

Via e-mail

INTERNATIONAL UNION FOR THE PROTECTION OF NEW
VARIETIES OF PLANTS (UPOV)
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Propagation material

Dear members of the CAJ-AG,

CIOPORA is pleased to contribute to the development of an explanatory note on propagation and propagating material.

The discussion about a definition of “propagating material” or at least about a better understanding of the term “propagating material” is of utmost importance for breeders, because the term “propagating material” is one of the key terms in the UPOV system, as it covers the only material which is directly protected by the PBR.

The following considerations are based on the assumption that goal of UPOV is to achieve a harmonisation of the definitions of propagating material in the PBR laws of its members and to provide for a sufficiently broad scope of rights.

1. UPOV Acts should form the basis for harmonised PBR laws

The existing significant differences in respect of the key term “propagating material” in the PBR laws of the UPOV members show that one of the goals of UPOV, namely the harmonisation of the legal systems for the protection of plant varieties, has not been completely reached so far. Taking into consideration that today the trade with horticultural products is entirely international, the different definitions of propagating material and the resulting uncertainty and confusion must concern the entire industry, including breeders, propagators, growers and the trade.

In order to foster the harmonisation of PBR laws worldwide, it is indispensable that UPOV provides for a clear framework and clear definitions of the key terms of its system.

CIOPORA understands that the UPOV Acts do not provide for a binding definition of propagating material. Nevertheless, UPOV should not allow a broad range of definitions of “propagating material”, because this would mean a perpetuation of the existing wide variety of definitions, which lead to confusion when it comes to trade of plant material between different territories. Therefore, the UPOV members should agree among themselves on a standard definition, which fulfils the requirements of an effective system.

2. The UPOV Convention as effective sui generis system

UPOV's mission is to provide and promote an *effective* system of plant variety protection. In order to fulfil this mission, the scope of protection provided for by the UPOV Convention must be sufficiently broad.

One key parameter for the effectiveness of an IP system is which material is covered by the scope of protection. In this regard the UPOV system provides – compared e.g. to the Patent system – a rather weak protection, as it does not provide protection for the protected variety per se, but only for parts of the variety, namely for propagating material.

In order not to limit and weaken the protection even more, the UPOV Convention must provide for a sufficiently broad definition of propagating material.

From the UPOV study of the definitions of “propagating material” in 39 of its member countries one can class the definitions in four groups:

1. Rather broad definitions of “propagating material”, according to which “plants or parts of plants, from which another plant with the same characteristics can be produced” are considered to be propagating material.
2. A very narrow concept of propagating material, according to which only “plants or parts of plants intended or used for the reproduction or multiplication of plants” are considered to be propagating material.
3. Definition which include “plants or parts thereof intended for the cultivation (growing, planting or sowing)”.
4. Definitions which say: “plants or part of plants intended/designated for the propagation” without providing a definition of “propagation”.

Applying these different definitions of “propagating material” to some forms of material of vegetatively reproduced ornamental and fruit varieties (such as elite-plants, mother-plants, cuttings (rooted and un-rooted), young plants, pot plants, cut-rose plants, apple-trees, fruits, cut-flowers) it turns out that

- under the definitions in group 1 many forms of material are considered to be propagating material, namely all plants and such parts of plants, from which new entire plants can be produced (true-to type). In general, these are all parts of a plant which include a meristem, such as un-rooted cuttings, budding eyes, rhizomes, bulbs, corms, roots as well as cut-flowers belonging to those species in which meristematic cells are placed on them (e.g. roses, carnations etc.).
- under the definitions in group 2 very few forms of the material of vegetatively reproduced varieties is considered to be propagating material, because usually only elite-plants and mother-stock are intended for the reproduction or multiplication of plants. Young plants, pot plants, rose-plants, fruit trees, fruits and cut-flowers are usually not intended for the reproduction. Even cuttings are not intended for reproduction / multiplication: Instead, one cutting is usually intended for growing with the aim to gain one plant; multiplication usually is explicitly forbidden.
- under the definitions in group 3 some more material seems to be covered, including e.g. cuttings, young plants and trees, but excluding cut-flowers, fruits and finished pot plants.

CIOPORA considers a PBR law, which grants to the title-holder only the exclusive right to produce, reproduce, sell, etc. elite material and mother-stock, not as being effective.

CIOPORA considers a PBR law as being effective, in respect of propagating material, if it covers plants and parts of which are capable of producing entire plants of the variety true to type.

3. Conclusion

CIOPORA suggests that UPOV develops a standard definition of propagating material, which the UPOV members shall implement into their national PBR laws. The basic of such standard definition for propagating material shall be that any plant or part of a plant from which another plant with the same characteristics can be produced is considered propagating material.

We are at your disposal for further discussions of this matter in the next meeting of the CAJ-AG.

With kind regards,

CIOPORA



Dr. Edgar Krieger
Secretary General