



CAJ/68/11

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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

Geneva

ADMINISTRATIVE AND LEGAL COMMITTEE**Sixty-Eighth Session
Geneva, October 21, 2013**

REPORT

*adopted by the Administrative and Legal Committee**Disclaimer: this document does not represent UPOV policies or guidance*Opening of the session

- *1. The Administrative and Legal Committee (CAJ) held its sixty-eighth session in Geneva on October 21, 2013, 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 Secretary-General reported that, following a competition, Mrs. Alexandra Fava had been appointed to the post of Secretary I on October 1, 2013.
- *4. The Chair confirmed that the report of the sixty-seventh session of the CAJ, held in Geneva on March 21, 2013 (document CAJ/67/15), had been adopted by correspondence and was available on the UPOV website.

Adoption of the agenda

- *5. The CAJ adopted the draft agenda, as proposed in document CAJ/68/1.

Development of information materials concerning the UPOV Convention

- *6. The CAJ considered documents CAJ/68/2 and UPOV/EXN/HRV Draft 10.

Explanatory Notes on Acts in Respect of Harvested Material under the 1991 Act of the UPOV Convention

- *7. The CAJ approved document UPOV/EXN/HRV Draft 10 as the basis for the adoption of the "Explanatory Notes on Acts in Respect of Harvested Material under the 1991 Act of the UPOV Convention" by the Council at its forty-seventh ordinary session, to be held in Geneva on October 24, 2013.

* An asterisk next to the paragraph number indicates that the text is reproduced from the Report on the Conclusions (document CAJ/68/10).

Future work concerning the Explanatory Notes on Acts in Respect of Harvested Material

*8. The CAJ noted that the comments of the Russian Federation were circulated to participants and would be posted on the Administrative and Legal Committee Advisory Group (CAJ-AG) section of the UPOV website.

*9. The CAJ noted that the representatives of European Seed Association (ESA) and International Seed Federation (ISF) considered that paragraph 4 of document UPOV/EXN/HRV Draft 10 (reproduced below) should be reviewed in relation to future work by the CAJ-AG on illustrative examples.

“4. ‘Unauthorized use’ refers to the acts in respect of the propagating material that require the authorization of the holder of the breeder’s right in the territory concerned (Article 14(1) of the 1991 Act), but where such authorization was not obtained. Thus, unauthorized acts can only occur in the territory of the member of the Union where a breeder’s right has been granted and is in force.”

*10. The CAJ noted the comments made by the Delegation of the Russian Federation, the representatives of ESA and ISF, and agreed to consider those comments in relation to the future work on the Explanatory Notes on Acts in Respect of Harvested Material by the CAJ-AG, as set out in document CAJ/68/2, paragraphs 9 to 11.

Seminar on Essentially Derived Varieties and Explanatory Notes on Essentially Derived Varieties under the 1991 Act of the UPOV Convention (Revision)

*11. The CAJ requested the CAJ-AG to consider at its eighth session, to be held in Geneva on October 25, 2013, the discussions at the Seminar on Essentially Derived Varieties, to be held on October 22, 2013, in relation to the CAJ-AG work on future guidance concerning essentially derived varieties, as set out in document CAJ/68/2, paragraphs 13 to 16.

Participation of observers in the CAJ-AG

*12. The CAJ noted that the conclusions of the Consultative Committee, at its eighty-sixth session to be held in Geneva on October 23, 2013, concerning the participation of observers in the CAJ-AG would be reported to the CAJ.

*13. The CAJ noted that the Association for Plant Breeding for the Benefit of Society (APBEBES), the European Coordination Via Campesina (ECVC), the International Community of Breeders of Asexually Reproduced Ornamental and Fruit-Tree Varieties (CIOPORA) and ISF had been invited to participate in the relevant part of the eighth session of the CAJ-AG, as set out in document CAJ/68/2, paragraph 26.

Matters to be considered by the CAJ-AG at its eighth session

*14. The CAJ recalled that a report on the work of the CAJ-AG, at its eighth session, to be held in Geneva on October 25, 2013 (see document CAJ/68/2, paragraph 28), would be presented to the sixty-ninth session of the CAJ, to be held in April 2014. The draft agenda of the eighth session of the CAJ-AG is reproduced below:

1. Opening of the session
2. Adoption of the agenda
3. Explanatory Notes on Essentially Derived Varieties under the 1991 Act of the UPOV Convention (Revision) (document CAJ-AG/13/8/2)
4. Explanatory Notes on Propagation and Propagating Material (document UPOV/EXN/PPM Draft 1)
5. Explanatory Notes on Acts in Respect of Harvested Material (document CAJ-AG/13/8/3)
6. Matters concerning cancellation of the breeder's right (document CAJ-AG/13/8/4)
7. Matters concerning nullity of the breeder's right (document CAJ-AG/13/8/5)

8. Matters concerning variety denominations (document CAJ-AG/13/8/6)
9. Matters concerning variety descriptions (document CAJ-AG/13/8/7)
10. Matters arising after the grant of a breeder's right on: provisional protection, filing of applications and enforcement of breeders' rights (document CAJ-AG/13/8/8)
11. Matters concerning observers in the CAJ-AG (document CAJ-AG/13/8/9)
12. Matters referred by the CAJ to the CAJ-AG for consideration since the seventh session of the CAJ-AG
13. Date and program for the ninth session.

