



CAJ-AG/07/2/5

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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

**ADMINISTRATIVE AND LEGAL COMMITTEE
ADVISORY GROUP****Second Session****Geneva, October 26, 2007****ARTICLE 15 OF THE 1991 ACT: EXCEPTIONS TO THE BREEDER'S RIGHT
(ARTICLE 5(3) OF THE 1978 ACT)***Document prepared by the Office of the Union*

1. At its first session held in Geneva on October 20, 2006, the Administrative and Legal Committee Advisory Group ("CAJ-AG") discussed the provisions related to exceptions to the breeder's rights: Article 15 of the 1991 Act of the UPOV Convention and Article 5 (3) of the 1978 Act of the UPOV Convention, on the basis of the information provided on paragraphs 49 to 53 of document CAJ-AG/06/1/2. The CAJ-AG agreed that a document, addressing the issues raised in paragraphs 52 and 53 of document CAJ-AG/06/1/2, should be prepared by the Office of the Union for consideration at its 2007 session and that the document should include the explanations provided in the Distance Learning Course (DL-205) in relation to Article 15 of the 1991 Act and should be supplemented with the recommendation of the Diplomatic Conference on Article 15(2) of the 1991 Act concerning "common practice" with an explanation that common practice would not apply if harvested material was not traditionally used as propagating material.

2. Document CAJ-AG/06/1/2 listed the following issues to be addressed in relation to exceptions to the breeder's right (see paragraphs 51 to 53 of document CAJ-AG/06/1/2):

1 There are no particular issues on Article 15(1)(i) and (ii) of the 1991 Act. It is proposed to use existing explanations provided in DL-205.

2 In respect to Article 15(1)(iii), in addition to the explanations provided in DL-205, the following issues might be considered:

(a) Clarification that the breeder's exemption is not an obligation for the breeder, but an exception to the breeder's right if the material of the relevant variety is available (i.e. in the market) or, when it is not available, has been accessed for further breeding with the consent of the breeder. To consider covering the incidental occurrence of plants of a variety other than the variety sold to the farmer or the grower;

(b) to consider whether a clause in a contract can modify the exceptions to the breeder's right provided in the law (see comments on Article 14(2) in relation to Article 14(1)(b) of the 1991 Act).

3 To consider if further guidance beyond that provided in DL-205 can be developed, e.g. in relation to the exclusion of ornamental and fruit crops from the farmer's privilege.

3. It is further recalled that at its fifty-second session on April 6, 2005, the CAJ decided not to pursue the development of document CAJ/51/3 (Draft Explanatory Notes on Article 15(1)(i) and (2) of the 1991 Act of the UPOV Convention: Acts done Privately and for Non-Commercial Purposes and Provisions on Farm-Saved Seed) for adoption because consensus could not be reached for the time being. The CAJ noted that the material gathered in the framework of that item would be useful for the work of the Office of the Union (e.g. preparation of distance learning materials and in giving advice on the drafting of legislation of future members) (paragraphs 8 and 9 of document CAJ/52/5).

4. Following the request made by the CAJ-AG at its first session, on the basis of the agreed paragraphs of the material contained in the Annex to document CAJ/51/3, and the relevant material of the UPOV Distance Learning Course, the Office of the Union has prepared document UPOV/EXN/EXC Draft 1 "Explanatory Notes on Exceptions to the Breeder's Right Under the UPOV Convention" to address points 1, 2 (excluding (a) and (b)) and 3 of paragraph 2 above.

5. With respect to the clarification proposed in paragraph 2, point 2(a), the Office of the Union would like to seek further advice from the CAJ-AG before drafting any guidance on this matter. With respect to consideration of whether a clause in a contract can modify the exceptions to the breeder's right provided in the law (paragraph 2, point 2 (b)), that matter is considered in paragraph 7 of document CAJ-AG/07/02/3.

6. *The CAJ-AG is requested to:*

(a) *comment on the draft explanatory notes contained in document UPOV/EXN/EXC Draft 1,*

(b) *consider if explanatory notes should be developed to address matters raised in paragraph 2, points 2 (a) and (b).*

[End of document]