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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

ADMINISTRATIVE AND LEGAL COMMITTEE**Fifty-Sixth Session****Geneva, October 22 and 23, 2007****ENFORCEMENT OF PLANT BREEDERS' RIGHTS***Document prepared by the Office of the Union*

1. The purpose of this document is to report on the conclusions of the discussions in the Consultative Committee on the enforcement of plant breeders' rights.
2. At its seventieth session, held on October 26, 2005, the Consultative Committee received a report on the Meeting on Enforcement of Plant Breeders' Rights of October 25, 2005, at which the International Community of Breeders of Asexually Reproduced Ornamental and Fruit-Tree Varieties (CIOPORA) and the International Seed Federation (ISF) had made presentations concerning the enforcement of plant breeders' rights.
3. The Consultative Committee decided, at its seventieth session, to include an item in the draft agenda of the seventy-first session of the Consultative Committee, on April 7, 2006, on the enforcement of plant breeders' rights.
4. At its seventy-third session, on March 30, 2007, the Consultative Committee concluded that:
 - (a) there was general support to continue the existing activities within UPOV in relation to the enforcement of plant breeders' rights, with particular focus on the examination of laws of future members of the Union, awareness-raising and exchange of experiences and provision of information. There was no encouragement from the Consultative Committee to take on additional activities;

(b) it is useful to learn about the diversity of available mechanisms and experiences in the different national and regional systems. In that respect, it noted that information on enforcement matters, such as changes in legislation, summaries on case law or seminars which might be published in the UPOV Gazette and Newsletter or posted on the UPOV website, depended on contributions from members of the Union. In cases where the information was received from sources other than members of the Union, the Office of the Union would consult the relevant UPOV members in order to ensure that the information was accurate, useful and directly related to plant breeders' rights;

(c) the enforcement of plant breeders' rights is primarily the responsibility of the breeders based upon the appropriate legal remedies provided by members of the Union as required by the UPOV Convention. In that regard, the Consultative Committee received information on activities which had been organized by members of the Union concerning the enforcement of plant breeder's rights. It also heard that the international breeders' associations had taken a number of initiatives to make information more widely available to breeders and to seek information on available mechanisms and remedies to enforce plant breeders' rights.

5. The Consultative Committee noted that the Administrative and Legal Committee (CAJ), at its fifty-second session, held in Geneva on October 24, 2005, had agreed an approach for the preparation of information materials concerning the UPOV Convention. It also noted that the CAJ had agreed on the establishment of the "Administrative and Legal Committee Advisory Group" (CAJ-AG) to assist in the preparation of documents concerning such information materials and that the list of provisions agreed by the CAJ, where information materials are most urgently required, include the obligation to "provide for appropriate legal remedies for the effective enforcement of breeders' rights" (Article 30(1)(i) of the 1991 Act and 30(1)(a) of the 1978 Act).

6. At its seventy-third session, the Consultative Committee agreed to make available to CIOPORA and ISF the overview of the existing activities of UPOV in relation to the enforcement of plant breeders' rights, which is reproduced in the Annex to this document.

7. *The CAJ is invited to note:*

(i) the conclusions of the deliberations of the Consultative Committee on the enforcement of plant breeders' rights; and

(ii) the contents of this document and its Annex.

[Annex follows]

OVERVIEW OF EXISTING ACTIVITIES OF UPOV IN RELATION TO
THE ENFORCEMENT OF PLANT BREEDERS' RIGHTS

Introduction

1. The enforcement of plant breeders' rights is primarily the responsibility of the breeders based upon the appropriate legal remedies provided by members of the Union as required by the UPOV Convention.

2. The activities of UPOV in relation to the enforcement of plant breeder's rights are focused on the examination of laws of future members of the Union, on raising awareness of the importance of enforcement and on providing a forum for exchange of experience and information. This document provides an overview of the current activities of UPOV in those matters and information useful to reduce, avoid, and solve infringement cases.

