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ADMINISTRATIVE AND LEGAL COMMITTEE

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EXCHANGEABLE SOFTWARE

Document prepared by the Office of the Union

1. The purpose of this document is to report on relevant matters concerning exchangeable software.
2. The structure of the document is as follows:
 - I. REVISION OF DOCUMENT UPOV/INF/16/1 "EXCHANGEABLE SOFTWARE"1
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3. The following abbreviations are used in this document:

CAJ:	Administrative and Legal Committee
TC:	Technical Committee
TC-EDC:	Enlarged Editorial Committee
TWA:	Technical Working Party for Agricultural Crops
TWC:	Technical Working Party on Automation and Computer Programs
TWF:	Technical Working Party for Fruit Crops
TWO:	Technical Working Party for Ornamental Plants and Forest Trees
TWV:	Technical Working Party for Vegetables
TWPs:	Technical Working Parties

- I. REVISION OF DOCUMENT UPOV/INF/16/1 "EXCHANGEABLE SOFTWARE"

4. Section 4 of document UPOV/INF/16/1 "Exchangeable Software", adopted by the Council at its forty-fourth ordinary session, held in Geneva on October 21, 2010, provides the following:

"4. Information on use by members of the Union

"4.1 A circular is issued to members of the Union on an annual basis, inviting them to provide information on their use of the software included in document UPOV/INF/16.

“4.2 The information on software use by members of the Union is indicated in the columns ‘Member(s) of the Union using the software’ and ‘Application by user(s)’. With regard to the indication of ‘Application by user(s)’, members of the Union can indicate, for example, crops or types of crop for which the software is used.”

5. On February 4, 2011, the Office of the Union issued Circular E-1464 to the designated persons of the members of the Union in the Technical Committee, inviting them to provide information regarding the use of the software included in document UPOV/INF/16. In reply to that Circular, the Office of the Union received information regarding the use of the software included in document UPOV/INF/16 from Croatia. Document UPOV/INF/16/2 Draft 1, prepared for consideration of the TC at its forty-seventh session, held in Geneva, from April 4 to 6, 2011, incorporated the updated information on the use of exchangeable software presented by Croatia.

6. The TC, at its forty-seventh session, held in Geneva, from April 4 to 6, 2011, approved the content of document UPOV/INF/16 “Exchangeable software” as presented in document UPOV/INF/16/2 Draft 1. It noted that, subject to agreement by the CAJ at its sixty-fourth session, to be held in Geneva in October 2011, the revision of document UPOV/INF/16/1 (document UPOV/INF/16/2) would be put forward for adoption by the Council at its forty-fifth ordinary session, to be held in Geneva on October 20, 2011 (see document TC/47/26 “Report on the Conclusions”, paragraph 37).

7. The CAJ, at its sixty-fourth session, held in Geneva, on October 17, 2011, approved the revision of document UPOV/INF/16 “Exchangeable Software” (see document CAJ/64/11 “Report on the Conclusions”, paragraph 33).

8. The Council, at its forty-fifth ordinary session, held in Geneva, on October 20, 2011, adopted the revision of document UPOV/INF/16 “Exchangeable Software” (document UPOV/INF/16/2, see http://www.upov.int/information_documents/en/list.jsp), on the basis of the proposed amendments to document UPOV/INF/16/1, as presented in Annex III to document C/45/13 (see document C/45/17 “Report on the Decisions”, paragraph 19).

9. The CAJ is invited to note the adoption of document UPOV/INF/16/2.

II. NEW SOFTWARE TO BE CONSIDERED FOR INCLUSION IN A FUTURE REVISION OF DOCUMENT UPOV/INF/16 “EXCHANGEABLE SOFTWARE”

Software presented at the twenty-eighth session of the TWC

10. The procedure for considering proposed inclusions is set out in document UPOV/INF/16 “Exchangeable Software”, as follows:

“2. Procedure for inclusion of software

“Software proposed for inclusion in document UPOV/INF/16 by members of the Union is, in the first instance, presented for review by the Technical Working Party on Automation and Computer Programs (TWC). On the basis of such presentations and the experience of members of the Union, the TWC makes a recommendation to the Technical Committee on whether to include that software in document UPOV/INF/16. In the case of a positive recommendation by the TC and by the Administrative and Legal Committee (CAJ), the software will be listed in a draft of document UPOV/INF/16, to be considered for adoption by the Council. Document UPOV/INF/16 is adopted by the Council.”

