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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
GENEVA

ADMINISTRATIVE AND LEGAL COMMITTEE

Sixty-Third Session
April 7, 2011

**DEVELOPMENT OF INFORMATION MATERIALS
CONCERNING THE UPOV CONVENTION**

Document prepared by the Office of the Union

Introduction

1. The Administrative and Legal Committee (CAJ), at its fifty-second session, held in Geneva on October 24, 2005, agreed an approach for the preparation of information materials concerning the UPOV Convention, as explained in paragraphs 8 to 10 of document CAJ/52/4. It also agreed to the establishment of an advisory group to the CAJ ("CAJ-AG") to assist in the preparation of documents concerning such materials, as proposed in paragraphs 11 to 14 of document CAJ/52/4 (see paragraph 67 of document CAJ/52/5, Report).
2. The agreed approach is summarized as follows: the Office of the Union will develop certain draft materials which it considers covers aspects of a straightforward nature and will circulate these to the CAJ for comments within a specified time. In other cases, where it is considered that there are difficult issues, where discussions at a CAJ session would be important for the development of suitable information materials, and also in cases where the drafts on seemingly straightforward materials provoke unexpected concerns when circulated for comments, it was agreed that the assistance of the CAJ-AG would be sought prior to the CAJ being invited to discuss those matters at its sessions.
3. An overview of the development of the information materials is provided in the Annex to this document.

4. The structure of this document is as follows:

I. REPORT OF THE WORK OF THE CAJ-AG AT ITS FIFTH SESSION

(a) Matters referred to the CAJ-AG by the CAJ at its sixty-first session

(i) *Objectives of the possible development of a document on the exhaustion of the breeder's right under the 1991 Act of the UPOV Convention;*

(ii) *Objectives of the possible development of a document on the notion of "own holdings" under Article 15(2) of the 1991 Act of the UPOV Convention; and*

(iii) *Matters arising after the grant of a breeder's right.*

(b) Explanatory Notes considered by the CAJ-AG at its fifth session

(i) *Explanatory Notes on the Definition of Breeder under the 1991 Act of the UPOV Convention*

(ii) *Explanatory Notes on Acts in Respect of Harvested Material under the 1991 Act of the UPOV Convention*

(iii) *Explanatory Notes on Essentially Derived Varieties under the UPOV Convention (revision)*

II. INFORMATION MATERIALS CONSIDERED BY THE CAJ BY CORRESPONDENCE

UPOV/INF/15/1: Guidance for Members of UPOV on Ongoing Obligations and Related Notifications

III. PROGRAM FOR THE DEVELOPMENT OF INFORMATION MATERIALS

(a) New proposal for the development of information materials

(b) Work program for the development of information materials for the sixth session of the CAJ AG, to be held in Geneva in October 2011, and for the sixty-fourth session of the CAJ, to be held in Geneva in October 2011

IV. PROCEDURE FOR UPDATING ADOPTED DOCUMENTS

Report on a proposal, for consideration by the Consultative Committee, to provide a streamlined procedure for the updating of documents previously adopted by the Council

I. REPORT OF THE WORK OF THE CAJ-AG AT ITS FIFTH SESSION

5. The CAJ-AG held its fifth session in Geneva on October 18, 2010 and on the afternoon of October 19.

6. The Report of the CAJ-AG at its fifth session (document CAJ-AG/10/5/7) has been posted in the CAJ-AG and CAJ/63 sections of the UPOV website.

7. The terms of reference of the CAJ-AG provide that “[o]bserver organizations, in particular those representing the interests of breeders, might be invited by the CAJ-AG to present their views on a particular provision of the 1991 Act to assist in [its] work” (see document CAJ/52/4, paragraph 14, and document CAJ/52/5 “Report”, paragraph 67). The CAJ-AG decided by correspondence on September 6, 2010, to invite the International Community of Breeders of Asexually Reproduced Ornamental and Fruit Varieties (CIOPORA) and the International Seed Federation (ISF) to the relevant part of the fifth session of the CAJ-AG, in order to enable them to continue the presentation of their views on relevant matters.

