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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
GENEVA

ADMINISTRATIVE AND LEGAL COMMITTEE

Sixty-First Session
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ELECTRONIC APPLICATION SYSTEMS

Document prepared by the Office of the Union

1. The purpose of this document is to report on developments concerning the proposals considered by the Administrative and Legal Committee (CAJ) at its sixtieth session, held in Geneva on October 19, 2009, and to consider how to proceed with respect to those proposals:

Proposal 1 is presented in document CAJ/60/5, paragraphs 21 to 35 and Annexes I to IV.

Proposal 2 is presented in document CAJ/60/5, paragraphs 36 to 39 and Annexes II and IV.

Abbreviations

UPOV Model Application Form:

UPOV Model Form for the Application for Plant Breeders' Rights (document TGP/5 "Experience and Cooperation in DUS Testing", Section 2/2: "UPOV Model Form for the Application for Plant Breeders' Rights")

UPOV Model TQ:

Generalized UPOV Model Technical Questionnaire to be Completed in Connection with an Application for Plant Breeders' Rights – document TGP/7/1, Annex 1: TG Template, Chapter 10 "Technical Questionnaire" (see document TGP/5 "Experience and Cooperation in DUS Testing", Section 3/1: "Technical Questionnaire to be Completed in Connection with an Application for Plant Breeders' Rights")

UPOV Test Guidelines TQ:

Model Technical Questionnaire specific for the relevant UPOV Test Guidelines (e.g. the Test Guidelines for Rose, document TG/11/8, contains a model Technical Questionnaire for Rose)

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BACKGROUND

Initiative

2. On January 18, 2007, the Office of the Union (Office) received a letter from the International Seed Federation (ISF) proposing that UPOV should consider the development of an electronic version of the UPOV model application form¹ and technical questionnaire² for use by members of the Union. It was noted that such an approach would allow a standard application form and technical questionnaire to be completed in a language of the applicant's choice and then converted electronically to the language of the member of the Union where an application was to be made. It was suggested that the individual members of the Union could have a separate appendix containing additional questions not covered by the standard application form and technical questionnaire, although ISF suggested that such appendices should be minimized. ISF clarified that the intention was to make the forms available for use by members of the Union as they considered appropriate.

3. The Office received a letter from the International Community of Breeders of Asexually Reproduced Ornamental and Fruit-Tree Varieties (CIOPORA) on January 19, 2007, supporting the proposal made by ISF. It requested, in addition, that any initiative should not lead to a result that application forms which were short and simple would become more complex. The Office also received a letter from the European Seed Association (ESA) on January 30, 2007, expressing its support for the proposal made by ISF.

4. In agreement with the Chairperson of the Technical Committee (TC), ISF was invited to make a presentation on its proposal at the forty-third session of the TC, held in Geneva, from March 26 to 28, 2007.

5. At its forty-third session, the TC thanked ISF for its presentation on a proposal for the development of an electronic application form and technical questionnaire and noted that a copy of the presentation would be posted on the ISF website (www.worldseed.org). The TC noted that any developments should take into account the initiatives by a number of the members of the Union to develop on-line application facilities. The Vice Secretary-General welcomed the initiative of ISF and looked forward to investigating ways in which this matter could be taken forward in the most appropriate and beneficial way, within UPOV's resources. In that respect, the Vice Secretary-General informed the TC that, at its fifty-fifth session, to be held in Geneva on March 29, 2007, the CAJ would be considering the possibility to invite ISF to make a similar presentation to the CAJ in October 2007 (see document TC/43/13 "Report", paragraph 111).

6. The CAJ, at its fifty-fifth session, held in Geneva on March 29, 2007, agreed to invite ISF to make a presentation on its proposal for the development of an electronic application form and technical questionnaire at its fifty-sixth session in conjunction with the CAJ discussions on the revision of document TGP/5. In addition, the CAJ invited members of the Union to present their initiatives on the development of on-line application facilities.

¹ See document TGP/5 "Experience and Cooperation in DUS Testing", Section 2/2: "UPOV Model Form for the Application for Plant Breeders' Rights"

² See document TGP/5 "Experience and Cooperation in DUS Testing", Section 3/1: "Technical Questionnaire to be Completed in Connection with an Application for Plant Breeders' Rights"

7. At its fifty-sixth session, held in Geneva on October 22 and 23, 2007, the CAJ received presentations by a representative of ISF and by the Delegations of Brazil, Germany and the United Kingdom on experiences and initiatives for the development of electronic application forms and technical questionnaires. Those presentations (in English only) are reproduced in Annexes II to V to document CAJ/56/6 “Report”, respectively, and on the UPOV website at http://www.upov.int/restrict/en/caj/index_caj56.htm.

