



CAJ-AG/11/6/6

ORIGINAL: English

DATE: September 14, 2011

**INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS**  
GENEVA

**ADMINISTRATIVE AND LEGAL COMMITTEE  
ADVISORY GROUP**

**Sixth Session  
Geneva, October 18, 2011**

PROPAGATION AND PROPAGATING MATERIAL

*Document prepared by the Office of the Union*

1. The CAJ at its sixty-third session, held in Geneva on April 7, 2011 noted the request made by the International Community of Breeders of Asexually Reproduced Ornamental and Fruit Varieties (CIOPORA) and agreed to request the Office of the Union to prepare a document, on the basis of contributions received, on “propagation and propagating material” for consideration by the Administrative and Legal Committee Advisory Group (CAJ-AG) at its sixth session in October 2011 (see document CAJ/63/9 “Report on the Conclusions”, paragraph 34).

BACKGROUND

2. In his letter of October 4, 2010<sup>1</sup>, concerning “Explanatory notes on Acts in respect of harvested material under the UPOV Convention, document UPOV/EXN/HRV Draft 5” Mr. Edgar Krieger, Secretary General, International Community of Breeders of Asexually Reproduced Ornamental and Fruit Varieties (CIOPORA), wrote that “it seems advisable to suspend the discussion about the Explanatory Note on Harvested Material and first start a discussion and draft an Explanatory Note on ‘Propagation and Propagating Material’. The term ‘propagation’ should be included in such new Explanatory Note, too, because also this

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<sup>1</sup> A copy of the letter is available at [http://www.upov.int/export/sites/upov/restrict/en/caj-ag/caj\\_ag\\_10\\_5/ciopora\\_hrv\\_oct\\_4\\_2010.pdf](http://www.upov.int/export/sites/upov/restrict/en/caj-ag/caj_ag_10_5/ciopora_hrv_oct_4_2010.pdf)

term is not understood in the same way within the industry and the related circles”. The Annex to that letter provided a compilation of the “definitions of propagating material in the PBR laws of selected UPOV members (the texts of the laws are taken from the UPOV website in English language)”.

3. The representative of CIOPORA, at the sixty-second session of the CAJ, held in Geneva on October 18 and 19, 2010, referred to the first part of the fifth session of the CAJ-AG, in the context of discussions on document UPOV/EXN/HRV: Explanatory Notes on Acts in Respect of Harvested Material under the 1991 Act of the UPOV Convention, in which CIOPORA had requested the development of explanatory notes on “propagation and propagating material” (see document CAJ/62/9 “Report”, paragraph 13).

4. The Chair of the CAJ, at the sixty-second session of the CAJ, recalled that the CAJ-AG would continue discussions on document UPOV/EXN/HRV: Explanatory Notes on Acts in Respect of Harvested Material under the 1991 Act of the UPOV Convention, at its fifth session, on the afternoon of October 19, 2010. She noted that the request made by CIOPORA would be considered by the CAJ-AG and the conclusions of the CAJ-AG on those matters would be reported to the CAJ at its sixty-third session, to be held in Geneva on April 7, 2011 (see document CAJ/62/9 “Report”, paragraph 14).

5. The CAJ-AG, at its fifth session, considered the request made by CIOPORA for the development of explanatory notes on “propagation and propagating material” and agreed to report that request to the CAJ, at its sixty-third session. The CAJ-AG recalled that it was a matter for the CAJ to decide on the development of new explanatory notes (see document CAJ-AG/10/5/7 “Report”, paragraph 10).

#### MATTERS FOR CONSIDERATION

6. As explained in paragraph 1 of this document, the CAJ at its sixty-third session, agreed to request the Office of the Union to prepare a document, on the basis of contributions received, on “propagation and propagating material”. No further contributions have been received since that time. Therefore, for information purposes, the Office of the Union has undertaken a review of the references to propagation and propagating material in the laws notified by the members of the Union. The Annex to this document provides a synopsis of references as far as they provide guidance on the terms “propagation” or “propagating material”

*7. The CAJ-AG is invited to consider the synopsis in the Annex to this document.*

[Annex follows]

## ANNEX

## SYNOPSIS OF REFERENCES RELATED TO PROPAGATION / PROPAGATING MATERIAL IN THE LAWS OF MEMBERS OF THE UNION

Source: unless otherwise indicated, the laws searched were those notified by members of the Union to UPOV

