



CAJ/66/9

ORIGINAL: English

DATE: March 14, 2013

INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

Geneva

ADMINISTRATIVE AND LEGAL COMMITTEE**Sixty-Sixth Session
Geneva, October 29, 2012**

REPORT

*adopted by the Administrative and Legal Committee*Opening of the session

- *1. The Administrative and Legal Committee (CAJ) held its sixty-sixth session in Geneva on October 29, 2012, under the Chairmanship of Mr. Lü Bo (China).
- *2. The session was opened by the Chair, who welcomed the participants. The list of participants is reproduced in the Annex to this report.
- *3. The Chair informed the CAJ that France had deposited its instrument of ratification of the 1991 Act of the UPOV Convention on April 27 2012, and had become bound by the 1991 Act on May 27, 2012, and that Panama had deposited its instrument of accession to the 1991 Act of the UPOV Convention on October 22, 2012, and would become bound by the 1991 Act on November 22, 2012.
- *4. The Vice Secretary-General introduced Mr. Ben Rivoire, a national of France and Mr. Leontino Taveira, a national of Brazil, who had joined the Office of the Union as Consultants in May 2012.
- *5. The Chair confirmed that the report of the sixty-fifth session of the CAJ held in Geneva on March 29, 2012 (document CAJ/65/13), had been adopted by correspondence and was available on the UPOV website.

Adoption of the agenda

- *6. The CAJ adopted the agenda, as presented in document CAJ/66/1, with the addition of document CAJ/66/5 Add., under agenda item 5 (b).

* An asterisk next to the paragraph number indicates that the text is reproduced from the Report on the Conclusions (document CAJ/66/8).

Development of Information Materials Concerning the UPOV Convention

*7. The CAJ considered documents CAJ/66/2 and UPOV/INF/15/2 Draft 1.

UPOV/INF/15 “Guidance for Members of UPOV on Ongoing Obligations and Related Notifications and on the Provision of Information to Facilitate Cooperation” (Revision) (document UPOV/INF/15/2 Draft 1)

*8. The CAJ agreed the following amendments to document UPOV/INF/15/2 Draft 1:

Paragraph 9(a)	to delete the word “both” in the second sentence
Paragraph 12	the second and third sentences to read as follows: “[...] Any changes to that legislation governing breeders’ rights shall be notified promptly to the Secretary-General in one of the UPOV languages (English, French, German or Spanish) <u>and published accordingly. The English version</u> of those changes in the legislation and/or the relevant consolidated text will <u>also then</u> be published in the UPOV Gazette and Newsletter and in the UPOV Lex (http://www.upov.int/upovlex/en/) at the earliest opportunity”.

*9. The CAJ agreed that, on the basis of the above amendments, the Office of the Union should prepare a revised version of document UPOV/INF/15/2 Draft 1, to be considered for adoption by the Council at its thirtieth extraordinary session of the Council, to be held in Geneva on March 22, 2013.

*10. The CAJ noted that a document providing background information on the proposed changes and a first draft of the revision of document UPOV/INF/5 “UPOV Model Plant Breeders’ Rights Gazette” was planned to be presented to the CAJ at its sixty-seventh session, to be held in March 2013.

*11. The CAJ noted the information concerning the seventh session of the Advisory Group to the CAJ (CAJ-AG), to be held in Geneva on October 29 (p.m.) and 30, 2012, as set out in paragraphs 11 to 15 of document CAJ/66/2.

*12. The CAJ noted the following developments concerning the seventh session of the CAJ-AG:

(a) comments on relevant explanatory notes from: the International Community of Breeders of Asexually Reproduced Ornamental and Fruit Varieties (CIOPORA) (comments of October 4 and of October 15, 2012), European Seed Association (ESA) (comments of October 8, 2012) and International Seed Federation (ISF) (comments of October 15, 2012) had been notified to the CAJ and CAJ-AG and posted in the CAJ-AG website;

(b) in addition to the *ad hoc* invitations for CIOPORA, European Coordination Via Campesina (ECVC), and ISF, agreed by the CAJ-AG at its sixth session, which was held in Geneva on October 18, 2011, (see paragraph 14 of document CAJ/66/2), the CAJ-AG had agreed by correspondence to invite the Association for Plant Breeding for the Benefit of Society (APBRES) to attend the relevant part of the CAJ-AG to present its views on the participation of observers in the CAJ-AG; and

(c) a draft schedule for the seventh session of the CAJ-AG (document CAJ-AG/12/7/INF) had been notified to the CAJ and CAJ-AG and posted in the CAJ-AG website.

