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# INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

Geneva

## ADMINISTRATIVE AND LEGAL COMMITTEE

### Sixty-Sixth Session Geneva, October 29, 2012

#### ISSUES CONCERNING A UNIQUE VARIETY IDENTIFIER

*Document prepared by the Office of the Union*

1. The Administrative and Legal Committee (CAJ), at its sixty-fifth session, held in Geneva on March 29, 2012, considered document CAJ/65/5, which included a report on the discussions at the second meeting of experts from UPOV, the World Intellectual Property Organization (WIPO), the Community Plant Variety Office of the European Union (CPVO) and the International Seed Federation (ISF), to consider the development of an Electronic Blank Form. Document CAJ/65/5 reported that the discussions at that meeting had highlighted the difficulty in identifying applications that were made for the same variety in different territories because of the absence of a unique variety identifier. At the second meeting of experts, it was noted that the possibility of creating of a unique variety identifier had been discussed within UPOV in the past, but had not been pursued (see document TC/39/14 – CAJ/47/5, paragraphs 14 to 18). It was agreed that the CAJ should be informed of the discussion in order that the CAJ might consider whether the matter was worthy of further discussion (see document CAJ/65/5, paragraphs 23 and 24).

2. The CAJ, at its sixty-fifth session, agreed that the Office of the Union should prepare a document to explain the issues, for consideration at its sixty-sixth session in October 2012 (see document CAJ/65/12 “Report on the Conclusions”, paragraph 63).

3. This document provides information on the consideration of this matter as follows:

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#### DISCUSSIONS IN THE *AD HOC* WORKING GROUP ON VARIETY DENOMINATIONS

4. At its second meeting, held in Geneva, April 18, 2002 the *Ad hoc* Working Group on Variety Denominations (Working Group) requested the Office of the Union to draft a questionnaire for all members of the Union and other interested organizations, seeking information on how the effectiveness of the UPOV-ROM (or similar web-based database) might be improved. The questionnaire was produced in two versions: version (a) for authorities and version (b) for breeders and other subscribers (see document WG-VD/3/3).

5. Question 3 of the questionnaire was the following:

“The UPOV Convention<sup>1</sup> requires that a variety must be submitted to all members of the Union under the same denomination and that the authority of each member of the Union shall register the denomination so submitted, unless it considers the denomination unsuitable within its territory. In the latter case, the variety may have a different denomination in different territories.

“Do you use the UPOV-ROM to check if a variety has a different denomination in different territories?”

6. The responses to that question were as follows:

	(a) Authorities	(b) Other Users
Yes	22 (71%)	5 (45%)
No	9	6
Total	31	11

“Comments:

“(i) It is currently not possible to check if the same variety has a different denomination in different territories, because there is no unique variety identifier. The breeder’s reference is not reliable for this purpose.

\*“(ii) Each variety should be attributed a unique code and then it might have different variety names / synonyms / trade names in different territories.”

(\*Comments made exclusively by breeders and other subscribers (“other users”))

7. At its third meeting, held in Geneva on October 21, 2002, the Working Group concluded as follows (see document WG-VD/3/4 “Summary Report”, paragraph 18):

“Of particular relevance to the Working Group, as it was discussed during the Draft Explanatory Notes above, was the consideration of the introduction of a unique variety identifier that could offer a solution in those cases where it was necessary to have different variety denominations in different territories for the same variety. A field for this unique identifier might, for example, then be included in the UPOV-ROM, UPOV Model Application Forms, etc.”

8. At its fourth meeting, held in Geneva on April 10, 2003, the Working Group considered document WG-VD/4/2 “Draft Explanatory Notes on Article 20 of the 1991 Act of the UPOV Convention concerning Variety Denominations”, which contained the following paragraphs:

“3. It is also proposed that, during the discussions of the Draft Explanatory Notes, the Working Group would further consider two matters that were identified in the replies to the questionnaire designed to investigate how the effectiveness of the UPOV-ROM could be improved (Circular U 3256 for authorities and Circular U 3257 for breeders and other subscribers). More precisely, the Working Group may consider whether the introduction of a unique variety identifier might offer a solution in those cases where it is necessary to have different variety denominations, in different territories, for the same variety. A “field” for this unique identifier might, for example, then be included in the UPOV-ROM, UPOV Model Application Forms, etc.

“4. The proposed solution in paragraph 3 is meant to allow for the traceability of the variety when different denominations are necessary. For instance, the authority of one member might need to register a different denomination from the one already registered by another member for the same variety (e.g. different alphabets). That authority would need to submit this information to the Office of the Union to obtain a type of unique variety identifier or reference, which it would then transmit to the breeder and the authorities concerned. The Office would then keep a register of different denominations for each variety.”

