



Disclaimer: unless otherwise agreed by the Council of UPOV, only documents that have been adopted by the Council of UPOV and that have not been superseded can represent UPOV policies or guidance.

This document has been scanned from a paper copy and may have some discrepancies from the original document.

---

Avertissement: sauf si le Conseil de l'UPOV en décide autrement, seuls les documents adoptés par le Conseil de l'UPOV n'ayant pas été remplacés peuvent représenter les principes ou les orientations de l'UPOV.

Ce document a été numérisé à partir d'une copie papier et peut contenir des différences avec le document original.

---

Allgemeiner Haftungsausschluß: Sofern nicht anders vom Rat der UPOV vereinbart, geben nur Dokumente, die vom Rat der UPOV angenommen und nicht ersetzt wurden, Grundsätze oder eine Anleitung der UPOV wieder.

Dieses Dokument wurde von einer Papierkopie gescannt und könnte Abweichungen vom Originaldokument aufweisen.

---

Descargo de responsabilidad: salvo que el Consejo de la UPOV decida de otro modo, solo se considerarán documentos de políticas u orientaciones de la UPOV los que hayan sido aprobados por el Consejo de la UPOV y no hayan sido reemplazados.

Este documento ha sido escaneado a partir de una copia en papel y puede que existan divergencias en relación con el documento original.



## INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

**ADMINISTRATIVE AND LEGAL COMMITTEE****Thirty-fifth Session  
Geneva, April 26 and 27, 1995**

## REPORT

*adopted by the Committee***Introduction**

1. The Administrative and Legal Committee (hereinafter referred to as "the Committee") held its thirty-fifth session on April 26 and 27, 1995, under the chairmanship of Mr. H. Kunhardt (Germany). The list of participants is given at Annex hereto.
2. The session was opened by the Chairman, who welcomed the participants.

**Adoption of the Agenda**

3. The Committee adopted the agenda as given in document CAJ/35/1.

**Adoption of the Report on the Thirty-fourth Session**

4. The Committee adopted the report on its thirty-fourth session as given in document CAJ/34/5 Prov.

**Model Law on Plant Variety Protection***General*

5. Discussions were based on document CAJ/35/2.

6. The paragraphs which follow record the main observations and proposals on the Model Law for the guidance of the Office of the Union in finalizing the Model Law.

***Article 1: Purpose of the Law and Definitions***

7. The following suggestions were made:

(i) to limit Article 1 to definitions and set out the objective of the Law in a new Article 2;

(ii) to delete “or his successor in title” in subparagraph (ix), to introduce that wording into Article 10(1) and to simplify Article 33(2)(ii) (this represents a substantive correction of the text since the status of breeder is not transferable);

(iii) to delete or amend some definitions such as that of the holder, since they were not true definitions;

(iv) to add a reference in subparagraph (xiii) to the fact that the protected variety was identified by its denomination;

(v) to specify in the commentary that the applicant was the person who would normally become the holder, rather than the agent.

***Article 3: Nationality, Place of Residence or Registered Office***

8. The Committee concluded that Alternative B for paragraph (1)(iii) was to be deleted, either because one might consider it inappropriate to take position on the implications of the TRIPS Agreement on plant variety protection or because the alternative was already included in Alternative A. It was suggested, however, that the commentary should explain the situation.

9. The commentary should also refer to the possibility of omitting the condition of nationality, place of residence or registered office.

10. It was suggested that the French version of the Model Law should use the expression “siège ou établissement” where the English used “registered office.”

***Article 4: Agent***

11. It was suggested to indicate in the commentary that this Article was not indispensable, and that certain States only required an address for service in the country. It was also suggested to provide for a particular form to ensure that the Office would have the assurance that the person appointed as agent accepted his function and acknowledged it by his signature.

***Article 6: Novelty***

12. Different opinions were expressed in respect of paragraph (2)(v). It was suggested, on the one hand, to delete the end of the provision, from “in particular,” and to explain in the commentary the nature of the statutory or administrative obligations concerned and, on the other hand, to maintain the text in view of the importance of the quoted examples.

13. It was suggested to include an explanation in the commentary on the novelty of inbred lines used for the production of hybrid varieties.

***Article 10: (Persons entitled)--Principles***

14. Paragraph (2) gave rise to a detailed discussion in which it was underlined that the entitlement to protection was not governed, under the UPOV Convention, by the first-to-file rule. It was concluded that the best solution would be to delete paragraph (2) and to explain the functioning of the UPOV system in the commentary.

***Article 13: Scope of the Breeder's Right***

15. It was suggested to delete paragraph (5)(c) on the ground that the reference to breeding methods enabling the production of essentially derived varieties was not appropriate; it was explained that that provision corresponded word for word to Article 14(5)(c) of the 1991 Act.

