



CAJ-AG/06/1/3

ORIGINAL: English

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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
GENEVA

**ADMINISTRATIVE AND LEGAL COMMITTEE
ADVISORY GROUP**

**First Session
Geneva, October 20, 2006**

REPORT ON THE CONCLUSIONS

adopted by the Administrative and Legal Committee Advisory Group

1. Introduction

2. The Administrative and Legal Committee Advisory Group (hereinafter referred to as the "CAJ-AG") held its first session in Geneva on October 20, 2006.

3. The list of participants is reproduced in Annex I to this document.

Opening of the Session

4. The session was opened and chaired by the Vice Secretary-General, who welcomed the participants.

5. The Chair announced that simultaneous interpretation would be provided in English, French and Spanish at the first session of the CAJ-AG and, if appropriate, German interpretation would also be provided for the following sessions.

Adoption of the Agenda

6. The CAJ-AG adopted the agenda, as proposed in document CAJ-AG/06/1/1, after the inclusion of a new item “Other matters” at the request of the Delegation of the European Community.

Discussion Paper

7. The Chair introduced document CAJ-AG/06/1/2 and explained that a preliminary discussion of the key issues concerning the list of provisions, agreed by the Administrative and Legal Committee (CAJ) where information materials on the UPOV Convention were most urgently required, would enable the CAJ-AG to assist the CAJ in its consideration of those matters. It was recalled that the information materials on certain provisions of the UPOV Convention would focus on elements where there was a particular need for information and where there was a reasonable prospect of agreement. It was noted that some issues would need to be considered in relation to more than one provision of the UPOV Convention.

8. The CAJ-AG took note of the electronic mails of the representative of the Czech Republic of October 12, 2006, and of the International Community of Breeders of Asexually Reproduced Ornamental and Fruit-Tree Varieties (CIOPORA) of August 30, 2006, which were distributed at its first session.

Article 1(iv) and (vi) of the 1991 Act: Definitions of “breeder” and “variety”

9. With regard to the consideration of synthetic varieties, varietal associations and “composite varieties” / “multi-lines” in relation to the definition of variety (Article 1(vi) of the 1991 Act) and, therefore, the possibility of protection, it was agreed to await the initial consideration of an agenda item “Applications for breeders’ rights covering a combination of lines” by the Technical Committee (TC) at its forty-third session in March 2007 and to incorporate that guidance in a document to be considered by the CAJ-AG at its session of 2008.

10. With regard to the definition of “breeder” (Article 1(iv) of the 1991 Act), it was agreed that the Office of the Union would prepare a document which would, in particular, consider “development” in relation to “discovery and development”. It was agreed that the document should be prepared on the basis of existing documents, including document C(Extr.)/19/2 Rev., and materials to be provided by members of the Union, including Argentina and Australia. The document would include clarification that only the breeder of a variety is entitled to file an application for that variety (subject matter of protection) and to obtain the grant of the right, if the variety complies with the conditions of protection (relationship between Article 1(iv), (v) and Article 21(1)(iii) of the 1991 Act). It was agreed that the document should be presented to the CAJ-AG at its session of 2008.

Article 5(2) of the 1991 Act: Conditions of Protection (Article 6(2) of the 1978 Act)

Article 18 of the 1991 Act: Measures Regulating Commerce (Article 14 of the 1978 Act)

11. The CAJ-AG agreed that the Office of the Union should prepare a document for its session of 2007. The document would be based on existing materials. The document would clarify the different aspects between the relevant Articles in the Convention: who is entitled

to file an application (Article 1(iv) of the 1991 Act); requirements for the examination of the application (Article 12 of the 1991 Act); conditions for the grant of the plant breeder's right (Article 5 of the 1991 Act); the requirement for the plant breeder's right to be independent of measures regulating commerce (Article 18 of the 1991 Act); and restrictions on the exercise of the plant breeder's right only for reasons of public interest (Article 17 of the 1991 Act).

12. The CAJ-AG concluded that it would not be appropriate to seek to provide guidance on provisions that might be incompatible with Articles 5(2) and 18 of the 1991 Act. It agreed that such provisions in draft laws or laws of future members should be dealt with on a case-by-case basis in the preliminary examination of the Consultative Committee of those draft laws or laws.

Article 12 of the 1991 Act: Examination of the Application

13. The CAJ-AG noted that the program for the development of TGP documents agreed by the TC (document TC/42/5, Annex II) proposed that a draft of the revised Sections 1 to 7 of document TGP/5 "Experience and Cooperation in DUS Testing" should be considered by the TC and the Technical Working Parties in 2007. It was agreed that the proposed revised Sections 1 to 7 of document TGP/5 should be submitted directly to the CAJ, without consideration by the CAJ-AG.