Search terms: propagation, propagating material, harvested material, material, plant, plant material, seed, multiplication, reproduction and production

***Bold, italic highlighting*** is introduced by the Office of the Union for emphasis

MEMBER	LEGISLATION AND SELECTED TERMS
Albania	<p><u>Law No. 8880 dated April 15, 2002, of the Republic of Albania on Plant Breeder's Right</u>  <u>Article 3 (19) Definitions</u></p> <p>“Material’ means: (a) propagating material of any variety (seed, sapling, piece, bulb, rhizome and slip). (b) harvested material including entire plants or parts of plants.”</p>
Argentina	<p><u>Law No. 20247/73 on seed and phylogenetic creations of March 30, 1973<sup>2</sup></u>  <u>Article 2</u></p> <p>“[...] ‘seed’ shall mean any plant organ <b>intended for</b> sowing or propagation.”</p>
Australia	<p><u>Plant Breeder's Rights Act, 1994 (consolidated as of March 2011)<sup>3</sup></u>  <u>Section 3 (1) Definitions</u></p> <p>“<b>propagating material</b>, in relation to a plant of a particular plant variety, means any part or product from which, whether alone or in combination with other parts or products of that plant, another plant with the same essential characteristics <b>can</b> be produced.</p> <p>“<b>propagation</b>, in relation to a living organism or its components, means the growth, culture or multiplication of that organism or component, whether by sexual or asexual means.</p> <p>“<b>reproduction</b>, in relation to propagating material of a plant of a particular variety, means any process, whereby the number of units of that propagating material that have the capacity to grow into independent plants is multiplied.”</p>
Austria	<p><u>Federal Law on the Protection of Plant Varieties (Variety Protection Act, 2001)</u>  <u>Part I Definitions, Section 1 (4)</u></p> <p>“‘propagating material’ shall mean seeds, plants and parts of plants <b>meant for</b> the production or, otherwise, the growing, of plants;”</p>
Azerbaijan	<p><u>Law on Selection Achievements of 1996</u>  <u>Article 1, Basic Definitions</u></p> <p>“<b>Plant material</b> means seeds, bulbs, tubers, branches or other parts <b>used for</b> purposes of reproduction of the variety;”</p>

<sup>2</sup> Source: translation from the archives of the Office of the Union.

<sup>3</sup> Source: WIPO Lex (<http://www.wipo.int/wipolex/en/>)

Belarus	<p><u>Law of the Republic of Belarus of April 13, 1995 N° 3725 XII on Patents for Plant Varieties</u></p> <p><u>Article 1, Definitions</u></p> <p>“‘harvested material’ shall mean entire plants or parts of plants disposed of for the purposes other than reproduction of a variety;</p> <p>“‘propagating material’ shall mean plants, seeds, seedlings, bulbs or any other parts of plants <b>intended for</b> the purposes of multiplication;”</p>
Belgium	<p><u>Law on Plant Variety Protection, 20<sup>th</sup> May, 1975<sup>3</sup></u></p> <p><u>Article 2.A.2</u></p> <p>“<i>Matériel de reproduction ou de multiplication: semences, plants, plantes ou parties de plantes destinés à la reproduction de végétaux;</i>”</p>
Brazil	<p><u>Law No. 9456 of April 28, 1997</u></p> <p><u>Article 3</u></p> <p>(xiv) “seed” means every and any plant structure used in the propagation of a plant variety;</p> <p>(xv) “propagation” means the reproduction and multiplication of a plant variety, or the concurrence of those actions;</p> <p>(xvi) “propagation material” means every and any part of the plant or plant structure that <b>is used</b> in the reproduction and multiplication thereof;</p> <p>(xvii) “whole plant” means the plant with all those of its parts capable of being used in the propagation of a plant variety</p>
Bulgaria	<p><u>Law on the Protection of New Plant Varieties and Animal Breeds, 1996 (as amended and consolidated 20 October 2000)<sup>3</sup></u></p> <p><u>Additional Provisions</u></p> <p>“‘Propagating material’ is a whole plant, seeds, planting material, as well as parts of this plant, insofar as they contain at least one cell and <b>are used for</b> reproduction of the whole plant, irrespective of the method of their production - artificial or natural.”</p>
Canada	<p><u>Plant Breeders’ Rights Act (S.C. 1990, c. 20) (Consolidated as of 30th January, 2011)<sup>3</sup></u></p> <p><u>Article 2 (1), Definitions</u></p> <p>“propagating material” “<i>matériel de multiplication</i>”</p> <p>“propagating material” means any reproductive or vegetative material <b>for</b> propagation, whether by sexual or other means, of a plant variety, and includes seeds for sowing and any whole plant or part thereof that may be used for propagation;”</p>
Chile	<p><u>Law No. 19.342 on the Rights of Breeders of New Varieties of Plants</u></p> <p><u>Article 2 (c)</u></p> <p>“(c) ‘Propagating material’ means seed, fruit, plants or parts thereof <b>intended for</b> the reproduction of plants;”</p>
Costa Rica	<p><u>Law No. 8631 on the Protection of New Varieties of Plants as amended by Law No. 8686</u></p> <p><u>Article 4, Definitions</u></p> <p>“Material: In relation to a variety, ‘material’ shall mean:</p> <p>(a) Plant propagating material, in any form;</p> <p>(b) Harvested material, including entire plants and parts of plants.</p> <p>“Seed: Any plant reproduction or propagation structure <b>intended for</b> the seeding or plantation of a plant variety. This definition shall include sexual and asexual seeds, nursery plants and propagating material produced using biotechnologies.”</p>

