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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
GENEVA

ADMINISTRATIVE AND LEGAL COMMITTEE

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ACTS DONE PRIVATELY AND FOR NON-COMMERCIAL PURPOSES
AND PROVISIONS ON FARM-SAVED SEED UNDER
THE 1991 ACT OF THE UPOV CONVENTION

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1. UPOV continues to receive requests for the examination of draft laws that have provisions concerning exceptions to the breeder's right provided in the 1991 Act of the UPOV Convention (1991 Act).
2. The objective of this document is to seek guidance from the Administrative and Legal Committee (CAJ) in order to assess the need to develop a position paper to explain the scope and implementation of the compulsory exception under Article 15(1)(i)¹ and the optional exception under Article 15(2)² of the 1991 Act, in order to facilitate UPOV's response to legislative developments.

¹ Article 15(1)(i) provides that:

“(1) [*Compulsory exceptions*] The breeder's right shall not extend to
(i) acts done privately and for non-commercial purposes, ”

² Article 15(2) provides that:

“(2) [*Optional exception*] Notwithstanding Article 14, each Contracting Party may, within reasonable limits and subject to the safeguarding of the legitimate interests of the breeder, restrict the breeder's right in relation to any variety in order to permit farmers to use for propagating purposes, on their own holdings, the product of the harvest which they have obtained by planting, on their own holdings, the protected variety or a variety covered by Article 14(5)(a)(i) or (ii).”

3. Subject to the decision of the CAJ concerning the proposal in paragraph 2 of this document, it is suggested that the Table of Contents which appears in the Annex to this document could provide the basis for the development of a document for discussion at the forty-ninth session of the CAJ, in April 2004.

4. The CAJ is invited to consider the proposal in paragraph 2 of this document and, if applicable, to comment on the proposed Table of Contents contained in the Annex to this document.

[Annex follows]

Table of Contents

Introduction

The document would provide information on the scope and implementation of the compulsory exception under Article 15(1)(i) and the optional exception under Article 15(2) of the 1991 Act, with appropriate references to the 1978 Act, and guiding principles in the introduction of exceptions.

I. Exception to the Breeder's Right Under Article 15(1)(i) of the 1991 Act

In particular, in relation to the compulsory exception under Article 15(1)(i), it is proposed to consider:

(a) What is private and non-commercial?

(b) Does private and non-commercial cover subsistence farming, and what is subsistence farming?

(c) What can subsistence farmers do?

(i) save seed?

(ii) exchange for seed or other goods?

(iii) sell seed?

II. Exception to the Breeder's Right Under Article 15(2) of the 1991 Act

In particular, in relation to the optional exception under Article 15(2), it is proposed to consider:

(a) What can farmers do without the authorization of the breeder (e.g. selling to or exchange of seed with third parties, including other farmers, requires the prior authorization of the breeder);

(b) As the 1991 Act does not define "within reasonable limits and subject to the safeguarding of the legitimate interests of the breeder," this section would illustrate how the above requirements have been implemented by countries and intergovernmental organizations that have legislation in line with the 1991 Act and, as far as possible, the rationale behind such approaches. This would cover, for example:

- (i) within reasonable limits – for example:
 - type of crop (“Recommendation Relating to Article 15(2)” of the Diplomatic Conference for the Revision of the International Convention for the Protection of New Varieties of Plants of 1991);³
 - proportion of crop which may be used as farm-saved seed;
 - type of farmer (e.g. size of the farmer’s holding or the level of production).

- (ii) subject to the safeguarding of the legitimate interests of the breeder:
 - provisions to compensate or pay royalties to breeders for the use of farm-saved-seed;
 - other measures to benefit the breeding industry.

- (iii) relation between the provisions implementing (i) and (ii) (e.g. in some cases small farmers are exempted from royalty payment).

[End of Annex and of document]

³ See UPOV Publication No. 346(E) “Records of the Diplomatic Conference for the Revision of the International Convention for the Protection of New Varieties of Plants,” p. 63:
“The Diplomatic Conference recommends that the provisions laid down in Article 15(2) of the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as Revised at Geneva on November 10, 1972, on October 23, 1978, and on March 19, 1991, should not be read so as to be intended to open the possibility of extending the practice commonly called “farmer’s privilege,” to sectors of agricultural or horticultural production in which such a privilege is not a common practice on the territory of the Contracting Party concerned.”