Variety Denominations

*13. The CAJ considered document CAJ/66/3.

*14. The CAJ approved the following steps in relation to potential areas for cooperation between UPOV and the International Commission for the Nomenclature of Cultivated Plants of the International Union for Biological Sciences (IUBS Commission) and the International Society for Horticultural Science Commission for Nomenclature and Cultivar Registration (ISHS Commission):

(a) Members of the IUBS Commission and the Office of the Union to draft a brief, joint notice for publication in *Hanburyana* in order to inform the Sixth International Symposium on the Nomenclature of Cultivated Plants, scheduled to take place from July 15 to 18, 2013, in Beijing, China, of the areas where greater cooperation and harmonization between UPOV and the IUBS Commission could be beneficial, on the basis set out in document CAJ/66/3;

(b) Members of the IUBS Commission to approach Ms. Janet Cubey, Chairperson of the ISHS Commission with a view to UPOV organizing a meeting with ISHS and other relevant partners to discuss denomination classes and the concept of a common search platform for variety denomination searching purposes;

(c) Members of the IUBS Commission to inform UPOV of appropriate contact details for the IUBS Commission;

(d) Members of the IUBS Commission to consider how to initiate the process for UPOV to have observer status in the IUBS Commission; and

(e) further meetings, preferably using web conferencing, between members of the IUBS Commission, ISHS Commission and the Office of the Union, as necessary, in order to advance the points in (a) to (d).

UPOV information databases

*15. The CAJ considered document CAJ/66/4.

*16. The CAJ noted that the publication of the amended UPOV Code System would be arranged in conjunction with the consequential changes of a number of UPOV codes, which would be coordinated with the notification to all members of the Union and other contributors to the Plant Variety Database.

*17. The CAJ noted the new features of the PLUTO Plant Variety Database as presented by Mr. Glenn Mac Stravic, Head of the Brand Database Section at the World Intellectual Property Organization (WIPO) at its sixty-sixth session. In particular, the CAJ noted the following developments concerning the Plant Variety Database, as reported in document CAJ/66/4:

(a) Information on the latest date of submission by the contributors has been provided for the PLUTO database in the form of a pdf document. However, in the longer term, it is planned that the date of submission will be provided for individual data retrieved from the database;

(b) The addition of a page for searching variety denominations;

(c) An explanation of the search rules for the PLUTO database to be provided, as demonstrated at the sixty-sixth session of the CAJ;

(d) Options to save search settings for the PLUTO database, as demonstrated at the sixty-sixth session of the CAJ.

(e) Requirement for users of the PLUTO Database to register to use the database, with a view to using that information for future improvements. It was noted that this would mean that the PLUTO database would still be freely accessible; and

(f) The necessary arrangements for the inclusion of data in the original alphabet, in addition to the data being provided in Roman alphabet, have been made.

*18. The CAJ noted the information on the contribution of data and the provision of assistance to contributors to the Plant Variety Database, as reported in document CAJ/66/4, Annex II, and noted that contributors could now provide information on dates on which a variety was commercialized for the first time in the territory of application and other territories.

*19. The CAJ noted that the production of the UPOV-ROM by Jouve would terminate at the end of 2012, after which time the WIPO Brand Database Unit would produce a CD-ROM version of the PLUTO database (PLUTO CD-ROM). The CAJ invited members of the Union wishing to receive the PLUTO CD-ROM version of the Plant Variety Database from 2013 to inform the Office of the Union in order to ensure that the PLUTO CD-ROM would be compatible with their IT systems.

*20. The CAJ welcomed the proposal by the Delegation of the European Union to make a presentation at the sixty-seventh session of the CAJ, to be held on March 21, 2013, on the Community Plant Variety Office (CPVO) experience in the use of its denomination similarity search tool in the examination of proposed denominations.

*21. The CAJ requested the Office of the Union to conduct a survey of members of the Union on their use of databases for plant variety protection purposes and also on their use of electronic application systems.