Georgia	<p><u>Law for the Protection of New Varieties of Plants of December 29, 2006</u></p> <p><u>Article 2</u></p> <p>“(d) Propagation material means the seed, plant or its part <b>intended for</b> the propagation of a plant variety;</p> <p>“(e) Harvest means any output received as a result of the propagation of a plant variety;”</p>
Germany	<p><u>The Plant Variety Protection Law (consolidated as of 1997)</u></p> <p><u>Article 2, Definitions</u></p> <p>“2. Propagating material’ shall mean plants and parts of plants, including seeds, <b>intended for</b> the production of plants or for any other growing.”</p>
Hungary	<p><u>Act XXXIII of 1995 on the Protection of Inventions by Patents (as last amended by Act XXVII of 2009)</u></p> <p><u>Article 105, General Provisions, Chap. XIII, Plant Varieties and Protection of Plant Varieties</u></p> <p>“(b) propagating material: entire plants, seeds or other parts of plants <b>suitable for</b> growing the whole plant or for producing it in any other way.”</p>
Israel	<p><u>The Plant Breeders’ Rights Law 5733-1973 (Consolidated Text as amended by Amendments No. 1 (1983) and No. 2 (1996))</u></p> <p><u>Definitions, Article 1</u></p> <p>“‘harvested material’ - a plant and any part of it, including its fruit, which is not intended for cultivation or propagation;”</p> <p>“‘propagating material’ – a plant and any part of it, which is <b>intended for</b> cultivation or propagation, including seeds and tissue cultures;”</p>
Kenya	<p><u>Seeds and Plant Varieties Act, 1972 (as last amended in 2002)</u></p> <p><u>Part I, Interpretation, Article 2</u></p> <p>“‘seed’ means that part of a plant which <b>is or is intended to be used</b> for propagation and includes any seed, seedling, corm, cutting, bulb, bulbil, layer, marcott, root, runner, scion, set, split, stem, stock, stump, sucker or tuber so used or intended to be so used;”</p>
Kyrgyzstan	<p><u>Laws of the Kyrgyz Republic on the Legal Protection of Selection Achievements, (February 27, 2003, No. 46, March 31, 2005, No. 58, August 8, 2006, No. 155)</u></p> <p><u>Article 1</u></p> <p>“seeds – the generative and vegetative organs of plants which are <b>used to</b> reproduce the variety;</p> <p>“plant material – wholeplants or parts of plants, seeds, seedlings, bulbs or fruit of different cultures which are <b>intended for</b> propagation or sale for purposes other than the reproduction of the variety;”</p>
Lithuania	<p><u>Law on the Protection of New Plant Varieties of November 22, 2001 No. IX-618 (as last amended on November 19, 2006, No. X-862)</u></p> <p><u>Article 2, Definitions</u></p> <p>“1. Harvested material shall mean entire plants or parts of plants.</p> <p>“7. Propagating material shall mean a seed, an entire plant or a vegetative part of a plant (grafts, stocks, shoots, parts of rootstocks, tubers, etc.) <b>intended for</b> the propagation of plants of a certain variety.”</p>

