UPOV Coding of data	Contacted Nov. 25, 2008	Reply	Office response
*Iceland	—				
*Ireland	2	Yes			
Israel	0		yes	action being taken to provide appropriate data	
*Italy	5	No			
Japan	1	No	yes	-	reminder sent ³
Jordan	—		yes	-	reminder sent ³
Kenya	—		yes	-	reminder sent ³
Kyrgyzstan	0		yes	-	reminder sent ³
*Latvia	3	Yes			
*Lithuania	2	Yes			
Mexico	—		yes	-	reminder sent ³
Moldova	1	No	yes	-	reminder sent ³
Morocco	—		yes	-	reminder sent ³
*Netherlands	6	<i>Part</i>			
New Zealand	6	<i>Part</i>	no		
Nicaragua	—		yes	-	reminder sent ³
*Norway	4	Yes			
Panama	—		yes	-	reminder sent ³
Paraguay	—		yes	-	reminder sent ³
*Poland	6	Yes			
*Portugal	2	Yes			
Republic of Korea	1	No	yes	-	reminder sent ³
*Romania	4	<i>Part</i>			
Russian Federation	5	Yes	no		
Singapore	—		yes	-	reminder sent ³
*Slovakia	6	Yes			
*Slovenia	3	Yes			
South Africa	1	Yes	yes	request to provide data in Word format as per Gazette	to investigate feasibility via UPOV-WIPO arrangement
*Spain	3	No			
*Sweden	3	Yes			
*Switzerland	6	Yes			
Trinidad and Tobago	—		yes	-	reminder sent ³
Tunisia	—		yes	-	reminder sent ³

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Contributor	Number of new contributions to the UPOV-ROM in 2007 ²	UPOV Coding of data	Contacted Nov. 25, 2008	Reply	Office response
Turkey	—		yes	-	reminder sent ³
Ukraine	0		yes	-	reminder sent ³
*United Kingdom	6	No			
United States of America	6	No	yes	assistance requested for attribution of UPOV codes for USPTO data	assistance to be provided via UPOV-WIPO arrangement
Uruguay	0		yes	-	reminder sent ³
Uzbekistan	—		yes	-	reminder sent ³
Viet Nam	—		yes	-	reminder sent ³
OECD	1	No	yes	meeting on January 28, 2009: UPOV codes to be provided and data to be updated in synchrony with OECD website	

[Annex III follows]

ANNEX III

SUMMARY OF COMMENTS RECEIVED IN RESPONSE TO
CIRCULAR E-893: UPOV-ROM

(a) General comments

Brazil

“[...] we would like to make a suggestion with the aim to include in the report one important information annually required by WIPO regarding the origin of applications. The country of the Applicant and the country of the Title Holder should be informed including the two letter code ISO 3166 before their names on TAGs <730> and <733> or, another solution would be add an specific TAG for that information. We can imagine how difficult is the inclusion of new information, but it would be valuable in order to allow WIPO extract from UPOV database the information which is now provided annually in a separate report by every UPOV member.”

European Community

Remarks of the Community Plant Variety Office of the European Community (CPVO):

“Over 4 years experience in collecting data for the CPVO Centralized Database and the UPOV-ROM reveals that a flexible approach is necessary in order to ensure a high number of contributions in the CPVO systems based on voluntary participation. The situation in respect of the existence of databases containing plant breeders rights data, their level of computerization and the range of data available is varying a lot in each Member State and this needs to be weighed before considering to make a field available or not.

“The CPVO would also like to remark that the fields of the UPOV-ROM need to be reviewed as a whole. In the UPOV letter are mentioned some required additional information, e.g. commercialization dates. Other information might also be necessary, while some currently requested information never seems to be provided and turns out to be not necessary. Furthermore, the Office thinks it would be useful to review the structure of the information requested. It is not practical for data processing that several types of information are requested in a single field (e.g. denomination and date), as part of it should be mandatory and the other part not. Finally, some clarification about the information requested in some fields is necessary for the user to provide adequate data.”

Hungary

“I would also like to inform you that in our point of view the Data Elements and Tag References chart (Annex of Circular E-893) contains the necessary and sufficient data.”

Russian Federation

The Russian Federation proposed that there should be a possibility to provide only new and amended data for each version of the UPOV-ROM.

Ukraine

No comments or proposals.

United States of America

“We have a couple [of] general comments. First, we feel it may be beneficial to reconsider the use of the current tagging format in favor of using XML having more descriptive tags and a well defined DTD. By using XML as a data exchange mechanism some validation of data can be achieved at each Office by enforcement of the DTD. XML would also provide a simpler and straight forward means for loading the data into commercial databases.”