Electronic Application Systems

Electronic Version of the UPOV Model Application Form

*22. The CAJ considered documents CAJ/66/5.

23. The Delegation of Australia noted that in addition to the proposed selected crops / species, the prototype might be useful for situations where there were no UPOV Test Guidelines and therefore no UPOV Technical Questionnaire, for instance, the first application of a variety for a particular species.

24. The Vice Secretary-General explained that the aim was for the prototype to be based on selected crops / species for which there was a large number of applications. He clarified that once the system was working, it could be extended to all crops / species.

25. The Delegation of the European Union reported that the European Union and its member States did not use all the fields in the application form. It had been necessary to amend some fields. For example, it reported that the address part had to be subdivided, and it no longer corresponded to the UPOV model form. It suggested that, when developing the prototype, such a situation be taken into consideration.

*26. The CAJ endorsed the development of a prototype electronic form for interested members of the Union and agreed that the key aspects of the prototype from the perspective of members of the Union would be as follows:

Form Content: The UPOV electronic form would contain all items required by the participating members of the Union, i.e. it would contain all items in the UPOV Model Application Form and, in addition, items required for an application in the participating member of the Union concerned. Applicants would select the members of the Union in which they wish to make an application and all relevant items for the selected members of the Union would be presented for completion.

Status: Participating members of the Union would decide the status of any data provided via the UPOV electronic form for their own situation.

Data format: The UPOV electronic form would enable data to be transferred to participating members of the Union in Word, Excel, PDF or XML format. The participating members of the Union would decide in which format(s) to accept data. In the case of XML format, a standard format would be developed, based on WIPO standard ST.96.

Languages: The UPOV electronic form would present all items (questions) in English, French, German and Spanish. Translations for all items (questions) in other languages would be provided by the participating members of the Union, with a suitable disclaimer.

Crops/species: Crops/species for the prototype would be one or more of:

Wheat (*Triticum aestivum* L.); Maize (*Zea mays* L.);
Potato (*Solanum tuberosum* L.); Lettuce (*Lactuca sativa* L.);
Tomato (*Solanum lycopersicum* L.); Pea (*Pisum sativum* L.);
and Ryegrass (*Lolium* L.);

and one or more of:

Rose (*Rosa* L.); Chrysanthemum (*Chrysanthemum* L.); Carnation (*Dianthus* L.);
Pelargonium (*Pelargonium* L'Hér. ex Ait.); Petunia (*Petunia* Juss.);
Peach (*Prunus persica* (L.) Batsch); and Apple (*Malus domestica* Borkh.).

Participating members of the Union would be able to select the crops/species in which to participate, i.e. the UPOV electronic form for each crop/species could

have different participating members of the Union. The selection of the crops/species for the prototype would be made by the Office of the Union in consultation with the participating members of the Union, ISF and CIOPORA.

Partners: The partners in the development of the prototype would be the participating members of the Union (including the continued participation of the Community Plant Variety Office of the European Union (CPVO)), Office of the Union, WIPO Internet Services Section, WIPO Standards Section, WIPO Global Database Service, ISF and CIOPORA.

Meetings: Meetings for the development of the prototype would, in general, be held in Geneva with an option to participate by web conference.

*27. The CAJ noted that, whilst the prototype would be based on selected crops / species the electronic application system project was intended to be relevant for all crops / species. The CAJ also noted that participation in the prototype did not require members of the Union to have electronic application systems in place.

*28. The following members of the Union, including the continued participation of the European Union, indicated their interest to be participating members of the Union in the prototype: Australia, Brazil, Canada, Colombia, Dominican Republic, Mexico, New Zealand, Paraguay, Republic of Korea, United States of America and Viet Nam.

*29. The CAJ noted that the next meeting of experts on the prototype of the electronic version of the UPOV model application form, including interested members of the Union, would take place in Geneva on March 20, 2013, starting at 6.00 p.m.

Standard References to the UPOV Model Application Form

*30. The CAJ considered document CAJ/66/5 Add.

*31. The CAJ noted the replies to the survey on the use of standard references of the UPOV Model Application Form and noted that a submission had also been received from Latvia after the publication of the addendum.

Use of electronic communication for meetings

*32. The CAJ considered document CAJ/66/6.