A. Examination of laws of future members of the Union

3. Any State and/or intergovernmental organization wishing to become a member of UPOV needs to obtain the positive advice of the Council of UPOV on the conformity of its laws with the provisions of the UPOV Convention prior to depositing its instrument of accession (Article 34(3) of the 1991 Act of the UPOV Convention).

4. The examination of laws by the Council of UPOV gives the opportunity to members of the Union to examine whether the laws of the State or organization concerned provide the required "appropriate legal remedies for the effective enforcement of breeders' rights" (Article 30(1)(i) of the 1991 Act of the UPOV Convention).

B. Raising awareness

5. UPOV recognizes the importance of raising awareness of the enforcement of plant breeders' rights. Relevant activities organized by members of the Union for raising awareness, if appropriate, with the cooperation of UPOV include seminars, lectures, distance learning materials and briefing sessions for policy-makers, judges and enforcement officers (i.e. police, customs authorities and officers of authorities with responsibility in enforcing the law).

6. In order to help to raise awareness and facilitate participation on activities related to enforcement, information provided by the relevant member of the Union (e.g. seminars) will be posted on the "News and Events" of the UPOV website.

C. Forum for exchange of experience and information useful to reduce, avoid, and solve infringement cases

7. Members of the Union recognize the value of learning about the diversity of available mechanisms and the experiences in the different national and regional systems.

(a) *Legislation relevant for the enforcement of plant breeders' rights*

- (i) Council document "Reports by Representatives of Members and Observers on the Legislative, Administrative and Technical Fields"

8. The document presented to the ordinary sessions of the Council "Reports by Representatives of Members and Observers on the Legislative, Administrative and Technical Fields" (for example, the 2006 version of this document can be found at http://www.upov.int/en/documents/c/40/c_40_13.pdf) is a source of information concerning developments in the field of enforcement of plant breeders' rights (for instance, changes in legislation, jurisprudence and seminars).

- (ii) "Plant Variety Protection", UPOV Gazette and Newsletter

9. "Plant Variety Protection", the UPOV Gazette and Newsletter, publishes relevant information on legislation governing breeders' rights of members of the Union (http://www.upov.int/en/publications/gazette_newsletter.htm). Such legislation contains provisions on the enforcement of plant breeders' rights or reference to the applicable legislation in that field. Members of the Union which make modifications to other laws (i.e. administrative, civil or criminal law) which are relevant for the enforcement of plant breeders' rights are encouraged to publish those modifications in the UPOV Gazette and Newsletter.

- (iii) UPOV website ("Legal Resources")

10. The section "Legal Resources" contains legislation governing plant breeders' rights of members of the Union (http://www.upov.int/en/about/legal_resources/index.htm). Information on other legislation relevant for the enforcement of plant breeders' rights is made available on the UPOV website where provided by the relevant member of the Union.

(b) *Case Law*

11. The UPOV Gazette and Newsletter has a case law section which includes summaries on recent judgments notified to the Office of the Union and/or direct links to the full text of those judgments. The views expressed in those summaries or in the contents of those judgments are not necessarily those of UPOV. They are provided for information purposes only.

12. Information on case law published in the UPOV Gazette and Newsletter can also be found electronically on the UPOV website under the section "Legal Resources" (http://www.upov.int/en/about/legal_resources/case_laws/index.htm).

(c) Tools which may be useful for enforcement

13. The Working Group on Biochemical and Molecular Techniques and DNA Profiling in Particular (BMT) is a group open to experts of Distinctness, Uniformity and Stability (DUS), biochemical and molecular specialists and plant breeders, one of the roles of which is to provide a forum for discussion on the use of biochemical and molecular techniques in the consideration of essential derivation and variety identification.

14. In order to encourage the involvement of breeders in the BMT, a specific day will be allocated during the eleventh session of the BMT to be held in Spain in May 2008, for discussions on the use of molecular techniques in variety identification and in the consideration of essential derivation.

15. This overview of the existing activities of UPOV in relation to the enforcement of plant breeders' rights will be published in the freely accessible area of the UPOV website.

[End of Annex and of document]