8. The CAJ, at its fifty-sixth session (see document CAJ/56 “Report”, paragraph 20), agreed that the Office should organize a meeting in order to explore possibilities:

(a) to provide a forum for exchanging information on electronic application systems and databasing of information;

(b) to investigate possibilities to facilitate harmonized electronic application systems and databasing of information, for interested members of the Union, by means of a standard electronic application form (including technical questionnaire), possibly with authority-specific annexes, to be made available for downloading from the UPOV website. Investigations would include:

(i) the development of a multilingual standard electronic application form in all languages provided by the relevant members of the Union (if not an official UPOV language);

(ii) options for transfer of data from the standard electronic application form for use in applications made with members of the Union (on-line transmission, e-mail, paper), including the sharing of software between members of the Union and the use of electronic signatures and verification;

(iii) means to facilitate the incorporation of data in electronic application systems in a format compatible with the UPOV-ROM Plant Variety Database;

(c) to identify legal and administrative aspects which should be considered in the development of electronic application systems by members of the Union.

9. The CAJ agreed that any standard electronic application form (including technical questionnaire) would need to be based on the UPOV model forms contained in document TGP/5 “Experience and Cooperation in DUS Testing”^{1,2} and document TGP/7 “Development of Test Guidelines”³.

10. At its fifty-seventh session, held in Geneva on April 10, 2008, the CAJ considered document CAJ/57/4, in conjunction with an oral report by the Vice Secretary-General on the Electronic Applications Systems Meeting, held in Geneva on April 9, 2008. The Vice Secretary-General reported that approximately sixty participants had attended the meeting and that a presentation had been made by the Community Plant Variety Office (CPVO) of the European Union on their project on the development of an electronic application system. As agreed by the CAJ at its fifty-sixth session, held on October 22 and 23, 2007, the meeting had explored the possibilities provided under paragraph 2 of document CAJ/57/4. The

³ See document TGP/7 “Development of Test Guidelines”, Annex 1: TG Template, Section 10. Technical Questionnaire.

Vice Secretary-General reported that two concrete proposals had resulted from the discussions:

(a) to prepare a survey on “core” questions in the UPOV Model Application Form, by requesting members of the Union to indicate which items of the Model Application Form they use and which they consider mandatory; and

(b) to develop a pilot project, for a small number of crops, consisting of a downloadable application form, with or without a technical questionnaire, for testing in cooperation with breeders’ organizations and a number of authorities.

11. In relation to the two proposals, the Vice Secretary-General noted that only very limited interest had been expressed at the meeting, which did not appear to be sufficient to justify the human and financial resources that such an exercise would entail for participating authorities and the Office of the Union.

12. After an initial discussion, the Vice Secretary-General noted that there had been very little time to reflect on the proposals discussed at the meeting and, given the substantial resource implications, suggested that it might be helpful to have more time for reflection.

13. The CAJ agreed that an item should be included on the agenda of its fifty-eighth session on October 27 and 28, 2008, in order to review the situation. The CAJ noted that, if there was support for a pilot project, the matter would need to be considered by the Consultative Committee in order to consider the impact on human and financial resources.

14. At its fifty-eighth session, held in Geneva on October 27 and 28, 2008, the CAJ considered document CAJ/58/5 and agreed that an item should be included on the agenda of its fifty-ninth session, and a document prepared by the Office of the Union on the basis of the agreed UPOV Model Application Form and further inputs from delegations and consultations thereof.

Elaboration of proposals

15. Documents TC/45/13 and CAJ/59/5 presented the following proposals concerning the development of electronic applications systems:

Proposal 1: Standardized reference by authorities to the UPOV Model Application Form, UPOV Model TQ and/or UPOV Test Guidelines TQ

A proposal based on members of the Union making reference in the relevant fields of their application forms and technical questionnaires (TQ) to the corresponding item in the UPOV Model Application Form and UPOV Model TQ or UPOV Test Guidelines TQ.

Proposal 2: Use of information provided in an electronic version of the UPOV Model Application Form (and possibly the UPOV Model TQ or UPOV Test Guidelines TQ)

A proposal based on an approach whereby the applicant would use the UPOV Model Application Form, and possibly the UPOV Model TQ or UPOV Test Guidelines TQ, to provide information to an authority as a part of an application for a breeder’s right.

16. The criteria for developing those proposals were explained in document CAJ/59/5 as follows:

“Criteria

“14. The discussions in the CAJ have confirmed that it would not be feasible to develop an electronic application form that would satisfy the requirements for making a complete application for a breeder’s right with a member of the Union. Of the various aspects that would make such an approach unrealistic, the need for additional authority-specific information by individual members of the Union (i.e. in addition to the information included in the UPOV Model Application Form) and issues concerning electronic signatures have been consistently highlighted.

