

International Union for the Protection of New Varieties of Plants

WHAT IT IS, WHAT IT DOES

WHAT IS UPOV? The International Union for the Protection of New Varieties of Plants, known as “UPOV,” is an intergovernmental organization with headquarters in Geneva. The acronym UPOV is derived from the French name of the organization, *Union internationale pour la protection des obtentions végétales*.

The mission of UPOV is to provide and promote an effective system of plant variety protection, with the aim of encouraging the development of new varieties of plants, for the benefit of society.

WHAT IS THE ORIGIN OF UPOV? UPOV has been established by the International Convention for the Protection of New Varieties of Plants (the “*UPOV Convention*”), which was signed in Paris in 1961. The Convention entered into force in 1968. It was revised in Geneva in 1972, 1978 and 1991. The 1991 Act entered into force on April 24, 1998. Reference to the UPOV Convention in this document means the 1991 Act.

WHAT IS THE PURPOSE OF THE UPOV CONVENTION?

The purpose of the UPOV Convention is to ensure that the members of the Union acknowledge the achievements of breeders of new varieties of plants, by granting to them an intellectual property right, on the basis of a set of clearly defined principles. To be eligible for protection, varieties have to be (i) distinct from existing, commonly known varieties, (ii) sufficiently uniform, (iii) stable and (iv) new in the sense that they must not have been commercialized prior to certain dates established by reference to the date of the application for protection.

WHAT IS THE EFFECT OF PLANT BREEDERS' RIGHTS? The UPOV Convention sets out a minimum scope of protection and offers members the possibility of taking national or regional circumstances into account in their legislation.

The UPOV Convention defines acts concerning propagating material in relation to which the holder's authorization is required. Exceptionally, but only where the holder has had no reasonable opportunity to exercise his right in relation to the propagating material, his authorization may be required in relation to any of the specified acts done with harvested material of the variety.

Like all intellectual property rights, plant breeders' rights are granted for a limited period of time, at the end of which varieties protected by them pass into the public domain. The rights are also subject to controls, in the public interest, against any possible abuse.

It is also important to note that the authorization of the holder of a plant breeder's right is not required for the use of their variety for private and non-commercial purposes, for research purposes, nor for use in the breeding of further new varieties.

WHY PROTECT NEW VARIETIES OF PLANTS?

Protection is afforded to plant breeders as an incentive for the development of new varieties of plants, in order to provide sustainable progress in agriculture, horticulture and forestry.

Improved varieties are a necessary, and very cost-effective, means of improving productivity, quality and marketability for farmers and growers.

Breeding new varieties of plants requires a substantial investment in terms of skill, labor, material resources, money and time. The opportunity to obtain certain exclusive rights in respect of new varieties provides successful plant breeders with a better chance of recovering their costs and accumulating the funds necessary for further investment. In the absence of plant breeders' rights, those aims are more

difficult to achieve since there is nothing to prevent others from multiplying the breeder's variety and selling it on a commercial scale, without recognizing in any way the work of the breeder.

WHY BECOME A MEMBER OF UPOV? By becoming a member of UPOV, a State or an intergovernmental organization signals its intention to protect plant breeders on the basis of principles that have gained worldwide recognition and support. It offers its own plant breeders the possibility of obtaining protection in the territories of other members and provides an incentive to foreign breeders to invest in plant breeding and the release of new varieties on its own territory.

It has the opportunity through membership of UPOV to share in and benefit from the combined experience of the members and to contribute to the worldwide promotion of plant breeding. A constant effort of intergovernmental cooperation



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is necessary to accomplish such an aim and this requires the support of a specialized Secretariat.

WHAT DOES UPOV DO? The main activities of UPOV are concerned with promoting international harmonization and cooperation, mainly between its members, and with assisting countries and certain organizations in the introduction of the UPOV system of plant variety protection.

The fact that the UPOV Convention defines the basic concepts of plant variety protection that must be included in the domestic laws of the members of the Union leads, in itself, to a great degree of harmony in those laws and in the practical operation of the protection systems. Such harmony is enhanced, firstly, through specific activities undertaken within UPOV leading to recommendations and model agreements and forms and, secondly, through the fact that UPOV serves as a forum to exchange views and share experiences.