“Second, the complete data file of each Office contains much information that isn’t changing, old grants that have expired, for example. The USPTO feels it is unnecessary to send this data along with changing data to UPOV every two months, so it is our position that if WIPO is to maintain the UPOV data, and we concur that this is a positive step, the data should be maintained in such a way that requires only the bimonthly submission of incremental changes to the data. If the data were maintained in a relational or XML database, for instance, appropriate load processes could be developed making it necessary for each Office to only submit the bimonthly incremental changes to their data. This would reduce the in-house processing times for each Office as well as the network overhead associated with transmission of large, complete data files.”

- (b) Comments concerning fields for dates on which a variety was commercialized for the first time in the territory of application and other territories

Australia

“Australia could report on information provided by applicants regarding dates of commercialization. Sometimes only month and year are provided or, rarely, only year. In these cases the earliest possible date is assumed (i.e. first day of the month or first day of the year). If prior sale becomes an issue within this period then applicant has the responsibility of providing actual day of first sale. Two dates of first sales are possible and, if provided, should be accompanied by the country code (one date for the member country providing the data, the second date for first foreign sales). Provision of both dates should be optional.”

Hungary

“With reference to your letter of November 20, 2008 (Circular E-893 on the program for improvements to the UPOV-ROM Plant Variety Database), I hereby inform you that taking into consideration the provisions of Act XXXIII of 1995 on the Protection of Inventions by Patents (“the Patent Act”), we do not suggest the introduction of fields in the UPOV-ROM to provide information on dates on which a variety was commercialised for the first time in the territory of application and other territories. Article 106(6) of the Patent Act provides as follows:

- (6) The variety shall be deemed to be new if the propagating or harvested material of the variety has not been sold or otherwise disposed of to others by or with the consent of the breeder [Article 108(1)] or his successor in title, for purposes of exploitation of the variety
- (a) in the country earlier than one year before the date of priority,

(b) abroad earlier than four years or, in the case of trees or of vines, earlier than six years before the date of priority.

The applicant shall submit a declaration on the above mentioned conditions of novelty but this declaration does not have to contain the concrete date on which the propagating or harvested material of the variety was commercialised for the first time. The Patent Act does not prescribe any sanction for the case if the declaration does not contain this data.”

United States of America

“It would be helpful for the USPTO if the UPOV-ROM data include the date of first sale/distribution to the public as well as all the other names the plant has been called or known by. However, such information should not be made mandatory.”

(c) *comments concerning specific “fields” (data elements)*

TAG	Description of Item	Status	
<000>	Start of record and record status	mandatory	<p>AU: to be updated by check on previous submission</p> <p>QZ: Separator between 2 records – mandatory</p> <p>We are of the opinion that it is not always possible to indicate the record status and it should not be mandatory. In our database, the system compares data submitted for a variety with existing data and can calculate automatically if a record is new, has been modified or remains unchanged.</p> <p>(1 – new record 2 – modified record 3 – unchanged record 0 – unknown)</p> <p>RU: It is desirable to have opportunity to submit new and changed data only (TAG <001> and TAG <002>) what is about 5% of all information on UPOV-ROM.</p>
<190>	Country or organization providing information	mandatory	<p>AU: check compliance with ISO 3166</p> <p>QZ: Mandatory.</p> <p>It can also be added by the database manager without much efforts in case of need.</p>
<010>	Type of record and (variety) identifier	mandatory	<p>QZ: This field should be mandatory.</p> <p>The variety is identified by its application number + its type of publication in our centralized database. Our experience reveals that the field ‘variety identifier’ is not clearly explained and is diversely interpreted by Member States. This variety identifier should for us be the unique key identifying always one and the same variety in the contribution of a Member State over time. This should for us be the application number and it is in this respect overlapping with the field <210>.</p> <p>The type of record should also be mandatory. In details, we are of the opinion that the type of record ‘BIL’ (bilateral agreement) is not useful: it concerns records about varieties tested by Member States on behalf of others. The information held by the testing country can only be less precise or complete than the information held by the Member State where the application has been made. Moreover, such information is a duplicate and increases the size of databases unnecessarily. In practice, only very few countries submit data under this category.</p>