*33. The CAJ noted the information provided on the use of electronic communication of meetings within UPOV and noted that a report on the conclusions of the Consultative Committee concerning policy on access to electronic communication for meetings would be made to the CAJ at its sixty-seventh session in March 2013. The CAJ recalled the importance of physical participation in UPOV meetings.

Issues concerning a unique variety identifier

*34. The CAJ considered document CAJ/66/7.

*35. The CAJ noted the discussions in the *ad hoc* Working Group on Variety Denominations and in the CAJ on issues concerning a unique variety identifier.

36. The Delegation of Japan noted that it was difficult to check if a breeder proposed different denominations for the same variety in different countries. However, it was of the opinion that it was too early to introduce a new system for a unique variety identifier because it would involve a lot of work for the Office of the Union and the members of the Union.

37. The Delegation of the European Union was of the view that the denomination of the variety should remain the identifying factor for the variety throughout all the members of the Union, unless the denomination was contrary to public order or unsuitable in accordance with the applicable legislation. It concluded that it

would be premature to develop a single international register of synonyms and noted that regional registers of synonyms were not available.

38. The Delegation of Australia noted the usefulness of a unique variety identifier in relation to the information in the UPOV Plant Variety Database concerning the date of the first commercialization, but understood the difficulties of checking the information and the impact of a unique identifier on the use of variety denominations. It was of the view that there was not enough support to pursue discussions on a unique identifier and proposed to revisit the issue again in five years.

39. The Delegation of Paraguay noted both the importance and the difficulties of developing a single international register that would cover as many countries as possible.

40. The Delegation of Mexico noted the difficulties of having a single variety identifier and was of the opinion that the denomination of the variety should continue to be the variety identifier.

41. The representative of CIOPORA considered it very important to have a unique variety identifier. He reported that CIOPORA strongly advised its members to use code denominations.

42. The representative of the Asia and Pacific Seed Association (APSA) was in favor of a unique identifier for a variety across the UPOV members, but noted that such a system would be very difficult to implement.

43. The Vice Secretary-General noted that there were potential benefits of developing a system for a unique variety identifier, but acknowledged that such an approach did not appear to be feasible under the current circumstances. He suggested that the matter should be kept under review and revisited, particularly if other developments or initiatives led to a change of circumstances.

*44. The CAJ agreed that no further action would be appropriate, for the time being, in relation to the possible development of a regional or international synonym register, or of a unique variety identifier. However, it agreed that the matter should be kept under review.

Program for the sixty-seventh session

*45. The CAJ noted that during the forty-ninth session of the Technical Committee to be held in Geneva in March 2013, item 3 on the draft agenda to be considered on March 20, 2013, would be dedicated to a discussion on:

(a) molecular techniques:

- (i) application of models by members of the Union; and
- (ii) presentation of the situation with regard to molecular techniques in other international organizations; and

(b) use of DUS test reports by members of the Union (see document TC/48/22 "Report on the conclusions", paragraph 161).

46. The CAJ agreed the following program for its sixty-seventh session, to be held in Geneva on March 21, 2013, and anticipated that a full day would be necessary to cover the program:

1. Opening of the session
2. Adoption of the agenda
3. Report on developments in the Technical Committee
4. Development of information materials concerning the UPOV Convention
5. TGP documents
6. Molecular techniques
7. Variety denominations

8. Information and databases
 - (a) UPOV information databases
 - (b) Exchangeable software
 - (c) Electronic application systems
9. Use of electronic communication for meetings
10. Program for the sixty-eighth session
11. Adoption of the report on the conclusions (if time permits)
12. Closing of the session

47. This report was adopted by correspondence.

[Annex follows]

ANNEXE / ANNEX / ANLAGE / ANEXO

LISTE DES PARTICIPANTS / LIST OF PARTICIPANTS /
TEILNEHMERLISTE / LISTA DE PARTICIPANTES

(dans l'ordre alphabétique des noms français des membres/
in the alphabetical order of the names in French of the members/
in alphabetischer Reihenfolge der französischen Namen der Mitglieder/
por orden alfabético de los nombres en francés de los miembros)

I. MEMBRES / MEMBERS / VERBANDSMITGLIEDER / MIEMBROS

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