Mexico	<p><u>Federal Law on Plant Varieties, October 25, 1996</u></p> <p><u>Article 2</u></p> <p>“III. ‘propagating material’ means any reproductive or vegetative propagating material that <b>can be used</b> for the production or multiplication of a plant variety, including seed for sowing and any whole plant or part of a plant from which it is possible to reproduce plants of seeds;”</p> <p><u>Regulations of the Federal Plant Variety Law</u></p> <p><u>Article 2<sup>nd</sup></u></p> <p>“VI. Propagation material: Any sexual or asexual reproduction material that <b>may be used</b> for the production or multiplication of a plant variety, including seeds for sowing and any whole plant or part of a plant from which whole plants or seeds may be obtained.”</p>
Morocco	<p><u>Law on the Protection of New Plant Varieties, December 2006</u></p> <p><u>Article 2</u></p> <p>“(b) ‘propagating material <b>for the</b> production of plants’ means</p> <ul style="list-style-type: none"> <li>- reproductive material such as seed and fruit;</li> <li>- vegetative propagating material such as plants or parts of plants, cuttings, tubers, bulbs, rhizomes.”</li> </ul>
Netherlands	<p><u>Seeds and Planting Material Act, 2000</u></p> <p><u>Chapter I, Definitions, Section 2</u></p> <p>“‘Propagating material’ shall mean plants or parts thereof that are <b>intended for</b> cultivation by planting or sowing or by any other means.”</p> <p><u>Act of February 19, 2005, containing New Regulations Governing the Approval of Varieties of Plants, the Marketing of Propagating Material, and the Granting of Breeder’s Rights (Seeds and Planting Materials Act, 2005)</u></p> <p><u>Chapter 1, Definition of Terms, Section 1</u></p> <p>“f. propagating material: plants and plant parts <b>intended for</b> the cultivation or propagation of plants or that are used for such purposes.”</p>
New Zealand	<p><u>Plant Variety Rights Act, 1987 (consolidated as of 2007)<sup>3</sup></u></p> <p><u>Article 2, Interpretation</u></p> <p>“<b>Reproductive material</b>, in relation to any variety, means any portion of a plant of that variety by means of which plants of that variety <b>may be</b> reproduced or propagated; and includes spores, seeds, and whole plants.”</p>
Nicaragua	<p><u>Law for the Protection of New Varieties of Plants, Law No. 318</u></p> <p><u>Article 3, Definitions</u></p> <p>“<b>Propagating material</b> means any material <b>for the</b> reproduction of plants, whether by sexual or asexual reproduction that <b>may be used</b> for the production or multiplication of a plant variety, including seeds for sowing and any whole plant or parts thereof, from which it is possible to bring about the reproduction of whole plants or seeds.”</p> <p><b>Reproductive or vegetative propagating material</b> means seeds, fruits, plants or parts thereof that <b>are used</b> for the reproduction of plants, including also whole plants.</p>
Panama	<p><u>Law No. 23 of July 15, 1997, on Industrial Property, Title V / Provisions on the Protection of New Plant Varieties</u></p> <p><u>Article 232, Definitions</u></p> <p>“Reproductive or vegetative propagating material: Seed, fruit, plants or parts thereof that <b>are used</b> for the reproduction of plants. It includes the whole plant.”</p>