TAG	Description of Item	Status	
<500>	Species--Latin name	mandatory until UPOV code provided	<p>QZ: The field species Latin name is and should remain mandatory for the identification of the species, even if the UPOV code is included in the record.</p> <p>We think that the UPOV code is a very useful field for the management of databases but that it is actually not necessary in contributions. It can even be misleading. We had cases where the UPOV code did not correspond to the species name. For example, contributors calculated automatically the UPOV code with the rule '5 first letters' and this does not always work! If the species name is not provided, the mistake cannot be spotted. We are of the opinion that everybody works on the basis of the species name and this is also the original information provided by breeders that should be registered. UPOV codes can be calculated automatically with species names on the basis of the UPOV spreadsheets. Each time we download a file, the list of species for which the UPOV code is not found automatically is edited and this is an important aspect in checking the quality of data submitted. In some cases, the UPOV code does not exist. In other cases, the spelling from the contributor is not conform to UPOV standards. In such a case, this can be reported and corrected. We opted for a more straightforward option: if country A sends us Malus L. as species name, the software does not identify the UPOV code but we register in our database that Malus L. corresponds to the UPOV code MALUS. When country A sends us again Malus L. the computer automatically attributes the code MALUS.</p> <p>Another reason for not requesting the UPOV code in contributions is that in case of modification of one UPOV code, contributors including the UPOV code in their file will have to correct it in their database.</p>
			<p><i>Office comment: it would not be appropriate for the Office to allocate UPOV codes. The Office can, where requested, provide assistance, but it must be the contributor that is responsible for its data.</i></p>
<509>	Species--common name in English	mandatory if no common name in national language (<510>) is given.	<p>QZ: This field should not be mandatory.</p> <p>This field might be useful because it might give additional information not included in the species name or the UPOV code. For example, there are 2 categories in the Common Catalogue for the species <i>Apium graveolens</i> L.: 1 <i>Apium graveolens</i> L. - Celery - 2 <i>Apium graveolens</i> L. - Celeriac . . The reference should nevertheless remain the species Latin name.</p>

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<u>TAG</u>	<u>Description of Item</u>	<u>Status</u>	
<510>	Species--common name in national language other than English	mandatory if no English common name (<509>) is given	QZ: This field should not be mandatory. See comments above (<500>).
<511>	Species--UPOV Taxon Code	mandatory	AU: In cases where a new code is yet to be allocated the record should remain valid provided that <500> is included QZ: This field should not be mandatory. See comments above (<500>).
	DENOMINATIONS		QZ: Some countries do not have the dates of proposal, publication, and approval available in their databases. If the contributors do not have the dates available in their databases, they should if possible generate the tag <540>/<541>/<542>/<543> in order to inform about the status of the denomination. In the CPVO database, the status of the denomination is calculated automatically according to these tags. In other words, at least one of these fields should be mandatory, even if no dates are mentioned. In case one denomination proposal is replaced by a new denomination proposal, it is useful to receive the history on each denomination proposal with all dates. One denomination will appear with tag <543>
<540>	Date + denomination, proposed, first appearance or first entry in data base	mandatory if no breeder's reference (<600>) is given	QZ: We received sometimes questions as to the meaning of 'first appearance or first entry in data base'. This explanation should be clarified. We interpret it as the date of formal proposal of the denomination. Before a denomination has been proposed for the variety, some countries put the breeder reference in this field instead of tag <600> The tag could be renamed : <540> proposal date + denomination
<541>	Date + proposed denomination, published		QZ: This date is very useful if available in the national databases. The tag could be renamed : <541> publication date + denomination
<542>	Date + denomination, approved	mandatory if protected or listed	QZ: This date is very useful, if available in the national databases. The tag could be renamed : <542> approval date + denomination We would like to remark that the program JOUVE detects an error each time there are 2 tags <542> in one record. But in some cases, one denomination which has been approved can be replaced by a new denomination proposal, which has also been approved. In such cases, there will be 2 tags <542> in the record.

