

**Working Group on a Possible International System
of Cooperation**

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NOVELTY

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NOVELTY

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Relevant provisions

Criteria

Varieties of recent creation

Examining Novelty

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Article 6

Novelty

(1)[*Criteria*] The variety shall be deemed to be new if, at the date of filing of the application for a breeder's right, **propagating or harvested material** of the variety has **not been sold or otherwise disposed of to others, by or with the consent of the breeder**, for purposes of **exploitation of the variety**

(i) **in the territory** of the Contracting Party in which the application has been filed earlier than **one year** before that date and

(ii) **in a territory other than that of the Contracting Party** in which the application has been filed earlier than **four years** or, in the case of **trees or of vines, earlier than six years** before the said date.

(2)[*Varieties of recent creation*]

(3)[*"Territory" in certain cases*]

What has an effect on novelty?

| Relevant Material | Relevant Acts | Condition | grace periods |
|----------------------|--|---------------------------------------|--|
| propagating material | sold for the purposes of exploitation | by or with the consent of the breeder | earlier than 1 year in the territory where the application is filed |
| harvested material | otherwise disposed of to others for the purposes of exploitation | | earlier than 6 years (trees/vines) or 4 years (other crops) in other territories |

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Relevant Acts

Acts may be considered not to result in the loss of novelty

- (i) trials of the variety not involving sale or disposal of to others for purposes of exploitation of the variety (clarified in 1978 Act);
- (ii) sale or disposal of to others without the consent of the breeder;
- (iii) sale or disposal of to others that forms part of an agreement for the transfer of rights to the successor in title;

Relevant Acts

Acts may be considered not to result in the loss of novelty

- (iv) sale or disposal of to others that forms part of an agreement under which a person multiplies propagating material of a variety on behalf of the breeder where that agreement requires that the property in the multiplied material reverts to the breeder;

Relevant Acts

Acts may be considered not to result in the loss of novelty

- (v) sale or disposal of to others that forms part of an agreement under which a person undertakes **field tests or laboratory trials, or small-scale processing trials**, with a view to evaluating the variety;
- (vi) sale or disposal of to others that forms part of **the fulfillment of a statutory or administrative obligation**, in particular concerning biosafety or the entry of varieties in an official catalogue of varieties admitted to trade;

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Relevant Acts

Acts may be considered not to result in the loss of novelty

- (vii) sale or disposal of to others of **harvested material which is a by-product or a surplus product of the creation of the variety or of the activities referred to in items (iv) to (vi) above**, provided that the said material is sold or disposed of **without variety identification** for the purposes of consumption; and
- (viii) disposal of to others for the purposes of **displaying the variety at an officially recognized, exhibition**

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NOVELTY: VARIETIES OF RECENT CREATION

1 - “transitional” and optional provision

2 - to enable the protection of varieties which have been created shortly before protection becomes available for the first time

EXAMINING NOVELTY

UPOV Model Form for the Application for Plant Breeders' Rights

8. The variety has been [sold or otherwise disposed of to others, by or with the consent of the breeder, for purposes of exploitation of the variety] / [offered for sale or marketed, with the agreement of the breeder] (Authority to delete as appropriate)

in [territory of application]: _____

not yet for the first time (date) _____

under the denomination _____

and in other territories: _____

not yet for the first time (territory and date) _____

under the denomination _____

DATE OF FIRST COMMERCIALIZATION INTRODUCED IN THE PLUTO DATABASE IN 2013

Item <XXX>: dates on which a variety was commercialized for the first time in the territory of application and other territories (not mandatory)

| | <u>Comment</u> |
|--|--|
| (i) Authority providing the [following] information | ISO two letter code |
| (ii) Territory of commercialization | ISO two letter code |
| (iii) Date on which the variety was commercialized ¹ for the first time in the territory (¹ The term "commercialization" is used to cover "sold or otherwise disposed of to others, by or with the consent of the breeder, for purposes of exploitation of the variety" (Article 6(1) of the 1991 Act of the UPOV Convention) or "offered for sale or marketed, with the agreement of the breeder" (Article 6(1)(b) of the 1978 Act of the UPOV Convention), as appropriate. | according to the format YYYY[MMDD] (Year[MonthDay]): month and day will not be mandatory if not available |
| (iv) Source of information | mandatory for each entry in item <XXX> |
| (v) Status of information | mandatory for each entry in item <XXX> (to provide an explanation or a reference to where an explanation is provided (e.g. the website of the authority providing the data for this item) |
| <i>Note: for the same application, the authority in (i) could provide more than one entry for items (ii) to (v). In particular, it could provide information on commercialization in the "territory of application", but also "other territories"</i> | |