Paraguay	<p><u>Law No. 385/94 of Seeds and Cultivars Protection, 1994 (Ley N° 385/1994 de Semillas y Protección de Cultivares)</u><sup>3</sup></p> <p><u>Artículo 2°(n). Definiciones</u></p> <p>“Semilla o simiente: toda parte o estructura vegetal, incluyendo plantas de viveros o mudas, que <b>sea destinada o utilizada</b> para siembra, plantación o propagación;”</p>
Poland	<p><u>Act of June 26, 2003, on the Legal Protection of Plant Varieties, as amended by the Act of June 9, 2006, and the Act of May 9, 2007 (consolidated text)</u></p> <p><u>Article 2</u></p> <p>“8) propagating material – shall be taken to mean plants or their parts <b>intended for</b> sowing, planting, grafting, budding or other method of propagation of plants, including the application of biotechnology;</p> <p>“9) harvested material – shall be taken to mean the plants or their parts produced as a result of the cultivation of a specified variety not intended to be used as propagating material;”</p>
Republic of Korea	<p><u>Seed Industry Law of January 26, 2001 under Law No. 6374</u></p> <p><u>Article 2, Definitions</u></p> <p>““(iii) seed’ means a seed, a mushroom spawn, or vegetative material <b>used for</b> the propagation or cultivation of plants;”</p>
Republic of Moldova	<p><u>Law on the Protection of Plant Varieties, N39-XVI of February 29, 2008</u></p> <p><u>Article 2, Legal Basis</u></p> <p>““material of a variety’ means seeds, whole plants or parts thereof, <b>capable of</b> reproducing whole plants;”</p>
Romania	<p><u>Law on the Protection of the New Plant Varieties No. 255/1998 as amended in 2006 (consolidated text)</u></p> <p><u>Article 2, Definitions</u></p> <p>“c) propagating material means seeds, entire plants or various parts of plants which are <b>capable of</b> reproducing the entire plants;”</p>
Russian Federation	<p><u>Law on the Protection of Selection Achievements, (August 6, 1993)</u></p> <p><u>Article 1, Definitions</u></p> <p>““seeds’ means a plant or parts thereof <b>used for</b> the purpose of reproduction of the variety;”</p> <p>““plant material’ means a plant or parts thereof used for purposes other than reproduction of the variety;”</p>
Singapore	<p><u>Plant Varieties Protection Act, Cap. 232A</u></p> <p><u>Article 2, Interpretation</u></p> <p>““harvested material’ means any harvested material to which the rights of a grantee under section 28 (1) are extended by virtue of section 28 (7);</p> <p>““propagating material’, in relation to a plant of a particular plant variety, means any part or product from which, whether alone or in combination with other parts or products of that plant, another plant with the same essential characteristics <b>can be</b> produced;</p> <p>““propagation’, in relation to a plant or any of its components, means the growth, culture or multiplication of that plant or component.”</p>

Slovakia	<p><u>Law on the Protection Rights of New Varieties and Animal Breeds No. 132/1989 (amended 22/1996 Coll. Laws)</u></p> <p><u>Article 2, Definition of the Terms</u></p> <p>“b) the propagating material of varieties shall mean seeds and plantings, as well as plants and their parts <b>designated for</b> further propagation.”</p>
Slovenia	<p><u>The Protection of New Varieties of Plants Act, (consolidated as of 2006)<sup>4</sup></u></p> <p><u>Article 2, Definitions</u></p> <p>“8. The material of the protected variety’ means any kind of propagating material or harvested material of the protected variety which <b>could be used</b> for further multiplication of this variety.”</p>
South Africa	<p><u>Plant Breeder’s Rights Act, No. 15 of 1976 (consolidated as of 1996)</u></p> <p><u>Section 1, Definitions</u></p> <p>“propagating material’ means any material of a plant that <b>can be used</b> for the propagation of a plant;”</p>
Switzerland	<p><u>Federal Law on the Protection of Plant Varieties No. 232.16 of March 20, 1975 (status as of September 1, 2008)</u></p> <p><u>Article 2, Definitions</u></p> <p>“Propagating material” shall be deemed to be seeds, seedlings, grafts, stocks and any other parts of the plant, including the material obtained by in vitro production, which are <b>meant to be</b> propagated, sown, planted or replanted.</p>
Tunisia	<p><u>Law No. 99-42 of 10 May, 1999 on Seed, Seedlings and New Varieties of Plants</u></p> <p><u>Article 2</u></p> <p>“For the purposes of this Law: (1) “Seed and seedlings” means all seeds, plants, parts of plants such as grafts, tubers, bulbs and stubs.”</p>
Turkey	<p><u>Law No. 5042 of January 8, 2004, on the Protection of Breeder’s Rights for New Plant Varieties</u></p> <p><u>Article 2, Definitions</u></p> <p>“f) Seed: vegetative and generative plant parts <b>used for</b> propagation of plants “g) Propagation or reproduction: derivation of a new generation plants having the same characteristics with initial and parent plants. “h) Production: cultivation of plants with the aim of obtaining product or propagating material. “i) Propagating material: all plants or their parts <b>used for</b> propagating plants.”</p>
Ukraine	<p><u>Amendment of the Law of Ukraine on the Protection of Plant Variety Rights (July 1, 2002)</u></p> <p><u>Section 1, General Provisions</u></p> <p>“planting material – plants and parts thereof, considered <b>suitable for</b> the reproduction of whole plants;”</p>

[End of Annex and of document]

<sup>4</sup> Source: WIPO Lex (<http://www.wipo.int/wipolex/en/>)