8. The following matters have been considered by the CAJ-AG at its fifth session:

(a) Matters referred to the CAJ-AG by the CAJ at its sixty-first session

(i) *Objectives of the possible development of a document on the exhaustion of the breeder’s right under the 1991 Act of the UPOV Convention*

9. The CAJ, at its sixty-first session, agreed to request the CAJ-AG, at its fifth session, to consider the objectives of the possible development of a document on the Exhaustion of the Breeder’s Right under the 1991 Act of the UPOV Convention (see document CAJ/61/11 “Report on the Conclusions”, paragraph 32).

10. The CAJ-AG, at its fifth session, agreed that agenda item 5(a) “Objectives of the possible development of a document on the exhaustion of the breeder’s right under the 1991 Act of the UPOV Convention (document CAJ-AG/10/5/4)” should be considered by the CAJ-AG at its sixth session in October 2011 (see document CAJ-AG/10/5/7 “Report”, paragraph 19).

(ii) *Objectives of the possible development of a document on the notion of “own holdings” under Article 15(2) of the 1991 Act of the UPOV Convention*

11. The CAJ, at its sixty-first session, agreed to request the CAJ-AG, at its fifth session, to consider the objectives of the possible development of a document on the notion of “own holdings” under Article 15(2) of the 1991 Act of the UPOV Convention (see document CAJ/61/11 “Report on the Conclusions”, paragraph 33).

12. The CAJ, at its sixty-second session, noted that in recognition of the difficulty in developing a common definition of “own holdings”, the CAJ-AG, at its fifth session, had agreed to propose to the CAJ that, for the time being, it should not seek to develop guidance on the notion of “own holdings” (see document CAJ/62/8 “Report on the Conclusions”, paragraph 13).

(iii) *Matters arising after the grant of a breeder's right*

13. The CAJ, at its sixty-first session, considered documents CAJ/61/8 “Matters arising after the grant of a breeder’s right” and CAJ/61/8 Add. (see document CAJ/61/11 “Report on the Conclusions”, paragraphs 64 to 66).

14. The CAJ, at its sixty-first session, noted the contributions contained in documents CAJ/61/8 and CAJ/61/8 Add. and requested the Office of the Union to prepare a document for consideration by the CAJ-AG, at its fifth session, on possible ways to proceed with matters raised in those contributions.

15. The CAJ, at its sixty-second session, noted that the CAJ-AG had considered document CAJ-AG/10/5/6 and had invited members of the Union, in particular those which had made contributions on matters arising after the grant of a breeder’s right (see Annex to document CAJ-AG/10/5/6), to provide the Office of the Union with comments on whether their contributions had been identified under appropriate headings of document CAJ-AG/10/5/6 and whether further guidance should be developed. Based on those comments, the Office of the Union would prepare a document for consideration by the CAJ-AG at its sixth session in October 2011 (see document CAJ/62/8 “Report on the Conclusions”, paragraph 14).

(b) Explanatory Notes considered by the CAJ-AG at its fifth session

(i) *Explanatory Notes on the Definition of Breeder under the 1991 Act of the UPOV Convention*

16. The CAJ-AG, at its fifth session, considered documents CAJ-AG/10/5/2 “Explanatory Notes” and UPOV/EXN/BRD Draft 3 “Explanatory Notes on the Definition of Breeder under the 1991 Act of the UPOV Convention”.

17. The CAJ-AG agreed that the Office of the Union should prepare a revised version of the “Explanatory Notes on the Definition of Breeder under the 1991 Act of the UPOV Convention” (document UPOV/EXN/BRD Draft 4) for consideration by the CAJ-AG at its sixth session, to be held in October 2011 (see document CAJ-AG/10/5/7 “Report”, paragraph 8).

(ii) *Explanatory Notes on Acts in Respect of Harvested Material under the 1991 Act of the UPOV Convention*

18. The CAJ-AG, at its fifth session, considered documents CAJ-AG/10/5/2 “Explanatory Notes” and UPOV/EXN/HRV Draft 5 “Explanatory Notes on Acts in Respect of Harvested Material under the 1991 Act of the UPOV Convention”.

