



CAJ/46/3

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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
GENEVA

ADMINISTRATIVE AND LEGAL COMMITTEE

Forty-Sixth Session
Geneva, October 21 and 22, 2002

PUBLICATION OF VARIETY DESCRIPTIONS

Document prepared by the Office of the Union

1. At its forty-fifth session in Geneva on April 18, 2002, the Administrative and Legal Committee (hereinafter referred to as "the Committee") considered document CAJ/45/4, concerning the project related to the publication of variety descriptions and approved the schedule of activities as proposed under Section 6 of the Annex to document CAJ/45/4.
2. The project focused on two main aspects: firstly, the need for a model study to investigate and develop solutions to the technical issues concerning the possible development and publication of variety descriptions, at the international level, in an effective way; and secondly, that there were important legal, administrative and financial issues which would need to be resolved, by the Committee, before considering the possible introduction of an international system for the publication of variety descriptions.
3. This document deals with the second aspect, the consideration of the administrative, legal and financial matters and in particular, as a first step, the development of a draft questionnaire as proposed in Section 6.2.1 of document CAJ/45/4.

4. The first draft of this questionnaire has been prepared by the Office of the Union on the basis of the project developed by the *ad hoc* Working Group on the Publication of Variety Descriptions. The draft questionnaire is attached in the Annex to this document.

5. *The Committee is invited to consider the attached draft questionnaire.*

[Annex follows]

**DRAFT QUESTIONNAIRE ON THE
PUBLICATION OF VARIETY DESCRIPTIONS**

PREPARED BY THE OFFICE OF THE UNION
AUGUST 2002

This questionnaire is intended to identify the current administrative, legal and financial framework in the field of publication and/or production of variety descriptions. Members of the Union are requested to provide the following information and to express views on a project to create a centralized international database for the publication of variety descriptions.

I. AUTHORITIES WITH EXPERIENCE IN PUBLISHING VARIETY DESCRIPTIONS

1. Does your authority have experience in publishing variety descriptions?

| | |
|--|---|
| <input type="checkbox"/> Yes (Goto question 2) | <input type="checkbox"/> No (Goto question 9) |
|--|---|

2. Does your authority currently publish variety descriptions?

| |
|--|
| <input type="checkbox"/> Yes (Goto question 3) |
|--|

| |
|---|
| <input type="checkbox"/> No (Please explain why you have discontinued publication and then go to question 9) |
|---|

3. What information is provided in the variety description?

| |
|--|
| <input type="checkbox"/> "Full" description according to all characteristics in the UPOV Test Guidelines |
|--|

| |
|--|
| <input type="checkbox"/> UPOV asterisked characteristics |
|--|

| |
|--|
| <input type="checkbox"/> "Full" description according to all characteristics in the test guidelines used for DUS examination in your territory |
|--|

| |
|---|
| <input type="checkbox"/> Other (please explain) |
|---|

4. What means does your authority use for publication?
(e.g. printed gazette, Website, CD-ROM, etc.)

| |
|--|
| |
|--|

5. Whom do you give copies of the publication to?

| |
|--|
| |
|--|

6. Does your authority charge the recipients?

| |
|------------------------------|
| <input type="checkbox"/> Yes |
| <input type="checkbox"/> No |

| |
|--|
| <input type="checkbox"/> Some (please explain) |
|--|

7. Is the cost of publication borne:

| |
|--|
| <input type="checkbox"/> entirely by the fee to applicants |
|--|

| |
|--|
| <input type="checkbox"/> entirely by the authority |
|--|

| |
|---|
| <input type="checkbox"/> entirely by the recipients |
|---|

| |
|---|
| <input type="checkbox"/> other (please explain) |
|---|

8. Do you require authorization for the publication (e.g. by the applicant)?

| |
|---|
| <input type="checkbox"/> Yes (please explain) |
|---|

| |
|-----------------------------|
| <input type="checkbox"/> No |
|-----------------------------|

II. AUTHORITIES WHOM MAKE VARIETY DESCRIPTIONS AVAILABLE ON REQUEST

9. Does your authority make variety descriptions available on request?

| |
|--|
| <input type="checkbox"/> Yes (Go to question 10) |
| <input type="checkbox"/> No (Go to question 15) |