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<sup>1</sup> Article 20(5) of the 1991 Act / Article 13(5) of the 1978 Act

9. Document WG-VD/4/2, Annex "Draft Explanatory Notes on Article 20 of the 1991 Act of the UPOV Convention concerning Variety Denominations", contained the following text under the draft Explanatory Notes on Article 20(2) [Characteristics of the denomination]:

"2.11 It is recommended to use the UPOV-ROM as an efficient tool to check if, in the territory of any UPOV member, the proposed denomination is different from designations of existing varieties of the same plant species or of a closely related species.

"The Working Group may consider whether the introduction of a unique variety identifier might offer a solution in those cases where it is necessary to have different variety denominations, in different territories, for the same variety. A 'field' for this unique identifier might, for example, then be included in the UPOV-ROM, UPOV Model Application Forms, etc."

10. The Summary Report of the fourth meeting of the Working Group recorded the following discussion (see document WG-VD/4/4 "Summary Report"):

"13. Discussions took place on a possible solution to permit the traceability of the variety when different denominations were necessary (see paragraphs 3 and 4 of document WG-VD/4/2). Whilst recognizing the need to find a solution when different denominations for the same variety were necessary, the Working Group stressed the importance to carefully study the need not to undermine the essential rule in paragraph 5 of Article 20 of the 1991 Act, to provide for the same denomination in all members of the Union.

"14. Three observer organizations and one delegation emphasized the need to avoid the unnecessary creation of synonyms and of any mechanism that could give the impression that the creation of synonyms was facilitated.

"15. Another delegation indicated that, in certain cases, for example, different alphabets, the registration of different denominations for the same variety may be unavoidable. The same delegation requested the Working Group to further analyze how a solution might be found to identify that different denominations were registered for the same variety.

"16. The Senior Legal Officer requested the Working Group to indicate how, at present, information was exchanged between authorities when there was a need to register a different denomination to the one originally registered because the original denomination was unsuitable in a particular territory. One delegation indicated that, in certain cases, there was lack of transparency, for example, different applicants applying for protection for the same variety in different countries.

"17. One observer organization proposed to move comments on the traceability of the variety with different denominations from Draft Explanatory Note 2.11 in page 5 of the Annex to document WG-VD/4/2 to Draft Explanatory Notes concerning Article 20(5), "same denomination in all Contracting Parties," and with particular focus on how information on different denominations was transmitted between relevant authorities."

11. At its fifth meeting, held in Geneva on October 20, 2003, the Working Group considered document WG-VD/5/2 "Draft Explanatory Notes on Article 20 of the 1991 Act of the UPOV Convention concerning Variety Denominations", which contained the following text under the draft Explanatory Notes on Article 20 (5) [Same denomination in all Contracting Parties]:

"5.5 In order to permit the traceability of the variety when the registration of different denominations, in different territories, is necessary, the following solutions are proposed. These solutions shall not undermine the obligation under Article 20(5) of the 1991 Act, to register the same denomination in all members of the Union<sup>2</sup>.

*"Proposal by the Delegation of Argentina*

"If a proposal for a "unique identifier" is implemented, this should be done with caution, and priority should always be given to the original denomination. All the relevant parties should be clearly informed if a different denomination has been registered to the one originally registered because the original denomination was unsuitable in a particular territory. This information should be duly registered in the archives of the authority, the national list and other relevant sources for the users of the variety.

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<sup>2</sup> These solutions could also serve to identify cases of lack of transparency, for example, different applicants applying for protection for the same variety in different territories.

*“Proposal by the Delegation of Japan*

“The first authority receiving an application will assign a Unique Identifier (UI) and register three codes in its certificate: its denomination, national registration number and a UI. All the following authorities will use the same UI when registering it. Even if an authority orders an amendment to the denomination, the UI will not be affected by the change.

“i.e. If a UI is made from the country code (as established by the International Organization for Standardization “ISO”) and the national registration number of the first registered authority, it will be as follows:

“Country A (country code: AA) received a variety named “Alpha” and registered it as:

- Denomination: Alpha
- National Registration number: No. 1234
- Unique Identifier: AA1234

“Country B also received an application of the same variety and decided to register it. Then the variety will be issued as follows:

- Denomination: Alpha
- National registration number: No. 2233
- Unique Identifier: AA1234

“Country C found some difficulty with the denomination and the applicant proposed another denomination “Beta.” Then the codes will be:

- Denomination: Beta
- National registration number: No. 4321
- Unique Identifier: AA1234

“Country D does not use roman-script-based alphabet on its national language, but the variety fulfilled the conditions. Then it will be:

- Denomination: (written (transliterated?) in national language with the closest pronunciation of Alpha)
- National registration number: No. 987
- Unique Identifier: AA1234

“It is recommended to include these codes in the UPOV Plant Variety Database<sup>3</sup>.”