19. The CAJ agreed that the Office of the Union should prepare a revised version of the “Explanatory Notes on Acts in Respect of Harvested Material under the 1991 Act of the UPOV Convention” (UPOV/EXN/HRV Draft 6) for consideration by the CAJ-AG, at its sixth session, to be held in October 2011 (see document CAJ-AG/10/5/7 “Report”, paragraph 12).

(iii) *Explanatory Notes on Essentially Derived Varieties under the UPOV Convention (revision)*

20. The CAJ-AG, at its fifth session, considered document CAJ-AG/10/5/3 “Explanatory Notes on Essentially Derived Varieties under the 1991 Act of the UPOV Convention (revision)”.

21. The CAJ-AG agreed to request its members, CIOPORA and ISF to send comments on document CAJ-AG/10/5/3 to the Office of the Union. Based on the comments made at its fifth session and those submitted to the Office of the Union, a new version of document “Explanatory Notes on Essentially Derived Varieties under the 1991 Act of the UPOV Convention (Revision)” would be prepared for the sixth session of the CAJ-AG in October 2011 (see document CAJ-AG/10/5/7 “Report”, paragraph 18).

22. The CAJ is invited to note the report on the work of the CAJ-AG at its fifth session, as provided in document CAJ-AG/10/5/7 “Report” and summarized in paragraphs 5 to 21, above.

II. INFORMATION MATERIALS CONSIDERED BY THE CAJ BY CORRESPONDENCE

UPOV/INF/15/1: Guidance for Members of UPOV on Ongoing Obligations and Related Notifications

23. The CAJ, at its sixty-first session, noted that document UPOV/INF/15/1 Draft 1 was approved by the CAJ by correspondence and that the Council would be invited to adopt document UPOV/INF/15/1 “Guidance for Members of UPOV on Ongoing Obligations and Related Notifications” at its forty-fourth ordinary session, to be held in Geneva on October 21, 2010, on the basis of document UPOV/INF/15/1 Draft 2 (see document CAJ/62/8 “Report on the Conclusions”, paragraph 15).

24. The Council adopted document UPOV/INF/15/1 “Guidance for Members of UPOV on Ongoing Obligations and Related Notifications” on the basis of document UPOV/INF/15/1 Draft 2 (see document C/44/16 “Report on the Decisions”, paragraph 28).

25. The CAJ is invited to note the adoption of document UPOV/INF/15/1 “Guidance for Members of UPOV on Ongoing Obligations and Related Notifications, by the Council, at its forty-fourth ordinary session, held in Geneva on October 21, 2010.

III. PROGRAM FOR THE DEVELOPMENT OF INFORMATION MATERIALS

(a) New proposal for the development of information materials

26. The representative of CIOPORA, at the sixty-second session of the CAJ, referred to the first part of the fifth session of the CAJ-AG, in the context of discussions on document UPOV/EXN/HRV: Explanatory Notes on Acts in Respect of Harvested Material under the 1991 Act of the UPOV Convention, in which CIOPORA had requested the development of explanatory notes on “propagation and propagating material” (see document CAJ/62/9 Prov. “Draft Report”, paragraph 13).

27. The Chair, at the sixty-second session of the CAJ, recalled that the CAJ-AG would continue discussions on document UPOV/EXN/HRV: Explanatory Notes on Acts in Respect of Harvested Material under the 1991 Act of the UPOV Convention on the afternoon of October 19, 2010. She noted that the request made by CIOPORA would be considered by the CAJ-AG and the conclusions of the CAJ-AG on those matters would be reported to the CAJ at its sixty-third session, to be held in Geneva on April 7, 2011 (see document CAJ/62/9 Prov. “Draft Report”, paragraph 14).

28. The CAJ-AG, at its fifth session, considered the request made by CIOPORA for the development of explanatory notes on “propagation and propagating material” and agreed to report that request to the CAJ, at its sixty-third session, to be held on April 7, 2011. The CAJ-AG recalled that it was a matter for the CAJ to decide on the development of new explanatory notes (see document CAJ-AG/10/5/7 “Report”, paragraph 10).