11. At the twenty-eighth session of the TWC, held in Angers, France, from June 29 to July 2, 2010, the Community Plant Variety Office of the European Union (CPVO) invited the TWC to consider including the CPVO Centralised Database on Variety Denominations in document UPOV/INF/Software (former code of document UPOV/INF/16). It was explained that the database would be made available to all members of the Union and would enable them to use the CPVO variety denomination checking tool in conjunction with all data in the CPVO Centralised Database on Variety Denominations. The TWC noted the benefits that could be achieved from harmonization in the checking of variety denominations and agreed that the CPVO Centralised Database on Variety Denominations should be proposed for inclusion in document UPOV/INF/Software (see document TWC/28/36 “Report” paragraphs 65 and 66).

12. Following the twenty-eighth session of the TWC, the CPVO wrote to the Office of the Union explaining that the CPVO Centralised Database on Variety Denominations was accessible to members of the Union

through the CPVO website and explained that the software for checking variety denominations, which was the result of cooperation between the CPVO and the *Groupe d'Étude et de contrôle des Variétés et des Semences* (GEVES) (France), would also be made available to members of the Union. In that regard, it clarified that neither CPVO nor GEVES would be in a position to provide assistance for the installation or use of this software.

13. The TWC also received a presentation on the electronic office management systems deployed by CPVO, a copy of which was provided as document TWC/28/35, Annex III. The CPVO offered its assistance to any member of the Union wishing to benefit from the experience of the CPVO in developing their system and suggested that consideration might be given to how that offer might be reflected in document UPOV/INF/Software, or elsewhere (see document TWC/28/36 "Report" paragraph 67).

14. The TC, at its forty-seventh session, held in Geneva from April 4 to 7, 2011, noted the accessibility to members of the Union of the CPVO Centralised Database of Variety Denominations and noted that the CPVO was considering means of making its software for checking variety denominations available to members of the Union (see document TC/47/26 "Report on the Conclusions", paragraph 38). Following the forty-seventh session of the TC, the CPVO clarified that the accessibility to members of the Union of the CPVO Centralised Database of Variety Denominations also provided access to the software for checking variety denominations.

15. The TC, at its forty-seventh session, agreed that document UPOV/INF/16 should be modified in order to include the offer for assistance on the electronic office management systems made by the CPVO (see paragraph 16 of this document and paragraph 39 of document TC/47/26 "Report on the Conclusions").

16. The CAJ, at its sixty-fourth session, held in Geneva on October 17, 2011, noted that the software for checking variety denominations developed by the CPVO and *Groupe d'Étude et de contrôle des Variétés et des Semences* (GEVES) had been made available to members of the Union as set out in paragraph 17 of document CAJ/64/8 (see document CAJ/64/11 "Report on the Conclusions", paragraph 35).

17. The CAJ, at its sixty-fourth session, was invited to consider the proposal of the TC, at its forty-seventh session, that document UPOV/INF/16 should be modified in order to include the offer for assistance on the electronic office management systems made by the CPVO. The CAJ based its consideration on document CAJ/64/8 "Exchangeable Software", which explained as follows: document UPOV/INF/16 provides information on exchangeable software made available to other members of the Union. In that regard, the offer of assistance by the CPVO in the development of electronic office management systems does not directly correspond to the purpose of document UPOV/INF/16. Information on certain assistance provided by members of the Union is provided on the UPOV website, under section "News and Events". For instance, item "Assistance offered by Naktuinbouw" provides information on assistance provided in the form of a helpdesk on practical technical questions as well as information on internship. In addition, the Consultative Committee, at its eightieth session, held in October 20, 2010, noted the proposal for the publishing of the "Assistance" webpage on the second restricted area of the UPOV website and agreed that the access to the "Assistance" webpage would be reviewed at its eighty-second session, to be held in Geneva, on October 19, 2011.

18. On the basis above, the CAJ, at its sixty-fourth session, agreed to ask the Consultative Committee, at its eighty-second session, to review how offers for assistance made by members of the Union might be presented in a coordinated approach (see document CAJ/64/11 "Report on the Conclusions", paragraph 36).

19. The Consultative Committee, at its eighty-second session, held in Geneva on October 19 and on the morning of October 20, 2011, endorsed the inclusion of the offers by Naktuinbouw, as set out in paragraph 17 of this document of document CC/82/6, in section "(ii) Offers of assistance for the development of plant variety protection" of the "Assistance" webpage. It also endorsed the inclusion of the offer for assistance on the development of electronic office management systems made by the Community Plant Variety Office of the European Union (CPVO) in section "(ii) Offers of assistance for the development of plant variety protection" of the "Assistance" webpage.