“15. In addition to practical and resource issues, the discussions in the CAJ have indicated that it would be difficult for UPOV to develop an electronic form that contained requests for information beyond those set out in the UPOV Model Application Form and the UPOV Model TQ or UPOV Test Guidelines TQ.”

17. It should be noted that these proposals would be entirely optional, i.e. it would be a matter for each member of the Union to decide whether to take advantage of the proposed scheme. In addition, the proposals are not mutually exclusive.

18. At its forty-fifth session, held in Geneva from March 30 to April 1, 2009, the TC considered document TC/45/13. The Delegation of New Zealand commented that Proposal 1 “Standardized reference by authorities to the UPOV Model Application Form, UPOV Model TQ and/or UPOV Test Guidelines TQ” would be a reasonable option for implementation in New Zealand. The Delegation of the European Union⁴ and the representative of the International Seed Federation (ISF) expressed a preference for Proposal 2 “Use of information provided in an electronic version of the UPOV Model Application Form (and possibly the UPOV Model TQ or UPOV Test Guidelines TQ)”. The Delegation of the United States of America expressed concerns about the limited interest of members to make use of the form and the resource implications. It also sought further information with respect to the proposals before it could express a view. The TC noted that the matter would be considered further by the CAJ at its fifty-ninth session, to be held in Geneva on April 2, 2009.

19. At its fifty-ninth session, held in Geneva on April 2, 2009, the CAJ considered document CAJ/59/5 “Electronic application systems” and the oral report by the Vice Secretary-General of the comments made by the Technical Committee at its forty-fifth session, held in Geneva from March 30 to April 1, 2009. The discussions at the fifty-ninth session of the CAJ can be found in document CAJ/59/8 “Report”, paragraphs 47 to 56.

20. The CAJ agreed that the Office of the Union should prepare a set of detailed references for the document TGP/5 “Experience and Cooperation in DUS Testing”, Section 2/2: “UPOV Model Form for the Application for Plant Breeders’ Rights” for consideration at the sixtieth session of the CAJ. In addition, it requested the Office of the Union to provide information on the resource implications of Proposals 1 and 2 for the consideration of the CAJ at its sixtieth session. On that basis, Proposals 1 and 2 were developed and were considered by the CAJ at its sixtieth session, held in Geneva on October 19, 2009.

⁴ At the fifty-ninth session of the CAJ, the Delegation of the European Union noted that, at the forty-fifth session of the TC, it had expressed a preference for Proposal 2. However, taking into consideration the interventions made by other delegations at the forty-fifth session of the TC and, in particular, the resource and administrative implications of Proposal 2 “Use of information provided in an electronic version of the UPOV Model Application Form (and possibly the UPOV Model TQ or UPOV Test Guidelines TQ)”, it considered that both proposals should be maintained.

DEVELOPMENTS CONCERNING PROPOSAL 1: STANDARDIZED REFERENCE BY AUTHORITIES TO THE UPOV MODEL APPLICATION FORM AND UPOV MODEL TQ

21. Proposal 1 is set out in document CAJ/60/5, paragraphs 21 to 35, and Annexes I to IV.
22. The CAJ, at its sixtieth session, held in Geneva on October 19, 2009, considered “Proposal 1: Standardized reference by authorities to the UPOV Model Application Form and UPOV Model TQ”, on the basis of paragraphs 21 to 30 of document CAJ/60/5 and approved the:
 - (i) standard UPOV references for the UPOV Model Application Form and UPOV Model TQ, as set out in Annexes II and IV of document CAJ/60/5;
 - (ii) inclusion of an explanation of the standard references in the revision of document TGP/7 and in a revision of document TGP/5 Section 2/2;
 - (iii) posting of standard references and “linear blank forms” (in “Word” format) on the freely-accessible area of UPOV website, on the basis of Annexes II and IV of document CAJ/60/5; and
 - (iv) translation of “linear blank forms” into other languages, as set out in paragraph 26 of document CAJ/60/5.
23. The CAJ agreed that Proposal 1 “Standardized reference by authorities to the UPOV Model Application Form and UPOV Model TQ”, as approved by the CAJ at its sixtieth session, would be put forward for adoption by the Council in October 2010 (see document CAJ/60/10 “Report on the Conclusions”, paragraph 31).
24. With a view to explaining the standard references in the UPOV Model Application Form (see paragraph 22(ii)), document CAJ/61/2 “TGP documents”, Section (b) Revision of TGP documents, paragraphs 61 to 63, sets out a proposed text to be added to document TGP/5: Section 2, in “Instructions for converting the UPOV Model Form for the Application for Plant Breeders’ Rights into an Authority’s own form”.
25. With regard to the proposal of the CAJ concerning document TGP/7, in paragraph 22(ii) above, the TC-EDC, at its meeting on January 7, 2010, agreed that the inclusion of an explanation of the standard references for the UPOV Model TQ and for Test Guidelines, as set out in Annexes II and IV of document CAJ/60/5, would benefit from discussion in the TWPs and TC and suggested that the matter should not be included in document TGP/7/2, but should be considered for a future revision of document TGP/7 (document TGP/7/3).
26. The conclusions of the TC, at its forty-sixth session, concerning a revision of document TGP/7 to include standard UPOV references for the UPOV Model TQ and Test Guidelines, as set out in Annexes II and IV of document CAJ/60/5, will be reported to the CAJ at its sixty-first session. This matter will be considered under agenda item 4 “TGP documents” (see document CAJ/61/2, paragraphs 41 to 46)