29. The CAJ is invited to consider the request by CIOPORA to develop explanatory notes on “propagation and propagating material”, as provided in paragraph 28, above.

(b) Work program for the development of information materials for the sixth session of the CAJ-AG, to be held in Geneva in October 2011, and for the sixty-fourth session of the CAJ, to be held in Geneva in October 2011

30. Subject to the CAJ approval, at its sixty-third session, to be held on April 7, 2011, the CAJ-AG, at its fifth session, agreed the following program for its sixth session, to be held in October 2011, and anticipated that a full day would be necessary to cover the program (see document CAJ-AG/10/5/7 “Report”, paragraph 24):

1. Opening of the session
2. Adoption of the agenda
3. Explanatory Notes
 - (a) UPOV/EXN/BRD: Explanatory Notes on the Definition of Breeder under the 1991 Act of the UPOV Convention
 - (b) UPOV/EXN/HRV: Explanatory Notes on Acts in Respect of Harvested Material under the 1991 Act of the UPOV Convention

4. Explanatory Notes on Essentially Derived Varieties under the 1991 Act of the UPOV Convention (revision)
5. Matters arising after the grant of a breeder's right
6. Objectives of the possible development of a document on the exhaustion of the breeder's right under the 1991 Act of the UPOV Convention
7. Matters referred by the CAJ to the CAJ-AG for consideration since the fifth session of the CAJ-AG
8. Date and program for the seventh session

31. The CAJ-AG, at its fifth session, agreed that CIOPORA and ISF be invited to the relevant part of the sixth session of the CAJ-AG, in order to enable their views to be presented on relevant matters (see document CAJ-AG/10/5/7 "Report", paragraph 25).

32. The CAJ-AG noted that the tentative date of October 22, 2011, for the sixth session of the CAJ-AG might change to October 17, 2011, if the CAJ decided, at its sixty-third session, on April 7, 2011, that a full day would be necessary to cover the program for the sixty-fourth session of the CAJ in October 2011 (see document CAJ-AG/10/5/7 "Report", paragraph 26).

33. Based on the conclusions of the CAJ-AG, at its fifth session, and the conclusions of the CAJ at its sixty-third session, the CAJ will be invited to consider a program for the development of information materials for the sixth session of the CAJ-AG and for the sixty-fourth session of the CAJ, both sessions to be held in October 2011.

34. *The CAJ is invited to:*

(a) approve the work program for the development of information materials for the sixth session of the CAJ-AG and for the sixty-fourth session of the CAJ; and

(b) consider the date for the sixth session of the CAJ-AG under item "Program for the sixty-fourth session" of the CAJ, as set out in paragraph 32, above.

IV. PROCEDURE FOR UPDATING ADOPTED DOCUMENTS

35. The purpose of this section is to report on a proposal, for consideration by the Consultative Committee at its eighty-first session, to be held in Geneva on April 8, 2011, to provide a streamlined procedure for the updating of documents previously adopted by the Council. The proposal is summarized in the following paragraphs.

36. Certain documents adopted by the Council contain document references and/or reproduce the text of other adopted documents, such as explanatory notes, which are updated on a regular basis. For example, the Council, at its forty-third ordinary session, adopted

document UPOV/INF/6/1 “Guidance for the preparation of laws based on the 1991 Act of the UPOV Convention”. Part II of document UPOV/INF/6/1 contains notes based on information materials concerning certain Articles of the 1991 Act of the UPOV Convention and, in particular, explanatory notes. Since document UPOV/INF/6/1 was adopted by the Council, the “Explanatory Notes on Variety Denominations under the UPOV Convention” (document UPOV/INF/12/3) have been revised twice and the “Explanatory Notes on Conditions and Limitations Concerning the Breeder’s Authorization in respect of Propagating Material under the UPOV Convention” (document UPOV/EXN/CAL/1) and “the “Explanatory Notes on the Definition of Variety under the 1991 Act of the UPOV Convention” (document UPOV/EXN/VAR/1) have been adopted by the Council.