Program for the updating of document UPOV/INF/5 "UPOV Model Plant Breeders' Rights Gazette"

*15. The CAJ considered document CAJ/68/3.

*16. The CAJ noted the developments relevant for the updating of document UPOV/INF/5 concerning the development a prototype electronic form, matters concerning essentially derived varieties, and the distance learning course "Examination of Applications for Plant Breeders' Rights" (DL-305), reported in document CAJ/68/3.

*17. The CAJ agreed to include an item for the updating of document UPOV/INF/5 "UPOV Model Plant Breeders' Rights Gazette" in the program for the seventieth session of the CAJ, to be held in October 2014.

Molecular techniques

*18. The CAJ considered document CAJ/68/4.

*19. The CAJ noted that the Technical Committee (TC), at its forty-ninth session, held in Geneva, from March 18 to 20, 2013, had received the following presentations on the application of models for the use of molecular techniques in the examination of DUS by members of the Union, copies of which were posted on the UPOV website at http://upov.int/meetings/en/details.jsp?meeting_id=28343 (see paragraph 4 of document CAJ/68/4).

Use of characteristic specific molecular markers to assess seasonal type in Barley	Mr. Andrew Mitchell (United Kingdom)
Applications of molecular data in DUS testing	Mr. Joel Guiard (France)
Use of molecular techniques in the renewal of reference material	Mr. Kees van Ettehoven (Netherlands)
Use of molecular techniques in Brazil	Mr. Fabricio Santana Santos (Brazil)

20. The Delegation of the European Union expressed its support for any initiative that increased exchange and cooperation with other international organizations.

*21. The CAJ noted that a date had been proposed for the fourteenth session of the Working Group on Biochemical and Molecular Techniques, and DNA-Profiling in Particular (BMT) (see document CAJ/68/4, paragraph 14), which had been coordinated with the International Seed Testing Association (ISTA) and the Organisation for Economic Co-operation and Development (OECD).

Variety denominations

*22. The CAJ considered document CAJ/68/5.

23. The Delegation of the European Union recalled the role of the Community Plant Variety Office of the European Union (CPVO) in the field of variety denominations. It explained that the CPVO would be willing to participate in discussions on variety denominations with other international organizations.

24. The Vice Secretary-General expressed his appreciation of the cooperation between UPOV and the CPVO, including CPVO's participation at the meeting of the International Commission for the Nomenclature of Cultivated Plants of the International Union of Biological Sciences (IUBS Commission), which was held in Beijing, China, on July 20 and 21, 2013. He noted that the Office of the Union would be willing to coordinate with the IUBS Commission in order to explain the differences between recommendations on variety denominations at the UPOV level and individual denomination guidelines at the national or regional authorities' level.

*25. The CAJ noted the developments concerning potential areas for cooperation between 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) and UPOV, as set out in document CAJ/68/5.

Information and databases

(a) *UPOV information databases*

*26. The CAJ considered document CAJ/68/6.

*27. The CAJ approved the amendments to the program for improvements to the PLUTO database, as set out in Annex II of document CAJ/68/6, on the basis of the explanations in document CAJ/68/6, paragraphs 4 to 18, subject to the following amendments (highlighted in grey):

Paragraph 2.4	<p>"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. <u>In cases where the PLUTO database administrator is requested by the contributor to allocate UPOV codes, or where it is considered to be appropriate to amend a UPOV code allocated by the contributor, the PLUTO database administrator will make proposals for approval by the contributor. In the absence of objections responses within the designated time, the proposed UPOV codes will be used in the PLUTO database. Where the contributor subsequently notifies the PLUTO database administrator of a need for correction, the correction will be made at the first opportunity, in accordance with Section 4 "Frequency of data updating".</u>"</p>
Paragraph 4	<p>"4. <i>Frequency of data submission</i></p> <p>"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 TC and CAJ will be invited to consider whether to create possibilities for data to be updated on a more frequent basis. Contributors will be encouraged to provide data as soon as possible practical after it is published by the authority(ies) concerned. The PLUTO database will be updated with new data as quickly as possible after receipt, in accordance with the uploading procedure. The PLUTO database can, as necessary, be updated with corrected data, in accordance with the uploading procedure."</p>

