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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

COUNCIL

**Sixteenth Ordinary Session
Geneva, October 13 to 15, 1982**AGREEMENTS, REGULATIONS AND RULES
UNDER THE 1978 TEXT OF THE UPOV CONVENTION

DRAFT AGREEMENT BETWEEN WIPO AND UPOV

Memorandum of the Secretary-General

1. The Council, at its fifteenth ordinary session in November 1981, asked the Consultative Committee to consider at its twenty-fifth session in April 1982 drafts of the instruments necessary as a consequence of the entry into force of the Revised Act of 1978 of the UPOV Convention (hereinafter referred to as "the 1978 Act"). One of these instruments consists of the draft agreement to be concluded between UPOV and the World Intellectual Property Organization (WIPO). (Cf. document C/XV/11, paragraphs 8 and 10, and document C/XV/16, paragraph 16.)

2. The Secretary-General prepared the draft of such an agreement which deals also with the administrative and financial regulations of UPOV. That draft was considered by the Consultative Committee at its twenty-fifth session in April 1982. The Consultative Committee decided that some provisions of the draft should be amended. The proposed amendments are incorporated in the text attached to this document.

3. At its said session, the Consultative Committee noted that the amended draft would be submitted by the Director General of WIPO to the November 1982 session of the Coordination Committee of WIPO. It agreed that, if the agreement is approved by the Coordination Committee of WIPO, it should be signed by the President of the Council of UPOV and should then be presented to the Council of UPOV for final approval. Furthermore, the Consultative Committee agreed that if the Coordination Committee of WIPO or the Council of UPOV did not approve the agreement, negotiations should be re-opened.

4. It is proposed that the Council approve the text of the agreement as appearing in the Annex (or with such modifications as the Council wishes to make in that text) and authorize its President to sign the agreement on behalf of UPOV if the Coordination Committee of WIPO approves, in its November 1982 session, the same text as the Council of UPOV approves in its present session. It is furthermore proposed that, in case the Coordination Committee of WIPO does not approve, in its November 1982 session, the said text but proposes amendments thereto, the President of UPOV should sign no agreement and the Secretary-General should report to the next session of the Consultative Committee on the amendments proposed by the Coordination Committee of WIPO.

5. The Council is invited to approve the proposals made in the previous paragraph.

A G R E E M E N T

between

the World Intellectual Property Organization

and

the International Union for the Protection of New Varieties of Plants

Whereas the Convention Establishing the World Intellectual Property Organization provides that the said Organization "shall, where appropriate, establish working relations and cooperate with other intergovernmental organizations" and that "any general agreement to such effect entered into with such organizations shall be concluded by the Director General [of the said Organization] after approval by the Coordination Committee [of the said Organization]" (Article 13(1));

Whereas, before adopting, on October 23, 1978, the most recent text of the International Convention for the Protection of New Varieties of Plants (hereinafter referred to as "the UPOV Convention"), the Council of the International Union for the Protection of New Varieties of Plants, on October 18, 1978, expressed the "wish to continue the [then and still] existing arrangements on administrative and technical cooperation between UPOV [that is, the International Union for the Protection of New Varieties of Plants; hereinafter referred to as "UPOV"] and WIPO [that is, the World Intellectual Property Organization; hereinafter referred to as "WIPO"] under an agreement which would have to be negotiated and concluded between the two Organizations and which would include a provision whereby the Director General of WIPO would continue to be appointed Secretary-General of UPOV" (UPOV document C(Extr.)/IV/3, paragraph 5) and declared that "it would continue the [then and still] existing practice of seeking the agreement of the Secretary-General before appointing a Vice Secretary-General" (*ibid.*) and that the Council of UPOV has the power "to... (h) in general, take all necessary decisions to ensure the efficient functioning of the Union [that is, UPOV]" (UPOV Convention, Article 21);

Now, therefore, the World Intellectual Property Organization and the Union for the Protection of New Varieties of Plants have agreed as follows:

Article 1Requirements of UPOV

- (1) WIPO shall satisfy the requirements of UPOV as regards
- (i) meetings of the Council of UPOV and any other meetings convened by UPOV (providing meeting rooms, interpreters, sound recording, etc.),
 - (ii) personnel administration, as far as the staff of the Office of UPOV is concerned,
 - (iii) office space for the staff of the Office of UPOV at the Headquarters of WIPO, including its upkeep (lighting, air conditioning, cleaning, etc.),
 - (iv) financial administration of UPOV (receiving and disbursing funds, bookkeeping, internal financial control, etc.),

(v) translation and reproduction of documents and publications produced by the Office of UPOV,

(vi) mail (including the registration of incoming and outgoing letters) and telecommunication services (including telephone and teletype) concerning the Office of UPOV,

(vii) subscriptions and sales of publications produced by the Office of UPOV,

(viii) travel arrangements for the Office of UPOV (tickets, hotel reservations, etc.),

(ix) purchase of material, furniture and office equipment put at the exclusive disposal of the Office of UPOV,

(x) other matters concerning which agreement is reached between WIPO and UPOV.

(2) The requirements of UPOV shall be met on a basis of strict equality with the requirements of the various Unions administered by WIPO.

Article 2

Indemnification of WIPO

(1) UPOV shall indemnify WIPO for any service rendered to, and any expenditure incurred on behalf of, UPOV.

(2) Where any service rendered by WIPO concerns both UPOV and one or more Unions administered by WIPO (hereinafter referred to as "common services"), or where any expenditure incurred by WIPO concerns both UPOV and one or more Unions administered by WIPO (hereinafter referred to as "common expenditures"), the amounts of the indemnification owed by UPOV to WIPO shall be established in proportion to the interest of UPOV in the said service or expenditure.