14. The program for the development of TGP documents agreed by the TC (document TC/42/5, Annex II) proposed that a draft of TGP/3 "Varieties of Common Knowledge" might be considered by the CAJ-AG in 2007. As a result of its discussions, the CAJ-AG concluded that it would be difficult to find agreement on any text which suggested that plant material needed to be in existence for a variety to be taken into account for distinctness. In particular, concern was raised with regard to a situation where a breeder reproduced a previous crossing program in order to "re-breed" an extinct variety. In that respect, the breeder might be considered to be the breeder of the "resurrected" variety and might be able to protect a previously extinct variety unless the existence of that variety was considered to be a matter of common knowledge.

15. The CAJ-AG noted that the "General Introduction to the Examination of Distinctness, Uniformity and Stability and the Development of Harmonized Descriptions of New Varieties of Plants" (document TG/1/3) already provided clear guidance with respect to the term "common knowledge".

Article 14(5) of the 1991 Act: Essentially derived and certain other varieties

16. The CAJ-AG agreed that the issues raised in document CAJ-AG/06/1/2 should be discussed at its following session on the basis of the existing text in that document. The Office of the Union presented two versions of a scheme of the relationship between an initial variety and essentially derived varieties. In the first version (Annex II of this document), which is the version used in the Distance Learning Course (DL-205), it was indicated that there was no requirement for an initial variety to be protected in order to be considered to be an initial variety. In the second version (Annex III of this document), it was indicated that an initial variety must be protected in order to be considered an initial variety. The CAJ-AG concluded that the version in Annex II to this document, as included in the DL-205, was an appropriate reflection of the UPOV Convention. It also noted that the version in Annex III to this document could result in considerable confusion regarding the essential derivation status

of a variety. The CAJ-AG agreed that this particular matter might be presented for consideration by the CAJ at its fifty-fifth session in March 2007.

Article 14(2) of the 1991 Act: Acts in respect of harvested material

Article 16 of the 1991 Act: Exhaustion of the Breeder's Right

17. The CAJ-AG agreed that the Office of the Union should prepare a document elaborating key issues of Articles 14(2) and 16 of the 1991 Act, as presented in document CAJ-AG/06/1/2 (see paragraphs 39, 40, 56, 57 and 58), to be discussed in the CAJ-AG at its session in 2007. In preparing the document, it was agreed that the Office of the Union should draw on the materials which exist within the members of the Union.

Article 15: Exceptions to the Breeder's Right

18. The CAJ-AG agreed that a document, addressing the issues raised in paragraphs 52 and 53 of document CAJ-AG/06/1/2, should be prepared by the Office of the Union for consideration at its 2007 session.

19. The CAJ-AG agreed that the document should include the explanations provided in the Distance Learning Course (DL-205) in relation to Article 15 of the 1991 Act and should be supplemented with the recommendation of the Diplomatic Conference on Article 15(2) of the 1991 Act concerning "common practice" with an explanation that common practice would not apply if harvested material was not traditionally used as propagating material.

Article 30(1)(i) of the 1991 Act: Implementation of the Convention: Provide for appropriate legal remedies for the effective enforcement of breeders' rights (Article 30(1)(a) of the 1978 Act)

20. The CAJ-AG agreed that consideration of information materials on Article 30(1)(i) of the 1991 Act should await the deliberations of the Consultative Committee on enforcement of plant breeders' rights.

Program and Date for the Second Session

21. It was agreed to hold the second session of the CAJ-AG on October 26 or October 22, 2007 (see paragraph 22, below). The proposed program of work of the CAJ-AG is summarized as follows:

Article	October 2007	October 2008
Article 1(iv) of the 1991 Act: Definition of breeder Article 1(vi) of the 1991 Act: Definition of variety		Document for CAJ-AG (Await Technical Committee discussion on Article 1(vi))
Article 5(2): Conditions of Protection (Article 6(2) of the 1978 Act)	Document for CAJ-AG	
Article 18 of the 1991 Act: Measures Regulating Commerce (Article 14 of the 1978 Act)		
Article 12 of the 1991 Act: Examination of the Application	No further work in CAJ-AG	
Article 14(5) of the 1991 Act: Essentially derived and certain other varieties	Re-discuss existing text in document CAJ-AG/06/1/2	
Article 14(2) of the 1991 Act: Acts in respect of harvested material (Article 5(4) of the 1978 Act)	Document for CAJ-AG	
Article 16 of the 1991 Act: Exhaustion of the Breeder's Right		
Article 15 of the 1991 Act: Exceptions to the Breeder's Right (Article 5(3) of the 1978 Act)	Document for CAJ-AG	
Article 30(1)(i) of the 1991 Act: Implementation of the Convention: Provide for appropriate legal remedies for the effective enforcement of breeders' rights (Article 30(1)(a) of the 1978 Act)	Await Consultative Committee conclusion	