12. The Summary Report of the fifth meeting of the Working Group recorded the following discussion (see document WG-VD/5/4 “Summary Report”):

“21. In relation to Draft Explanatory Notes concerning Article 20(5), discussions took place on a possible solution to permit the traceability of the variety when different denominations were necessary, that was considered of particular relevance for authorities with non-roman script alphabets.

“22. The Delegations of Argentina and Japan introduced their proposals. As regards the proposal of the Delegation of Japan, it was clarified that the term “national registration number” referred to the number provided when the right had been granted. Comments were made on the need to find a solution when a denomination was unsuitable in a particular territory while not undermining the importance of variety denominations. It was suggested to provide additional written comments on those proposals before November 15, 2003.

“23. As regards Draft Explanatory Notes concerning Article 20(6), in particular 6.6, it was suggested to add in the second sentence, after ‘variety denominations already registered’ the words ‘in the same class’ and then to change the word ‘could’ to ‘should’. “

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<sup>3</sup> In relation to its proposal, the Delegation of Japan recommends a rule to prevent increasing the number of denominations. When the 2<sup>nd</sup> authority finds the denomination registered by the 1<sup>st</sup> authority unsuitable, the 2<sup>nd</sup> authority has to register another denomination, thus creating two denominations for the same variety. The 3<sup>rd</sup> authority should consider the denomination registered by the 1<sup>st</sup> authority, and only if the first one is unsuitable, the 3<sup>rd</sup> authority can investigate the denomination registered by the 2<sup>nd</sup> authority. Thus, the 3<sup>rd</sup> authority is allowed to have a new denomination only if the denominations registered by the 1<sup>st</sup> and 2<sup>nd</sup> authorities are unsuitable. For the following authorities, the rule continues to apply.

13. At its seventh meeting, held in Geneva on October 18, 2004, the Working Group considered document WG-VD/7/2 "Draft Explanatory Notes on Article 20 of the 1991 Act of the UPOV Convention concerning Variety Denominations", which contained the following text under the draft Explanatory Notes on Article 20 (5) [Same denomination in all Contracting Parties]:

"5.4 In order to permit the correct identification of a variety registered with different denominations, in different territories, a regional or international synonym register may be developed [by UPOV<sup>4</sup> and/or by some UPOV members<sup>5</sup>]."

14. There were no discussions at the seventh meeting of the Working Group on the proposed text, as presented in paragraph 11 of this document. At its eighth meeting, held in Geneva on April 7, 2005, the Working Group considered document WG-VD/8/2 "Draft Explanatory Notes on Article 20 of the 1991 Act of the UPOV Convention concerning Variety Denominations", which contained the same text, as presented in paragraph 11 of this document. There were no discussions at the eighth meeting of the Working Group on the proposed text, as presented in paragraph 11 of this document.

#### CONSIDERATION BY THE ADMINISTRATIVE AND LEGAL COMMITTEE (CAJ)

15. At its fifty-second session, held in Geneva on October 24 and 25, 2005, the CAJ considered document CAJ/52/3 "Draft Explanatory Notes on Article 20 of the 1991 Act of the UPOV Convention concerning Variety Denominations", which contained the following text under the draft Explanatory Notes on Article 20 (5) [Same denomination in all Contracting Parties]:

"5.4 In order to permit the correct identification of a variety registered with different denominations due to exceptional cases (see 5.3 above), in different territories, a regional or international synonym register may be developed by UPOV and/or by some members of the Union."

16. There were no discussions at the fifty-second session of the CAJ, or at its subsequent sessions, on the text proposed for paragraph 5.4 under the draft Explanatory Notes on Article 20 (5) [Same denomination in all Contracting Parties] and the text above was included in UPOV/INF/12/1 "Explanatory notes on variety denominations under the UPOV Convention", which was adopted by the Council at its fortieth ordinary session, held in Geneva on October 19, 2006.

