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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

Geneva

ADMINISTRATIVE AND LEGAL COMMITTEE

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VARIETY DENOMINATIONS

Document prepared by the Office of the Union

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1. The purpose of this document is to provide an overview of possible developments concerning the revision of the “Explanatory Notes on Variety Denominations under the UPOV Convention” (document UPOV/INF/12/4), the development of a UPOV similarity search tool for variety denomination purposes, and potential areas for cooperation between the International Commission for the Nomenclature of Cultivated Plants of the International Union for Biological Sciences (IUBS Commission), the International Society for Horticultural Science Commission for Nomenclature and Cultivar Registration (ISHS Commission) and UPOV.

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2. The following abbreviations are used in this document:

CAJ: Administrative and Legal Committee

CAJ-AG: Administrative and Legal Committee Advisory Group

TC: Technical Committee

IUBS Commission: International Union of Biological Sciences Commission

ISHS Commission: International Society for Horticultural Sciences Commission

I. POSSIBLE REVISION OF DOCUMENT UPOV/INF/12 “EXPLANATORY NOTES ON VARIETY DENOMINATIONS UNDER THE UPOV CONVENTION”

(a) Ongoing work of the CAJ-AG on variety denominations

3. The following report on the ongoing work of the CAJ-AG on variety denominations is also reported in document CAJ/69/2 “Development of information materials concerning the UPOV Convention“, see paragraphs 56 to 59).

4. The CAJ-AG, at its eighth session, held in Geneva on October 21 and 25, 2013, considered document CAJ-AG/13/8/6 “Matters concerning variety denominations”

5. The CAJ-AG agreed to the development of guidance in relation to a request from a breeder to change a registered variety denomination in cases other than where the denomination of the variety was cancelled after the grant of the right, on the basis that such a request should be refused. However, the CAJ-AG agreed that changes would be appropriate in the following situations:

(a) if it was discovered that there was a prior right concerning the denomination which would have resulted in the rejection of the denomination (see Article 20(4) and (7) of the 1991 Act, Article 13(4) and (7) of the 1978 Act and document UPOV/INF/12/4, Note 7);

(b) if the denomination was unsuitable because it was contrary to the provisions of Article 20(2) of the 1991 Act and Article 13(2) of the 1978 Act; and

(c) if the denomination was subsequently refused in another member of the Union and, at the request of the breeder, the authority agreed to change the denomination to the one registered in the said other member of the Union.

6. The CAJ-AG agreed that the additional guidance should be considered as part of a possible revision of the “Explanatory Notes on Variety Denominations under the UPOV Convention” (document UPOV/INF/12/4) (see document CAJ-AG/13/8/10 “Report”, paragraphs 69 to 71).

(b) Proposal concerning guidance on variety denominations

7. A trial run of the Distance Learning Program “Examination of applications for plant breeders’ rights” (DL 305) in English was conducted from November 11 to December 15, 2013, with nine experts that are tutors for the DL-205 course acting as students. The following comment was received from one of the students in relation to document UPOV/INF/12/4, paragraph 2.3.3(a)(i) (reproduced below for ease of reference):

“2.3.3 Identity of the variety

(a) As a general recommendation, a difference of only one letter or one number may be considered to be liable to mislead or cause confusion concerning the identity of the variety, except where the:

(i) difference of one letter provides for a clear visual or phonetic difference, e.g. if it concerns a letter at the beginning of a word:

Example 1: in the English language, ‘Harry’ and ‘Larry’ would not cause confusion; However, ‘Bough’ and ‘Bow’ might cause confusion (in phonetic terms);

Example 2: in the Japanese and Korean languages there is no difference between “L” and “R” sounds, thus “Lion” and “Raion” are exactly the same although these are distinguishable for English mother tongue speakers; [...]”