(3) The value of any service rendered exclusively to UPOV by WIPO and the evaluation of the interest of UPOV in common services and common expenditures shall be established by the Council of UPOV and the Director General of WIPO.

Article 3

Independence of WIPO and UPOV

Without prejudice to the application of Articles 1 and 2, above, the International Bureau of WIPO shall exercise its functions in complete independence of UPOV, and the Office of UPOV shall exercise its functions in complete independence of WIPO.

Article 4

The Secretary-General of UPOV

(1) The Council of UPOV shall appoint as Secretary-General of UPOV the Director General of WIPO.

(2) When the post of Director General of WIPO is vacant, and as long as it is vacant, the person acting as Director General of WIPO shall be Acting Secretary-General of UPOV.

(3) During the period between the effective date of appointment of the Director General of WIPO and his appointment as Secretary-General of UPOV, he shall be Acting Secretary-General of UPOV.

(4) The appointment of the Secretary-General of UPOV shall last as long as he is Director General of WIPO and shall cease on the day his appointment as Director General of WIPO ceases.

(5) The indemnity of the Secretary-General of UPOV, payable by UPOV, shall be determined by the Council of UPOV.

Article 5

Vice Secretary-General of UPOV

(1) There shall be a Vice Secretary-General of UPOV.

(2) Notwithstanding the hierarchical subordination of the Vice Secretary-General of UPOV to the Secretary-General of UPOV, the Vice Secretary-General of UPOV shall have the right :

(i) to be present at all the meetings of UPOV,

(ii) to report direct to the Council of UPOV whenever he is in disagreement with any act, plan or proposal of the Secretary-General of UPOV.

Article 6

Staff of the Office of UPOV

(1) For the purpose of this Agreement "the staff of the Office of UPOV" means the Vice Secretary-General of UPOV and any other person exclusively working for UPOV, whereas "the Office of UPOV" means both the Secretary-General of UPOV and the staff of the Office of UPOV.

(2) The staff of the Office of UPOV shall be responsible for all questions relating to the substantive provisions (particularly Articles 2 to 14) of the UPOV Convention and for all activities concerning international cooperation in the field of the protection of new plant varieties entrusted to it by the Council of UPOV.

(3) The staff of the Office of UPOV, other than the Vice Secretary-General of UPOV himself, shall be under the direction of the Vice Secretary-General of UPOV.

Article 7

Appointment and Dismissal of the Staff of the Office of UPOV

(1) Appointment of the Vice Secretary-General of UPOV and the possible termination of his appointment for disciplinary reasons or reasons of incapacity to fulfill his duties shall take place after the Council of UPOV has sought the agreement of the Secretary-General of UPOV to the said appointment or dismissal.

(2) The appointment of any other member of the staff of the Office of UPOV and the possible termination of his appointment for disciplinary reasons or reasons of incapacity to fulfill his duties shall be decided by the Vice Secretary-General of UPOV with the previous agreement of the Secretary-General of UPOV, provided that if such agreement is refused, the Council of UPOV shall decide on the matter. As far as the appointment of staff members in P.4 and higher categories is concerned, the Vice Secretary-General of UPOV will first consult with the President of the Council of UPOV.

Article 8

Administrative and Financial Regulations of UPOV

(1) Subject to the other Articles of this Agreement and to paragraphs (2) and (3) of this Article, the provision of the Staff Regulations and Staff Rules of WIPO and the provisions of the Financial Regulations and Rules of

WIPO, including future modifications thereof, shall, mutatis mutandis, apply also in respect of the staff of the Office of UPOV and the finances of UPOV, provided that the Council of UPOV may agree with the Director General of WIPO to any exceptions and additions to the same in which case such agreed exceptions and additions shall prevail. The said texts shall be considered to constitute the administrative and financial regulations of UPOV referred to in Article 20 of the UPOV Convention.

(2) Where the Classification Committee of WIPO deals with any post in the Office of UPOV lower than the post of the Vice Secretary-General of UPOV, the Vice Secretary-General of UPOV shall be a member of that Committee. Where the Selection Committee of WIPO deals with applications for posts in the Office of UPOV lower than the post of the Vice Secretary-General, the Selection Committee shall be presided over by the Vice Secretary-General of UPOV. Where the joint Consultative Committee of WIPO examines questions which concern, or also concern, the staff of the Office of UPOV, a member of that staff, designated by the Vice Secretary-General of UPOV, shall be a member of that Committee.

(3) In all financial matters concerning UPOV, the Controller of WIPO shall be responsible to the Council of UPOV.

Article 9

Duration and Termination of the Present Agreement

(1) The present Agreement shall be in force for an indefinite time.

(2) The present Agreement may be terminated by common agreement between WIPO and UPOV. Any agreement to terminate the present Agreement shall require a corresponding decision of the Coordination Committee of WIPO and a corresponding decision of the Council of UPOV and shall take effect on the date fixed in the agreement to terminate the present Agreement.

(3) WIPO may terminate the present Agreement by a decision of the Coordination Committee of WIPO notified in writing by the Director General of WIPO to the President of the Council of UPOV. UPOV may terminate the present Agreement by a decision of the Council of UPOV notified in writing by the President of the Council of UPOV to the Director General of WIPO. Any such notification may but need not give reasons, and it shall take effect on December 31 of the next year of odd number which follows the date of the receipt of the notification unless WIPO and UPOV agree on another date on which the termination of the present Agreement shall take effect.

Article 10

Entry into Force of the Present Agreement

The present Agreement shall be signed by the Director General of WIPO and the President of the Council of UPOV and shall enter into effect when it is approved by both the Coordination Committee of WIPO and the Council of UPOV.

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