#### PROVISIONS IN DOCUMENT UPOV/INF/12 "EXPLANATORY NOTES ON VARIETY DENOMINATIONS UNDER THE UPOV CONVENTION"

17. In revisions of document UPOV/INF/12 "Explanatory notes on variety denominations under the UPOV Convention", there have been no amendments to Explanatory Notes – Paragraph (5), and document UPOV/INF/12/3 "Explanatory Notes on Variety Denominations under the UPOV Convention", reads as follows:

##### "Paragraph 5

**"[Same denomination in all members of the Union] A variety must be submitted to all members of the Union under the same denomination. The authority of each member of the Union shall register the denomination so submitted, unless it considers the denomination unsuitable within its territory. In the latter case, it shall require the breeder to submit another denomination.**

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<sup>4</sup> [Pro domo: Development of the UPOV Plant Variety Database (extract from the correspondence of January 30, 2004 with the CPVO): The term "unique identifier" for UPOV purposes relates to an identifier which would be linked to a variety across different systems and different territories in cases where the variety denomination would not serve this purpose – for example because a denomination had not yet been proposed or the variety was designated by different denominations in different territories. It would be a purely administrative tool and would not be used as a substitute for the variety denomination(s) in terms of "designating" the variety in the appropriate territory. The issue of a UPOV unique identifier is still under discussion within UPOV. However, pending the outcome of discussions in UPOV, we should like to maintain the option of a UPOV unique identifier. We are aware of the reservations concerning the possibility of a UPOV unique identifier, but also consider that it is conceivable that some members of the Union may wish to initiate a UPOV unique identifier (particularly those not using the Roman alphabet).]

<sup>5</sup> See paragraph 11 of this document concerning proposals by Argentina and Japan.

*“Explanatory Notes – Paragraph (5)*

“5.1 This provision reflects the importance of a single variety denomination for the effective operation of the UPOV system.

“5.2 *Paragraph (5)* provides clear directions both for breeders and authorities:

“(a) In relation to subsequent applications of the same variety, the breeder must submit in all members of the Union the denomination that was submitted with the first application. An exception to the above obligation might be appropriate when the proposed denomination is refused by one authority before the denomination is registered by any of the other members of the Union, in which case the breeder is encouraged to submit a new denomination to all authorities in order to obtain a single denomination in all territories.

“(b) The essential obligation under paragraph (5) is that authorities should accept the denomination that was submitted and registered with the first application, unless such denomination is unsuitable in their territory (see section 5.3). On that basis, although certain provisions on variety denominations allow for authorities to develop individual guidance concerning best practices, the obligation under paragraph (5) should be given priority, unless there is direct conflict with the provisions of the UPOV Convention. In that respect, it is also recommended to avoid any narrow interpretation of the provisions of the UPOV Convention and related guidance or best practices, which could lead to the unnecessary refusal of variety denominations and, consequently, the unnecessary creation of synonyms for a variety;

“(c) Due to different alphabetic scripts or systems of writing, it may be necessary to transliterate or transcribe the submitted denomination to enable its registration in another territory. In such cases, both the variety denomination submitted in the application and its transliteration or transcription are regarded as the same denomination. However, a translation would not be considered as the same denomination.

“5.3 Whilst a degree of flexibility is appropriate, the following non-exhaustive list may assist the authorities in deciding what is unsuitable. A proposed denomination may be refused by an authority of a member if it transpires that, despite best endeavors (see section 5.5), in its territory

“(a) it does not conform to the provisions in paragraphs (2) and (4); or

“(b) it is contrary to public policy.

“5.4 In order to permit the correct identification of a variety registered with different denominations due to exceptional cases (see section 5.3 above), in different territories, a regional or international synonym register may be developed by UPOV and/or by some members of the Union.

“5.5 To reduce the risk of a variety denomination being considered to be unsuitable within a territory in which protection is to be sought, members of the Union are encouraged to make available to other authorities and breeders, the criteria, guidance and best practices which they apply for variety denominations. In particular, authorities are encouraged to make available any electronic search functions which they use in the examination of denominations in a form which would allow the on-line checking of a proposed variety denomination, against databases of relevant varieties and, in particular, the UPOV Plant Variety Database. Members of the Union may also choose to provide customized variety denomination checking services. Members of the Union are encouraged to use the UPOV website to provide information on, and links to, such resources.”

## CONSIDERATION OF POSSIBLE FURTHER ACTION

18. As requested by the CAJ, at its sixty-fifth session, this document explains the issues discussed within the Working Group and the CAJ, concerning a unique variety identifier, as the basis for consideration by the CAJ at its sixty-sixth session in October 2012 (see document CAJ/65/12 “Report on the Conclusions”, paragraph 63).

19. *The CAJ is invited to:*

*(a) note the discussions in the ad hoc Working Group on Variety Denominations and the Administrative and Legal Committee, on issues concerning a unique variety identifier; and*

*(b) consider whether any further action would be appropriate in relation to the possible development of a regional or international synonym register, or of a unique variety identifier.*

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