Comment:

“The sub-heading (i) difference of one letter provides for a clear visual or phonetic difference, e.g. if it concerns a letter at the beginning of a word: is followed by Example 1. The case of ‘Harry’ and ‘Larry’ illustrates well the point being made. My concern relates to the case of ‘Bough’ and ‘Bow’. These obviously could be confused with each other for phonetic reasons. They are not, however, an example of denominations that could be confused because of a difference of one letter – and to indicate they are could be distracting and confusing for students.

"Would the case of 'Bough' and 'Bow' be better covered under a separate sub-heading dealing with phonetic confusion? I guess that my criticism is directed to UPOV/INF/12 as well as to the Module wording."

8. The CAJ is invited to consider whether it would be appropriate to amend document UPOV/INF/12.

9. *The CAJ is invited to:*

(a) *note the ongoing work of the CAJ-AG concerning the development of guidance on variety denominations, as set out in paragraphs 3 to 6 above; and*

(b) *consider whether it would be appropriate to amend document UPOV/INF/12, paragraph 2.3.3(a)(i), as set out in paragraph 7 of this document.*

II. POSSIBLE DEVELOPMENT OF A UPOV SIMILARITY SEARCH TOOL FOR VARIETY DENOMINATION PURPOSES

10. A report concerning the possible development of a UPOV similarity search tool for variety denomination purposes is contained in document CAJ/69/9 "Possible development of a UPOV similarity search tool for variety denomination purposes".

11. The CAJ is invited to note that a report concerning the possible development of a UPOV similarity search tool for variety denomination purposes is contained in document CAJ/69/9 "Possible development of a UPOV similarity search tool for variety denomination purposes".

III. DEVELOPMENTS CONCERNING POTENTIAL AREAS FOR COOPERATION WITH THE IUBS COMMISSION AND THE ISHS COMMISSION

12. The background to this topic is provided in document CAJ/66/3 "Variety denominations", paragraphs 3 to 20.

13. The CAJ, at its sixty-eighth session, held in Geneva on October 21, 2013, considered document CAJ/68/5 "Variety denominations". The CAJ noted that on July 19, 2013, in Beijing, China, the Office of the Union had participated as a speaker in the VI International Symposium on the Taxonomy of Cultivated Plants (ISTCP 2013), which was hosted by the Beijing Forestry University and Beijing Botanical Garden, under the auspices of the International Society for Horticultural Sciences (ISHS). The Office of the Union had explained the guidance provided by UPOV on variety denominations (see document CAJ/68/10 "Report on the Conclusions", paragraph 22).

14. The CAJ noted that on July 20 and 21, also in Beijing, the Office of the Union had participated, in an observer capacity, in the meetings of the International Commission for the Nomenclature of Cultivated Plants of the International Union for Biological Sciences (IUBS Commission). At those meetings, the IUBS Commission had considered proposals to amend the Eighth Edition of the International Code of Nomenclature for Cultivated Plants (ICNCP). Those proposals were published in July 2013 in Volume 7 of the journal "Hanburyana" <http://www.rhs.org.uk/Plants/RHS-Publications/Journals/Hanburyana/Hanburyana-issues/Volume-7--June-2013>. The proposals agreed by the IUBS Commission will be reflected in the Ninth Edition of the ICNCP, which is expected to be published in 2014.

15. On that occasion, a proposal was made by the IUBS Commission to establish a working group, which would include UPOV, at the early stages of the preparatory work for the Tenth Edition of the ICNCP. At the fringes of the meetings in Beijing, an informal exchange took place between the Office of the Union and Ms. Janet Cubey, Chairperson of the ISHS Commission, with a view to discussing possibilities for greater

harmonization of denomination classes. It was suggested to explore areas of cooperation on denomination classes in the proposed working group for the Tenth Edition of the ICNCP.

16. Preparatory work concerning the Tenth Edition of the ICNCP took place at a meeting between members of the IUBS Commission on March 4, 2014. An oral report on any relevant developments will be provided to the CAJ at its sixty-ninth session.

17. The CAJ is invited to note 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), the International Society for Horticultural Science Commission for Nomenclature and Cultivar Registration (ISHS Commission) and UPOV, as set out in Section III of this document.

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