Other Matters

22. The Delegation of the European Community made a proposal that, whenever the CAJ agenda permitted, the October CAJ session should be reduced to one day in order to allow the session of the CAJ-AG to be held instead of the first day of the session of the CAJ. The Vice Secretary-General noted that the creation of the CAJ-AG had, as had been intended, substantially reduced the workload of the CAJ. He welcomed any proposals to make the best use of the time of the delegations and the Office of the Union. In order to take that matter forward for the October 2007 session, he explained that the matter should be agreed by the Consultative Committee and approved by the Council. It was agreed that an agenda item should be included for the seventy-third session of the Consultative Committee on March 30, 2007, to facilitate an exchange of views on the proposal.

Closing of the Session

23. The CAJ-AG agreed that a Draft Report on the Conclusions should be prepared by the Office of the Union and distributed to its participants for adoption by correspondence.

24. The present report has been adopted by correspondence.

[Annexes follow]

ANNEXE I / ANNEX I / ANLAGE I / ANEXO I

LISTE DES PARTICIPANTS / LIST OF PARTICIPANTS /
TEILNEHMERLISTE / LISTA DE PARTICIPANTES

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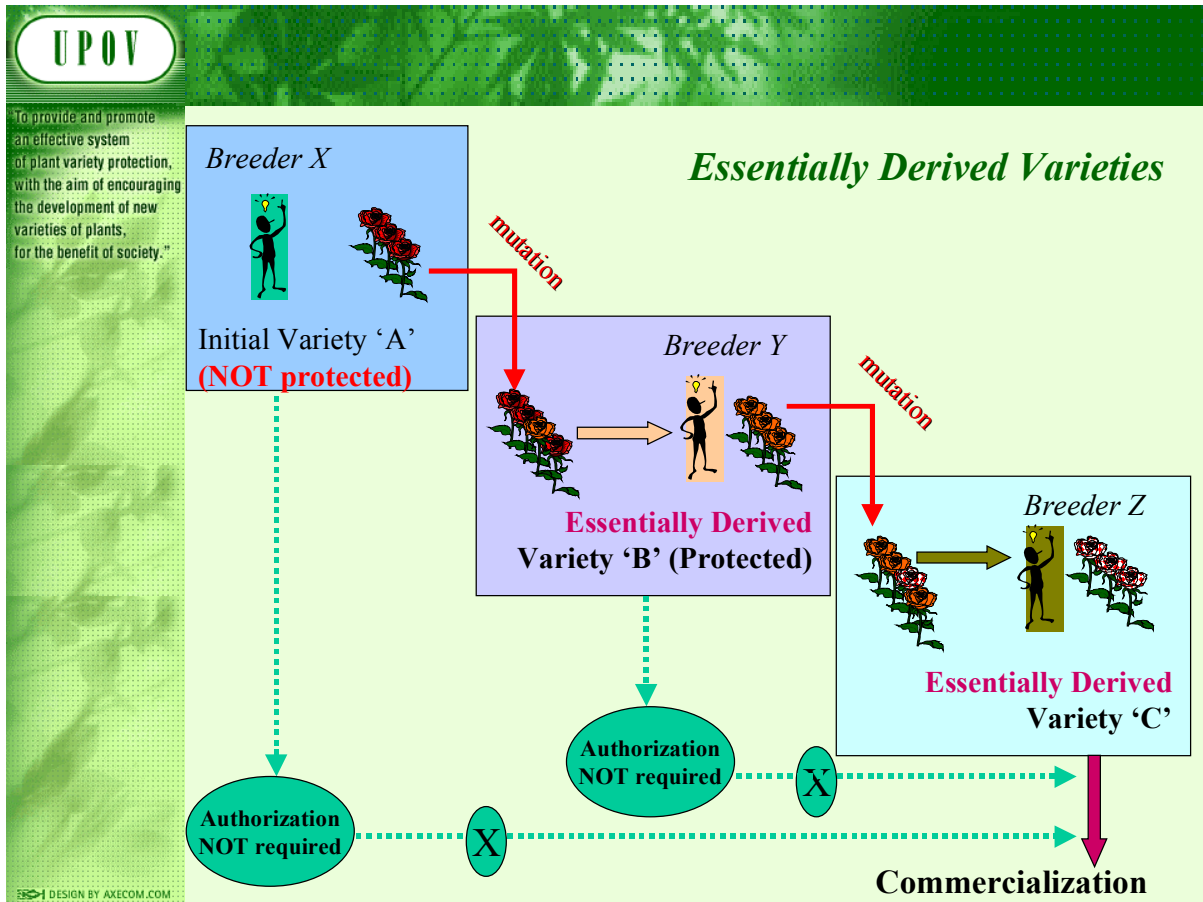
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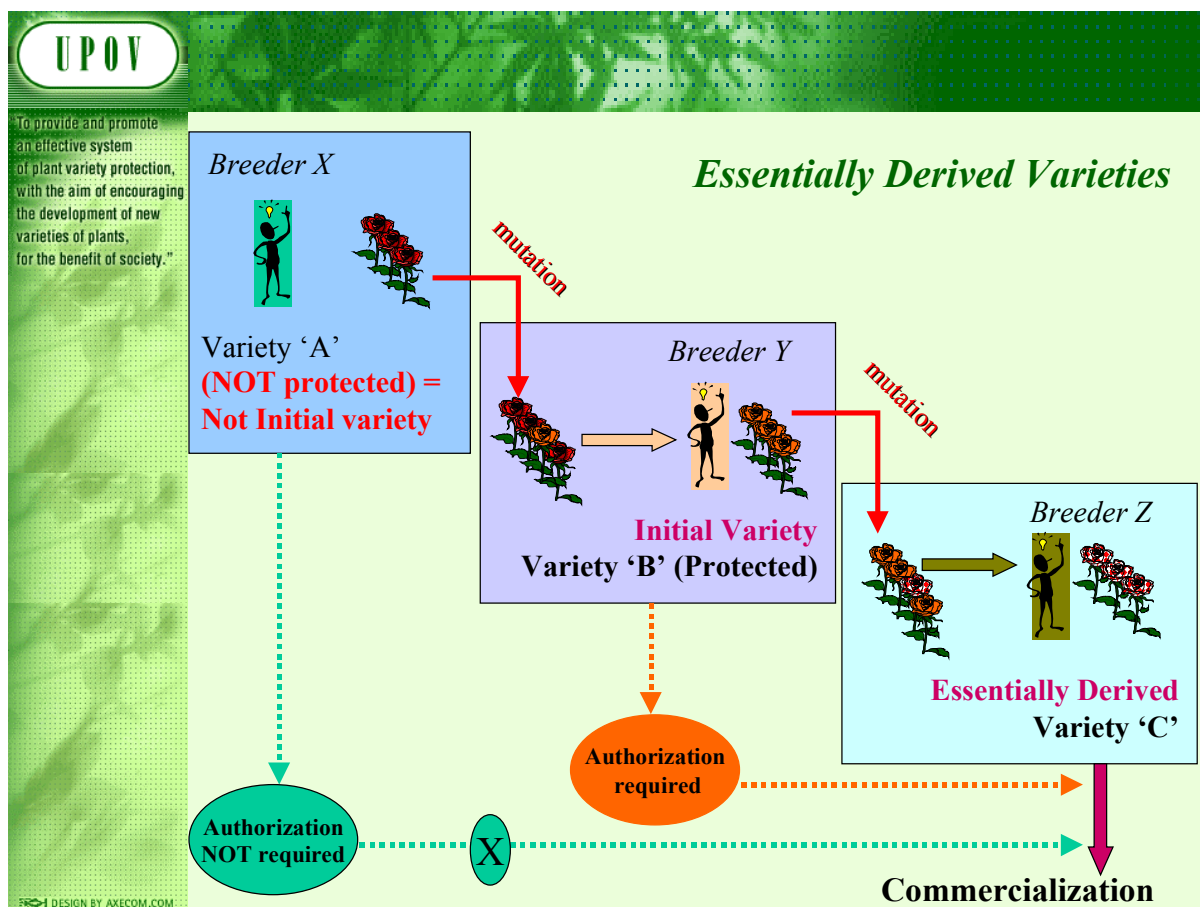
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ANNEX II



[Annex III follows]



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