*28. In relation to the amendments to the program for improvements to the PLUTO database, as set out in Annex II, the CAJ agreed to amend the disclaimer as follows:

~~“The data currently in the Plant Variety Database (PLUTO database) was last updated on [dd/mm/yyyy] is the data in version 201303 of the UPOV-ROM Plant Variety Database. A subscription service will also shortly be introduced for PLUTO, which will allow us to inform users of future updates of the data.~~

“To continue to the PLUTO page, you must first ~~agree to~~ acknowledge the following disclaimer.

“Please note that the information concerning plant breeders' rights provided in the PLUTO ~~Plant Variety database (PLUTO)~~ does not constitute the official publication of the authorities concerned. To consult the official publication, or to obtain details on the status and completeness of the information in the PLUTO database, please contact the relevant authority, contact details for which are provided at http://www.upov.int/members/en/pvp_offices.html.

“All contributors to the PLUTO database are responsible for the correctness and completeness of the data they supply. Users are particularly requested to note that it is not obligatory for members of the Union to supply data the PLUTO database and, for those members of the Union who supply data, it is not obligatory to supply data for all items.”

*29. The CAJ approved the following disclaimer for reports generated by the PLUTO database, as set out in document CAJ/68/6, paragraph 24:

“The ^{*} data in this report was generated from the PLUTO database on [dd/mm/yyyy].

“Please note that the information concerning plant breeders' rights provided in the PLUTO database does not constitute the official publication of the authorities concerned. To consult the official publication, or to obtain details on the status and completeness of the information in the PLUTO database, please contact the relevant authority, contact details for which are provided at http://www.upov.int/members/en/pvp_offices.html.

“All contributors to the PLUTO database are responsible for the correctness and completeness of the data they supply. Users are particularly requested to note that it is not obligatory for members of the Union to supply data the PLUTO database and, for those members of the Union who supply data, it is not obligatory to supply data for all items.”

30. The Delegation of the European Union welcomed the proposed amendments to the PLUTO database and recalled the role of the CPVO in collecting data from its contributors in accordance with the Memorandum of Understanding (MOU) between UPOV and the CPVO. The Delegation noted that although the content of both databases was similar, the objectives were to some extent different. It explained that the CPVO Variety Finder was used by breeders and by national authorities to evaluate the possibility of using a variety denomination. In that regard, there had been more than 60,000 denomination tests produced in 2012, which related to plant variety protection as well as to national and European catalogues for commercialization. The Delegation was in favor of a broad approach on variety denominations matters. It expressed its support to the proposed amendment regarding the frequency of data submission.

31. The Delegation of New Zealand requested that the date of submission of the data be clearly indicated in the PLUTO database, in order to facilitate the interpretation of the information.

*32. The CAJ recalled that any changes to the PLUTO database would be implemented in accordance with the Memorandum of Understanding between UPOV and the Community Plant Variety Office of the European Union (CPVO).

*33. The CAJ agreed on the draft questions for the survey of members of the Union on their use of databases for plant variety protection purposes and on their use of electronic application systems, as set out in document CAJ/68/6, Annex III, subject to the following amendments:

Question 2	To clarify that the questionnaire concerns authorities' databases, rather than the PLUTO database
Question 9	To be modified to include other forms of authorization, in addition to an electronic signature

New question	To add a box to indicate other information/features that are included in the authority's electronic application form
New question	To add a question after (o) concerning the end date of protection

(b) *Exchangeable software*

*34. The CAJ considered documents CAJ/68/7 and UPOV/INF/16/3 Draft 1.

*35. The CAJ agreed with the conclusions of the TC, at its forty-ninth session, that the title of document UPOV/INF/16 "Exchangeable Software" and the text of Section 1 "Requirements for exchangeable software" should remain unchanged on the basis that the document concerns software that has been developed or customized by a member of the Union for UPOV purposes; and that it would be useful for the TC to seek to develop a separate information document that would allow members of the Union to provide information on the use of non-customized software and equipment (e.g. data loggers) that was used by members of the Union.

*36. The CAJ approved the proposed revision of document UPOV/INF/16 for inclusion of new software, as set out in paragraphs 6 and 7 of document CAJ/68/7, on the basis of document UPOV/INF/16/3 Draft 1.

*37. With regard to the possible translation of the "Information System (IS) used for Test and Protection of Plant Varieties in the Russian Federation", it was agreed that the Office of the Union would arrange a telephone meeting in Russian with the IT expert of the Russian Federation in order to clarify translation requirements.