10. What information is provided in the variety description?

| |
|--|
| <input type="checkbox"/> "Full" description according to all characteristics in the UPOV Test Guidelines |
|--|

| |
|--|
| <input type="checkbox"/> UPOV asterisked characteristics |
|--|

| |
|--|
| <input type="checkbox"/> "Full" description according to all characteristics in the test guidelines used for DUS examination in your territory |
|--|

| |
|---|
| <input type="checkbox"/> Other (please explain) |
|---|

11. To whom do you make variety descriptions available?

| |
|--|
| |
|--|

12. Does your authority charge a fee to recipients of variety descriptions?

| |
|------------------------------|
| <input type="checkbox"/> Yes |
| <input type="checkbox"/> No |

| |
|--|
| <input type="checkbox"/> Some (please specify) |
|--|

13. Isthecostofissuingavarietydescriptiononrequestborne:

| |
|--|
| <input type="checkbox"/> entirelybythefeestoapplicants |
| <input type="checkbox"/> entirelybytheauthority |
| <input type="checkbox"/> entirelybytherecipients |
| <input type="checkbox"/> other(pleaseexplain) |

14. Doyourequireauthorizationbeforeissuingavarietydescription?
(e.g. bytheapplicant)

| |
|---|
| <input type="checkbox"/> Yes(pleaseexplain) |
| <input type="checkbox"/> No |

III. LEGALANDADMINISTRATIVECONSIDERATIONS

15. Pleaseexplainanylegaldifficulties,foryourauthority,associatedwiththepublicationofvarietydescriptionsviaacentralizedinternationaldatabase,withaccessforallinterestedparties.*

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* As identified in document CAJ/45/4 -TC/38/10, Annex, Section 4.1.2 “Access to ‘Published’ Variety Descriptions”:

“The purpose of the publication of descriptions is to provide all interested parties, in the international community, with an opportunity to ensure that a variety, considered eligible for protection, is clearly distinguishable from all varieties whose existence is a matter of common knowledge. Such parties will include other authorities (i.e. those not conducting the DUS examination on the candidate variety), breeders, genetic resource centers and the maintainers of ‘land race’ varieties. The contribution of variety descriptions for international publication would, therefore, need to be on this basis.”

16. Would your authority need to take any legal measures to enable it to publish variety descriptions via a centralized international database, with access for all interested parties?

| |
|------------------------------|
| <input type="checkbox"/> Yes |
| <input type="checkbox"/> No |

17. If your authority is willing, in principle, to contribute data, would it be able to submit variety descriptions in an agreed electronic format for inclusion in a database (as for the UPOV-ROM)?

| |
|------------------------------|
| <input type="checkbox"/> Yes |
|------------------------------|

| |
|---|
| <input type="checkbox"/> No (please explain how data could be provided, e.g. electronically, in an existing format, paper) |
|---|

IV. FINANCIAL CONSIDERATIONS

In the event of the creation of a centralized international database, the authorities of the members of the Union would be, at the same time, the source of the data and users of the data.

18. How is the cost of producing the description for a variety, granted protection by your authority, currently borne?

| |
|---|
| <input type="checkbox"/> entirely by the application fees |
|---|

| |
|--|
| <input type="checkbox"/> entirely by the authority |
|--|

| |
|--|
| <input type="checkbox"/> jointly by the authority/application fees |
|--|

| |
|--|
| <input type="checkbox"/> other (please explain) |
|--|

19. How is the cost of producing descriptions of varieties “whose existence is a matter of common knowledge” currently borne?

- entirely by the application fees
- entirely by the authority
- jointly by the authority/application fees
- other
(please explain)

20. Should the database be:

- self-financing through income from non-contributing users
- income generating
- free to all users

21. Please indicate other possible financial considerations in the development, maintenance and access to a centralized international database.

22. Would you, in principle, contribute data to a centralized database:

- freely with no conditions
- freely if there was free access to all data on the database for all contributing authorities
- freely on the basis that non-contributing users paid a fee to UPOV
- on the basis that a fee would be paid by all users and an appropriate share paid to the contributing authorities and UPOV
- other (please explain)

23. Would your authority be prepared to provide technical and/or other resources for

establishing the database

maintaining the database

contributing data

(please explain)

V. RESPONSIBILITY FOR SUBMITTED DATA

24. Should the accuracy of the data submitted to a centralized international database be the sole responsibility of the contributor (as with the UPOV -ROM)?

Yes

No

(please explain how data could be provided, e.g. electronically, in an existing format, paper)

VI. RESPONSIBILITY FOR USE OF DATA

25. If a database is established, should it be on the clear basis that the use of the data would be the sole responsibility of the user (as with the UPOV -ROM), regardless of any model systems which UPOV might develop to facilitate the use of data.

Yes

No

(Please explain)