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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
GENEVA

ADMINISTRATIVE AND LEGAL COMMITTEE

Sixty-First Session
March 25, 2010

ADDENDUM

MATTERS ARISING AFTER THE GRANT OF THE BREEDER'S RIGHT

Document prepared by the Office of the Union

1. The Annex to this document reproduces the contribution received from the Russian Federation on February 26, 2010, in reply to Circular E-1168 of December 23, 2009, inviting members and observers of the CAJ to provide examples on matters arising after the grant of the breeder's right, in particular in relation to nullity, cancellation, variety denomination and exhaustion of the breeder's right.

[Annex follows]

ANNEX

CONTRIBUTION FROM THE RUSSIAN FEDERATION

STATE COMMISSION OF THE RUSSIAN FEDERATION
FOR SELECTION ACHIEVEMENTS TEST AND PROTECTION

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To: UPOV Office

February 26, 2010

Subj.: Matters arising after the grant of the breeder's right

Dear Vice Secretary-General,

Unfortunately, I had no opportunity to send my comments by January 31, 2010, as written in Circular E-1168 of December 23, 2009, concerning **Matters arising after the grant of the breeder's right**.

Meanwhile I would like to share some my considerations on this subject and ask you to note them below.

Matters arising after the grant of the breeder's right

1. Article 10.

What should be guided the breeder when choosing the country of subsequent application?

2. Article 13.

How the breeder may realize his rights in relation to infringements have been made for the provisional protection period?

Examples demonstrating the breeder's actions in respect of persons infringed / infringing the breeder's right for the provisional protection period should be developed.

3. Article 14.

How the breeder may enforce more effectively his right when authorizing acts in respect of the propagating material to the third parties?

How the breeder may realize his right in respect of the harvested material received as a result of the use of the propagating material unauthorized? On what compensation may the breeder make a claim in this case?

How the breeder of an original variety may certify his right to a variety essentially derived from his original variety?

How the right of a joint owner of the original variety may be certified in the right for the essentially derived variety?

How the breeder of a hybrid line / hybrid parent form may certify his right for the hybrid?

How the breeder's rights for the hybrid line / hybrid parent form may be certified in the breeder's right for the hybrid?

How the breeder may enforce his right for the variety which is not clearly distinguishable from his variety protected? Who and what should do in this case?

How the authority should inform the public in respect of the varieties for which two or more PBRs are in force?

How the license may be issued for acts in respect of the propagating material of the variety for which two or more PBRs are in force?

Examples concerning state or public measures in respect of PBR efficiency enforcement should be demonstrated.

4. Article16.

How the breeder may realize his right if acts in respect of his variety material which he has sold or other marketed relate to export of the material to a country where varieties belonged to the given botanical genus or species are not protected?

Whether the breeder in this case has the right to:

- request from the exporter applicable remuneration for the authorization to export the material;
- stipulate acts of the third parties in respect of the variety material in the territory of the importer country;
- do not authorize the export?

Thank you very much for your attention.

Sincerely yours,

Y. Rogovskiy,
Deputy Chairman

[End of Annex and of document]