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GENF, SCHWEIZ



UNION INTERNATIONALE
POUR LA PROTECTION
DES OBTENTIONS VÉGÉTALES

GENÈVE, SUISSE

INTERNATIONAL UNION
FOR THE PROTECTION OF
NEW VARIETIES OF PLANTS

GENEVA, SWITZERLAND

UPOV Press Release No. 30

Geneva, April 21, 1998

THE 1991 ACT OF THE INTERNATIONAL CONVENTION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS (THE UPOV CONVENTION) ENTERS INTO FORCE

The Office of the International Union for the Protection of New Varieties of Plants (UPOV) announced today that the 1991 Act of the UPOV Convention enters into force on April 24, 1998. The new Act resulted from a Diplomatic Conference held in Geneva in 1991.

The UPOV Convention establishes the international rules of the system under which countries grant intellectual property rights to the individuals or entities which develop new varieties of plants. Breeding is long term and expensive but plant varieties once released are often easily reproduced. Private finance would not be attracted to plant breeding in the absence of appropriate intellectual property protection.

The UPOV Convention was initially created in 1961. Between 1961 and 1991, dramatic scientific and technical developments took place resulting in the emergence of genetic engineering and advanced tissue culture. These developments, plus the experience of operating the 1961 Convention, provided powerful motivators for the 1991 revision of the Convention.

The 1991 Act strengthens the breeder's position in very specific ways. It requires UPOV member States to grant to the breeder a right over all production of seed or other planting material, but leaves each State free to exclude from the breeder's right the use of seed saved and used on a farm (the so-called "farmer's privilege"). Member States must also grant to the breeder certain rights over the end product of his variety ("the harvested material"), subject to certain conditions (the harvested material must be derived from planting material used without the breeder's authorization and the breeder must not have had a reasonable opportunity to exercise a right in relation to that planting material).

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Perhaps most importantly if a genetic engineer uses a protected variety as the carrier for his innovation (insect resistance or herbicide resistance, for example), he may not be able to use the engineered variety without the authority of the owner of the protected variety, if the engineered variety is considered to be "essentially derived" from the protected variety. Prior to the 1991 revision, the engineered variety could have been exploited with no recognition of the contribution of the breeder of the protected variety to the final result.

The 1991 Act required a minimum of five ratifications and accessions before coming into force as an international legal instrument. The recent accession of Bulgaria and the Russian Federation brings to six the number of adherences. The UPOV Office has calculated, however, that protection, based on the 1991 Act, is already available within the domestic laws of more than thirty countries.

UPOV and the TRIPS Agreement

Article 27.3(b) of the Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement) calls for members of the World Trade Organization (WTO) to protect plant varieties in the patent system or by an effective *sui generis* system for the protection of plant varieties or by a combination of such systems. The UPOV Convention provides the only internationally recognized *sui generis* system for the protection of plant varieties. The obligation in the TRIPS Agreement to protect the rights of developers of new plant varieties already applies to all developed country members of WTO and will come into force for many developing countries on January 1, 2000.

Today, UPOV has thirty-seven member States and a further twelve States plus the European Community, have embarked upon the procedure leading to membership (a country's plant variety protection law must be found to be in conformity with the Convention before it can become a member). UPOV expects that many developing countries will choose the UPOV system as their model for an effective *sui generis* system of protection. The coming into force of the 1991 Act is an important event in this context.

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