



CAJ/42/2 Add.

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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
GENEVA

ADMINISTRATIVE AND LEGAL COMMITTEE

Forty-Second Session
Geneva, October 23 and 24, 2000

ADDENDUM TO DOCUMENT CAJ/42/2

THE NOTION OF BREEDER AND COMMON KNOWLEDGE

Document prepared by the Office of the Union

1. At its forty-first session, the Administrative and Legal Committee (hereinafter referred to as “the Committee”) was asked to consider the “notion of breeder” and “common knowledge” (document CAJ/41/2). This document consisted of Annex I (The Notion of Breeder in the Plant Variety Protection System Based upon the UPOV Convention) and Annex II (The Concept of Varieties of “Common Knowledge”).
2. At the forty-first session of the Committee, the Office of the Union undertook to prepare a revised position paper for the following session (see report, document CAJ/41/9, paragraphs 23 to 25). This position paper has been issued as CAJ/42/2 for consideration at this session.
3. Regarding the considerations in Annex II to document CAJ/41/2, the Committee is now invited to:

<i>Consider and Advise:</i>	<p><i>If the following positions stated in the document are in accordance with UPOV requirements:</i></p> <ul style="list-style-type: none"> • <i>A variety of common knowledge is <u>not restricted</u> to those varieties for which the filing of an application for the granting of a breeder’s right or for the entering in an official register has been made</i>
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	<ul style="list-style-type: none"> • <i>A variety of common knowledge must satisfy the definition of a variety set out in the UPOV Convention (Article 1(vi)) but is <u>not</u> necessarily required to fulfil the DUS criteria required for grant of PBR</i> • <i>Living plant material must be in existence (Article 7) for a variety (of common knowledge) to be taken into account for distinctness</i> • <i>Specific aspects which shall be considered to establish common knowledge include;</i> <ul style="list-style-type: none"> (i) <i>marketing of plants of the variety or publishing a detailed description</i> (ii) <i>entry of a variety for PBR or official registration</i> (iii) <i>existence of living material in plant collections</i> • <i>Common Knowledge is not restricted to national or geographic borders</i>
Note:	<i>A further clarification is proposed which will clarify that the “variety” and “common knowledge” criteria would apply to any plant material including ecotypes, landraces or other types of traditional variety.</i>

4. Document CAJ/42/2 explains that, for practical and financial reasons, the number of varieties against which direct comparisons are made for determining the distinctness of new varieties will not constitute all varieties of “common knowledge.” Therefore, the granting of PBR is subject to the information available to the DUS examiner at the time of the decision.

5. To ensure that the system for determining distinctness is robust, consideration also needs to be given to a series of administrative measures enabling concerned persons to rebut assumptions of distinctness. These measures can include publishing the descriptions of all new varieties granted PBR.

In this regard the Committee is invited to:

Consider and Advise:	<i>If there is a need to publish new variety descriptions to ensure robust decisions on distinctness.</i>
	<p><i>What role, if any, UPOV should play in facilitating the effective global publication of new variety descriptions, in particular by examining the focus of existing activities. For example:</i></p> <ul style="list-style-type: none"> • <i>Publication via UPOV-ROM or Web site</i> • <i>Harmonization of variety descriptions</i> • <i>Identification of effective characteristics for harmonization of descriptions</i> • <i>Identification of species where global publication is a high priority</i>
	<i>If there is any need to publish test reports, as opposed to variety descriptions.</i>

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