27. The standard references and “linear blank forms” (in “Word” format) for posting on the freely accessible area of UPOV website, on the basis of Annexes II and IV of document CAJ/60/5, will be presented for adoption by the Council at its forty-fourth ordinary session, to be held in Geneva on October 21, 2010.

28. *The CAJ is invited to*

(a) note that the proposed revision of document TGP/5: Section 2 will be considered under agenda item 4 (see document CAJ/61/2, paragraphs 61 to 63);

(b) consider the conclusions of the TC at its forty-sixth session, concerning a revision of document TGP/7 to include standard UPOV references for the UPOV Model TQ and Test Guidelines, as set out in Annexes II and IV of document CAJ/60/5, which will be reported to the CAJ at its sixty-first session; and

(c) note that the standard references and “linear blank forms” (in “Word” format) for posting on the freely accessible area of UPOV website, on the basis of Annexes II and IV of document CAJ/60/5, will be presented for adoption by the Council at its forty-fourth ordinary session, to be held in Geneva on October 21, 2010.

DEVELOPMENTS CONCERNING PROPOSAL 2: USE OF INFORMATION PROVIDED IN AN ELECTRONIC VERSION OF THE UPOV MODEL APPLICATION FORM AND UPOV MODEL TQ

29. Proposal 2 is presented in document CAJ/60/5, paragraphs 36 and 37 and Annexes II and IV.

30. The CAJ, at its sixtieth session, agreed that a Circular should be issued to the CAJ inviting expressions of interest in relation to “Proposal 2: Use of information provided in an electronic version of the UPOV Model Application Form and UPOV Model TQ”. The response to that circular would be considered by the CAJ at its sixty-first session, in March 2010.

31. In response to Circular E-1141 of November 24, 2009, the Office of the Union received the following responses:

Canada

The Canadian office would like to offer the following comments concerning “Proposal 2: Use of information provided in an electronic version of the UPOV Model Application Form and UPOV Model TQ...”

Our office does not have the capability to accept an electronic application at the present time. Documents can be emailed or faxed in MS Word or PDF format and, if the information is complete, a filing date can be assigned. However, the original of all documents requiring a signature must be submitted by post to the office within 60 days of the filing date.

Recently we have updated our national application form and have renumbered the information boxes so the items correspond directly with the UPOV Model Application Form (following Proposal 1). However, as is the case with many authorities, we have specific supplemental information that is required. Some, but not all, of this would be included in a completed UPOV Technical Questionnaire (for example breeding history and summary of distinctness). Our applicants do not currently use the UPOV TQ's. However, there are other legal requirements that would also have to be met for the application to be accepted. Supplemental forms relating to these other requirements could be made available either on the UPOV website or via a link to our website, but have not yet been developed.

Ukraine

Regarding Proposal 2 described in the Circular E-1141 the State Variety Service would like to express its interest in considering options of its implementation, drawing, in the meantime, your attention to the following obstacles which might prevent its realization:

- discrepancies in legislation of different countries cause corresponding discrepancies of applications, thus creating certain difficulties regarding unification of the Application, in particular, UPOV Model Application Form might not comply with some requirements to the Application provided for in the legislation of certain countries;
- the states, which do not use at least one UPOV official language as their official language, might experience difficulties when translating UPOV Model Application Form and UPOV Model TQ.

United Kingdom

We did investigate but did not think that we could contribute very greatly to the project so did not volunteer. We are interested in the project however, and are always willing to share experiences.

32. *The CAJ is invited to note the responses to Circular E-1141 and to consider how to proceed with Proposal 2 “Use of information provided in an electronic version of the UPOV Model Application Form and UPOV Model TQ”.*

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