20. *The CAJ is invited to note the developments concerning the inclusion of offers for assistance in the "Assistance" webpage.*

Software presented at the twenty-ninth session of the TWC

21. In reply to Circular E-1464, the Netherlands and the Russian Federation provided information on exchangeable software in addition to that included in document UPOV/INF/16/1 "Exchangeable Software". The information provided by the Netherlands was presented in Annex II to document CAJ/64/8 and the information provided by the Russian Federation was presented in Annex III to document CAJ/64/8.

22. The procedure for considering proposed inclusions is set out in document UPOV/INF/16 "Exchangeable Software", as follows:

"2. Procedure for inclusion of software

"Software proposed for inclusion in document UPOV/INF/16 by members of the Union is, in the first instance, presented for review by the Technical Working Party on Automation and Computer Programs (TWC). On the basis of such presentations and the experience of members of the Union, the TWC makes a recommendation to the Technical Committee on whether to include that software in document UPOV/INF/16. In the case of a positive recommendation by the TC and by the Administrative and Legal Committee (CAJ), the software will be listed in a draft of document UPOV/INF/16, to be considered for adoption by the Council. Document UPOV/INF/16 is adopted by the Council."

23. On that basis, the Netherlands and the Russian Federation were invited to present their proposals, at the twenty-ninth session of the TWC, held in Geneva from June 7 to 10, 2011 (see paragraph 40 of document TC/47/26 "Report on the Conclusions").

24. At its twenty-ninth session, the TWC considered document TWC/29/7 "Exchangeable Software" and received a presentation by Mrs. Hedwich Teunissen (Netherlands) on "Bionumerics Software for Databasing and Data Analysis" (document TWC/29/30). Copies of those documents are posted on the website of the sixty-fifth session of the CAJ (http://www.upov.int/meetings/en/details.jsp?meeting_id=25505). The TWC agreed that the Bionumerics Software for Databasing and Data Analysis could be included in the exchangeable software subject to agreement by the Working Group on Biochemical and Molecular Techniques and DNA Profiling in Particular (BMT) at its thirteenth session, to be held in Brasilia, from November 22 to 24, 2011 (see document TWC/29/31, "Report", paragraphs 39 and 40). There was no presentation from the Russian Federation at the twenty-ninth session of the TWC. The next opportunity for the review of the additional software provided by the Russian Federation will be at the thirtieth session of the TWC in 2012.

25. The TWV, at its forty-fifth session, held in Monterey, United States of America, from July 25 to 29, 2011, noted the information provided in document TWV/45/7. The TWV agreed that information on the cost and intellectual property rights for the Bionumerics Software for Databasing and Data Analysis should be provided. The TWV suggested that the TC should consider the type of information to be included in document "Exchangeable Software" (see document TWV/45/26 "Revised Report", paragraph 68).

26. The TWF, at its forty-second session, held in Hiroshima, Japan, from November 14 to 18, 2011, noted the information provided in document TWF/42/7. It agreed that information on the cost and intellectual property rights should be considered with regard to software proposed for inclusion in document "Exchangeable Software" (see document TWF/42/26 Rev. "Report", paragraph 56).

27. The TWO, at its forty-fourth session, held in Fukuyama, Japan, from November 7 to 11, 2011, noted the information provided in document TWO/44/7. It agreed that information on the cost and intellectual property rights should be considered with regard to software proposed for inclusion in document "Exchangeable Software" (see document TWO/44/25 "Report", paragraph 49).

28. At its thirteenth session, held in Brasilia, from November 22 to 24, 2011, the BMT received a presentation by Ms. Hedwich Teunissen (Netherlands) on the Bionumerics Software for Databasing and Data Analysis, based on document BMT/13/31, which is provided in document BMT/13/31 Add. Copies of those documents are posted on the website of the sixty-fifth session of the CAJ. In reply to a question from Mr. Tetsuya Kimura (Japan), Ms. Teunissen explained that the cost of purchasing the software varies depending on how many functions (plug-ins) are needed. The BMT noted that the Bionumerics Software had been proposed to be included in document UPOV/INF/16 "Exchangeable Software" by the TWC (see document BMT/13/36 "Report", paragraphs 64 to 66).

29. The TC, at its forty-eighth session, will be invited to consider the recommendation of the TWC at its twenty-ninth session concerning the inclusion of “Bionumerics Software for Databasing and Data Analysis” in document UPOV/INF/16, in conjunction with the comments of the TWV, TWF, TWO and BMT.

30. The comments of the TC, at its forty-eighth session, concerning “Bionumerics Software for Databasing and Data Analysis”, will be reported to the CAJ at its sixty-fifth session.

31. The CAJ is invited to consider, in conjunction with the comments of the TC, whether to propose that “Bionumerics Software for Databasing and Data Analysis” be included in document UPOV/INF/16 “Exchangeable Software”.

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