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<u>TAG</u>	<u>Description of Item</u>	<u>Status</u>	
<543>	Date + denomination, rejected or withdrawn		QZ: This date is very useful, if available in the national databases, but not included in the CSV file format. The tag could be renamed : <543> cancellation/withdrawal date + denomination US: Should not be mandatory
<600>	Breeder's reference	mandatory if existing	QZ: This field should not be mandatory.
<601>	Synonym of variety denomination		QZ: This field should not be mandatory. US: Should not be mandatory
<602>	Trade name		AU: Should allow multiple names (perhaps by using a suitable separator) QZ: This field should not be mandatory. RU: Explanation needed US: Should not be mandatory
<210>	Application number	mandatory if application exists	QZ: This field should be mandatory. See comments under field <010>
<220>	Application/filing date	mandatory if application exists	QZ: This field should not be mandatory.
<400>	Publication date of data regarding the application (protection)/filing (listing)		QZ: This field should not be mandatory.
<111>	Grant number (protection)/registration number (listing)	mandatory if existing	QZ: This field should not be mandatory. For granted or registered varieties at least one of the 4 tags <111> / <151> / <610> / <620> should be generated even if the contributor does not have the information about the date. As for denominations, we use these tags to calculate the status 'Registered'.
<151>	Publication date of data regarding the grant (protection) / registration (listing)		QZ: This field should not be mandatory. US: This data element is not currently listed as mandatory; however, the USPTO feels the publication dates of all grants should be mandatory to supply, particularly if the publication of the grant represents notice to the public of the protected plant variety. In some cases this date may be important to the examination of new US plant patent applications, because the date could establish the date as of when the document could be used as prior art.
<610>	Start date--grant (protection)/registration (listing)	mandatory if existing	AU: Date cannot be earlier than <220> QZ: This field should not be mandatory.
<620>	Start date--renewal of registration (listing)		AU: Date cannot be earlier than <610> QZ: This field should not be mandatory. RU: Explanation needed
<665>	Calculated future expiration date	mandatory if grant/listing	QZ: This field should not be mandatory.

<u>TAG</u>	<u>Description of Item</u>	<u>Status</u>	
<666>	Type of date followed by “End date”	mandatory if existing	<p>AU: Date should be consistent with type of date. (e.g. TER date cannot be before (<610>))</p> <p>QZ: This field should not be mandatory. Some clarification seems to be necessary. <666> should not be included in the record for varieties:</p> <ul style="list-style-type: none"> - under procedure of Listing or PBR - registered or granted <p><666> should be generated with the information about the status: Withdrawn applications: WDR Rejected applications: REJ Surrendered varieties: SUR Terminated varieties: TER Expired varieties: EXP</p> <p>Sometimes, the contributors do not have the date of withdrawal, or surrender available for the varieties for old applications.</p>
PARTIES CONCERNED			
<730>	Applicant’s name	mandatory if application exists	QZ: This field should be mandatory.
<731>	Breeder's name	mandatory	QZ: This field should be mandatory.
<732>	Maintainer's name	mandatory if listed	<p>QZ: This field should not be mandatory.</p> <p>RU: Title holder’s name (TAG <733>) and maintainer’s name (TAG <732>) can change and, therefore these options should be accompanied by their applicable Start date and End date</p>
<733>	Title holder's name	mandatory if protected	<p>QZ: This field should not be mandatory.</p> <p>RU: Title holder’s name (TAG <733>) and maintainer’s name (TAG <732>) can change and, therefore these options should be accompanied by their applicable Start date and End date</p>
<740>	Type of other party followed by party’s name		<p>QZ: This field should not be mandatory.</p> <p>The control on the format on the field is not easy for the contributor. We had to go back to them very often about this because Jouve detects a problem if the type of party is not indicated</p>
INFORMATION REGARDING EQUIVALENT APPLICATIONS IN OTHER COUNTRIES			
<300>	Priority application: country, type of record, date of application, application number		<p>QZ: This field should not be mandatory.</p> <p>US: Should not be mandatory</p>
<310>	Other applications: country, type of record, date of application, application number		QZ: This field should not be mandatory.

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<u>TAG</u>	<u>Description of Item</u>	<u>Status</u>
<320>	Other countries: Country, denomination if different from denomination in application	QZ: This field should not be mandatory.
<330>	Other countries: Country, breeder's reference if different from breeder's reference in application	QZ: This field should not be mandatory. The Jouve program detects errors as soon as the format is not respected and this is sometimes difficult for the contributors, who have corrected data in the program of extraction. Sometimes, they also do not have all information. Taken into account that these fields are not inserted into the CPVO database, some contributors do not send this information.
<900>	Other relevant information (phrase indexed)	QZ: This field should not be mandatory.
<910>	Remarks (word indexed)	QZ: This field should not be mandatory.
<920>	Tags of items of information which have changed since last transmission (optional)	AU: This could be done by a data quality check based on the previous submission by the member. See also comments for <000> QZ: This field should not be mandatory.
<998>	FIG	QZ: This field should not be mandatory.
<999>	Image identifier (for future use)	AU: If used, it would be useful for this to be a hyperlink to the members website page where the image (and perhaps other information) resides. QZ: This field should not be mandatory.

[End of Annex III and of document]