UPOV has established a detailed set of general principles for the conduct of the examination of plant varieties for distinctness, uniformity and stability, and more specific guidelines for some 230 genera and species <http://www.upov.int/en/publications/tg-rom/index.html>. These documents are progressively updated and extended to further genera and species. Their use is not limited to plant variety protection but extends to other areas such as national listing and seed certification.

The most intense cooperation between members concerns the examination of plant varieties. It is based on arrangements whereby one member can conduct tests on behalf of others or whereby one member accepts the test results produced by others as the basis for its decision on the grant of a breeder's

right. Through such arrangements, members are able to minimize the cost of operating their protection systems and breeders are able to obtain protection in several territories at relatively low cost.

The UPOV members and the UPOV Secretariat maintain contacts with and provide legal, administrative and technical assistance to the governments of a growing number of States expressing interest in the work of the Union and in the idea of plant variety protection. Regular contacts are also maintained with many intergovernmental and international non-governmental organizations.

Information on plant variety protection legislation is published in *Plant Variety Protection* (UPOV publication No. 438(E)).

HOW IS UPOV GOVERNED AND MANAGED? The Council of UPOV consists of the representatives of the members of the Union. Each member that is a State has one vote in the Council. Under the 1991 Act, certain intergovernmental organizations may also become members of the Union. The Council is responsible for safeguarding the interests and encouraging the development of the Union and for adopting its program and budget. The Council meets once a year in ordinary session. If necessary, it is convened to meet in extraordinary session. The Council has established a number of Committees, which meet once or twice a year.

The Secretariat of UPOV (called "the Office of the Union") is directed by a Secretary-General. Under a cooperation agreement with the World Intellectual Property Organization (WIPO), a Specialized Agency of the United Nations, the Director General of WIPO is the Secretary-General of UPOV. He is assisted by a Vice Secretary-General.

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MEMBERS OF UPOV AS OF OCTOBER 22, 2009*

Albania ³	Chile ²	France ²	Latvia ³	Portugal ²	Trinidad and Tobago ²
Argentina ²	China ²	Georgia ³	Lithuania ³	Republic of Korea ³	Tunisia ³
Australia ³	Colombia ²	Germany ³	Mexico ²	Republic of Moldova ³	Turkey ³
Austria ³	Costa Rica ³	Hungary ³	Morocco ³	Romania ³	Ukraine ³
Azerbaijan ³	Croatia ³	Iceland ³	Netherlands ³	Russian Federation ³	United Kingdom ³
Belarus ³	Czech Republic ³	Ireland ²	New Zealand ²	Singapore ³	United States of America ³
Belgium ¹	Denmark ³	Israel ³	Nicaragua ²	Slovakia ³	Uruguay ²
Bolivia	Dominican Republic ³	Italy ²	Norway ²	Slovenia ³	Uzbekistan ³
(Plurinational State) ²	Ecuador ²	Japan ³	Oman ^{3,5}	South Africa ²	Viet Nam ³
Brazil ²	Estonia ³	Jordan ³	Panama ²	Spain ³	
Bulgaria ³	European Community ^{3,4}	Kenya ²	Paraguay ²	Sweden ³	(Total 68)
Canada ²	Finland ³	Kyrgyzstan ³	Poland ³	Switzerland ³	

* Armenia, Bosnia and Herzegovina, Egypt, Guatemala, Honduras, India, Kazakhstan, Malaysia, Mauritius, Montenegro, Peru, Philippines, Serbia, Tajikistan, The former Yugoslav Republic of Macedonia, Venezuela, Zimbabwe, as well as the African Intellectual Property Organization, have initiated with the Council of UPOV the procedure for becoming members of the Union. Many other non-member States currently have laws to protect plant varieties, or bills before their legislatures.

¹ 1961 Convention as amended by the Additional Act of 1972 is the latest Act by which one State is bound.

² 1978 Act is the latest Act by which 22 States are bound.

³ 1991 Act is the latest Act by which 44 States and one organization are bound.

⁴ Operates a (supranational) Community plant variety rights system which covers the territory of its 27 members.

⁵ Oman will become bound by the 1991 Act on November 22, 2009.