37. It is proposed to the Consultative Committee, at its eighty-first session, that, where considered appropriate, the following approach be used for the updating of documents previously adopted by the Council:

(a) to present a Council document proposing specific amendments to the document being updated without presenting a complete revised draft document to the Council. The Council would be invited to adopt the revised version of the document on the basis of the specific amendments and the Office of the Union would prepare and publish the revised document on that basis; and

(b) to present to the Council for adoption, in conjunction with the Council document containing the specific amendments to the document being updated, an information document, similar to document “List of TGP Documents and Latest Issue Dates” (document TGP/0/3) containing the latest references and dates of information documents (for instance, INF and EXN series of documents).

38. If the above approach is endorsed by the Consultative Committee, at its eighty-first session, the CAJ may wish to note that, it is proposed to inform the Council accordingly, at its twenty-eighth extraordinary session, to be held on April 8, 2011 and to propose to the Council the specific amendments for the updating of document UPOV/INF/6/1 “Guidance for the preparation of laws based on the 1991 Act of the UPOV Convention”, for consideration by the Council, at its forty-fifth ordinary session, to be held on October 20, 2011.

39. The CAJ is invited to note the report on a proposal, for consideration by the Consultative Committee, at its eighty-first session, to be held in Geneva on April 8, 2011, to provide a streamlined procedure for the updating of documents previously adopted by the Council, as set out in paragraphs 37 and 38, above.

[Annex follows]

OVERVIEW OF THE DEVELOPMENT OF INFORMATION MATERIALS

Latest reference	Explanatory Notes on:	Status
UPOV/EXN/GEN/1	Genera and Species to be Protected under the 1991 Act of the UPOV Convention	Adopted by the Council in October 2009
UPOV/EXN/NAT/1	National Treatment under the 1991 Act of the UPOV Convention	Adopted by the Council in October 2009
UPOV/EXN/NOV/1	Novelty under the UPOV Convention	Adopted by the Council in October 2009
UPOV/EXN/PRI/1	Right of Priority under the UPOV Convention	Adopted by the Council in October 2009
UPOV/EXN/PRP/1	Provisional Protection under the UPOV Convention	Adopted by the Council in October 2009
UPOV/EXN/EDV/1	Essentially Derived Varieties under the 1991 Act of the UPOV Convention	Adopted by the Council in October 2009
UPOV/EXN/EXC/1	Exceptions to the Breeder's Right under the 1991 Act of the UPOV Convention	Adopted by the Council in October 2009
UPOV/EXN/NUL/1	Nullity of the Breeder's Right under the UPOV Convention	Adopted by the Council in October 2009
UPOV/EXN/CAN/1	Cancellation of the Breeder's Right under the UPOV Convention	Adopted by the Council in October 2009
UPOV/EXN/ENF/1	Enforcement of Breeders' Rights under the UPOV Convention	Adopted by the Council in October 2009
UPOV/EXN/VAR/1	Definition of Variety under the 1991 Act of the UPOV Convention	Adopted by the Council in October 2010
UPOV/EXN/CAL/1	Conditions and Limitations Concerning the Breeder's Authorization in Respect of Propagating Material under the UPOV Convention	Adopted by the Council in October 2010
UPOV/EXN/HRV Draft 6	Acts in Respect of Harvested Material under the 1991 Act of the UPOV Convention	For the CAJ-AG session in October 2011
UPOV/EXN/BRD Draft 4	Definition of Breeder under the 1991 Act of the UPOV Convention	For the CAJ-AG session in October 2011
CAJ-AG/11/6/3	Essentially Derived Varieties under the 1991 Act of the UPOV Convention (revision)	For the CAJ-AG session in October 2011
Latest reference	INF documents	Status
UPOV/INF/6/1	Guidance for the Preparation of Laws Based on the 1991 Act of the UPOV Convention	Adopted by the Council in October 2009
UPOV/INF/13/1	Guidance on How to Become a Member of UPOV	Adopted by the Council in October 2009
UPOV/INF/14/1	Guidance for Members of UPOV on How to Ratify, or Accede to, the 1991 Act of the UPOV Convention	Adopted by the Council in October 2009
UPOV/INF/15/1	Guidance for Members of UPOV on Ongoing Obligations and Related Notifications	Adopted by the Council in October 2010