*38. The CAJ approved the proposed revision of document UPOV/INF/16, concerning the inclusion of information on software used by members of the Union, as set out in document CAJ/68/7, paragraphs 13 and 14, on the basis of document UPOV/INF/16/3 Draft 1.

*39. The CAJ noted that the revision of document UPOV/INF/16 would be considered for adoption by the Council at its forty-seventh ordinary session, to be held on October 24, 2013.

(c) *Electronic application systems*

*40. The CAJ considered document CAJ/68/8.

*41. The CAJ noted that a report of the meeting on the development of a prototype electronic form to be held in Geneva on October 24, 2013, would be made to the CAJ at its sixty-ninth session, to be held in April 2014.

*42. The CAJ noted the request of the Delegation of Switzerland to participate in the meetings on the development of a prototype electronic form.

Possible development of a UPOV similarity search tool for variety denomination purposes

*43. The CAJ considered document CAJ/68/9.

*44. The CAJ noted the following correction in the Annex to document CAJ/68/9:

"5. Detailed description of the similarity test.

"The steps below are implemented for each couple (WT,WR).

"Preliminary filter: in the list of WR, all words with more than 3 characters as the WT, or less than 3 characters as the ~~WR~~ ~~WT~~ are not considered for the following calculations.

*45. The CAJ approved the establishment of a working group to develop proposals for a UPOV similarity search tool for variety denomination purposes, as proposed in document CAJ/68/9, paragraphs 4 to 7, as follows:

The composition of the group will be:

- (a) Denomination examiners from members of the Union (3 to 6 experts);
- (b) WIPO Global Databases Service (responsible for the PLUTO database);
- (c) Community Plant Variety Office of the European Union (CPVO); and
- (d) Office of the Union.

The work plan of the working group will be established by the working group itself; however, it is anticipated that the first step will be to review the search types currently available in the denomination search tab of the PLUTO database, particularly the Similarity factor (CPVO search tool), and to review search types in use in other situations (e.g. in relation to trademarks) that might provide an alternative basis for a UPOV similarity search tool.

The review of the suitability of search types will, in particular, take into account document UPOV/INF/12 "Explanatory notes on variety denominations under the UPOV Convention". In that regard, the working group will need to refer to the CAJ for further guidance if its work indicates that a review of document UPOV/INF/12 would be necessary for the development of an effective UPOV similarity search tool.

The meetings of the working group will be hosted by the Office of the Union in Geneva and will be chaired by the Office of the Union. The meetings will not be arranged to coincide with UPOV sessions and electronic participation by denomination examiners and the CPVO will be anticipated. Proposals developed by the working group will be presented to the CAJ and to the Technical Committee (TC), and the CAJ and TC will receive a brief report of the meetings of the working group.

*46. The CAJ noted the suggestion by the Delegation of the European Union for the inclusion in the working group of denomination examiners from the Netherlands and Spain and the importance of ensuring that there was sufficient coverage by the experts of the linguistic aspects of variety denominations.

47. The representative of the European Seed Association (ESA) requested information on whether observers would be invited to the meetings of the working group to develop proposals for a UPOV similarity search tool for variety denomination purposes.

48. The Vice Secretary-General agreed that the question of languages was an important aspect for the working group. He noted that some of the issues that could arise would have implications for existing explanatory notes, which should be considered by the CAJ. With regard to the participation of observers, the Vice Secretary-General noted that the working group could decide when to invite observers to participate in its meetings or to provide comments. At the initial stage, the working group would need to make an initial assessment and then to formulate proposals to be considered by the CAJ. He encouraged the CAJ to provide suggestions on matters concerning the tasks of the working group.

49. The Delegation of Australia reported that it would be useful to invite the members of the Union to make suggestions with regard to the possible outcome for the search tool. For instance, it explained that a member of the Union might want a particular rank-index calculation below which specific comparisons were not required. It was of the view that it would be useful if members of the Union notified particular searches requirements to the working group.

*50. The CAJ agreed that members and observers should be encouraged to provide suggestions on matters concerning the tasks of the working group.

Program for the sixty-ninth session

*51. The following program was agreed for the sixty-ninth session of the CAJ, to be held in Geneva on April 10, 2014.

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. Possible development of a UPOV similarity search tool for variety denomination purposes
10. Program for the seventieth session
11. Adoption of the report on the conclusions (if time permits)
12. Closing of the session

52. *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)

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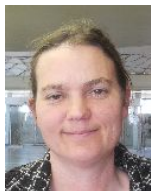
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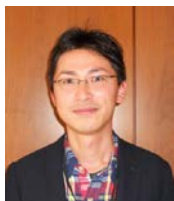
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