***Article 14: Exceptions to the Breeder's Right***

16. The principle adopted for paragraph (2) was criticized for two reasons: on the one hand, the Model Law should not make any proposal as to the nature and scope of the "farmer's privilege," and in any case go beyond the text adopted at the Diplomatic Conference; on the other hand, the Model Law should include (or propose that the States include) provisions setting out the scope of application and the precise nature of the exception made in favor of farmers. The President concluded that the text of the Model Law could contain two alternatives: an alternative offering a model provision couched in general terms and providing that the details would be set out in the Regulations, and an alternative which would provide that there would be no paragraph (2).

***Article 17: Duration of the Breeder's Right; Provisional Protection***

17. One delegation considered that Alternative B for paragraph (2) went too far and should be deleted; another delegation urged that the two alternatives should be maintained since the second provided for a provisional protection regime that was very advantageous to all parties.

***Article 18: Transfer of Property***

18. It was agreed to amend the reference to "movable property [personalty]."

***Article 19: Contractual Licenses***

19. It was agreed to substitute "may" for "shall" in the first sentence of paragraph (3)(a) (the entry of exclusive licenses would become facultative). Different opinions were expressed in respect of paragraph (3)(b): on the one hand, the registration would indeed have a sanction as counterpart but it would fix the date of entry into effect of the exclusive license against a third party; in many States, it would also open up the possibility for the exclusive licensee to sue for infringement. On the other hand, the absence of effect of the exclusive license against a third party would penalize the person acquiring the breeder's right in good faith and benefit the title holder acting in bad faith.

20. The Committee agreed that paragraph (4) should be deleted.

**Article 20: Compulsory Licenses**

21. That Article gave rise to a detailed discussion.
22. It was first of all underlined that the competence for the granting of compulsory licenses may lie, for instance, with the Ministry of Agriculture.
23. It was agreed that the Article should set out that exclusive licenses would be granted exclusively for reasons of public interest. It was underlined that it was hardly possible to define public interest for the purposes of that Article.
24. Paragraph (5) should be redrafted: in particular, subparagraphs (ii) and (iii) could be merged. The paragraph should also be closely linked with paragraph (1) to form a set of conditions for the granting of a compulsory license. It was underlined, however, that paragraph (5) did not contain certain conditions which were ordinarily provided (some of which were included in the TRIPS Agreement).
25. Paragraph (2) should be revised in the light of the fact that compulsory licenses should only be granted for the supply of the domestic market.
26. The words “against payment of adequate remuneration to the holder” should be deleted in paragraph (4).
27. Several objections were raised against the periods of time set out in paragraphs (5)(iv) and (6), and it was proposed to put the periods in square brackets. It was also suggested to provide that the compulsory license would end when the circumstances which had led to its granting had ceased to exist.
28. The necessity and desirability of paragraph (8) were questioned. Moreover, further organizations could be consulted. It was suggested to keep the paragraph to flag the possibility of consulting the interested professional organizations.
29. It was underlined that the decisions in the field of compulsory licenses should be subject to judicial review; that issue could be dealt with under Article 28.
30. It was also necessary to ensure that Article 20 permitted the granting of a compulsory license in respect of an essentially derived variety.

**Article 22: Nullity of the Breeder's Right**

31. It was observed that the declaration of nullity of an administrative act could require a judicial decision. This matter would be taken up in the commentary.

**Article 28: Appeals**

32. The wish was expressed that the whole Article be placed in square brackets in view of the diversity of the national circumstances and that it set out two alternatives, that is, the current text and one which would be restricted to a direct appeal to the administrative or judicial court, to be referred to as “the [...] Tribunal.”

***Article 31: Fees***

33. The wish was expressed that the commentary should describe the fees which were usual in the member States.

***Article 32: Restitutio in Integrum***

34. On the basis of arguments of legal theory, it was suggested to replace Article 33 by a provision under which the users of the protection system would enjoy a further time limit subject to payment of a special fee. The Chairman considered that the text should not be altered since it reflected provisions included in many patent laws.

***Article 36: Documentary Examination of the Application as to Substance***

35. It was agreed to delete the word "documentary."

***Article 43: Grounds for Refusal (of a Variety Denomination)***

36. The wish was expressed that the possibility of using a combination of figures as a variety denomination be referred to, at least in the commentary.

37. It was suggested to merge items (iv) and (v) of paragraph (1)(a).

***Article 45: Cancellation of a Denomination and Registration of a New Denomination***

38. It was agreed that the second sentence of paragraph (2) would read as follows: "... the proposal may be made by the Office."

***Article 50: Civil Law Protection***

39. It was requested that the Article be supplemented by a reference to the holder of an exclusive license.

***Articles 51 and 52: Penal Law Protection; Applicable Provisions***

40. It was underlined that those Articles essentially offered a frame for further thoughts rather than model provisions. In particular, the provisions referred to may not appear in the patent law.

41. It was agreed that Article 51(2) would be drafted in more general terms (and leave open the nature and size of the penalties).

**Future Work**

42. The Chairman proposed--and the Committee accepted--that the Office of the Union should prepare the final version of the Model Law on the basis of the observations made in session and should publish it as an information document. It was underlined that the Model Law would be prepared in four languages (English, French, German and Spanish), and in any

further language if so decided. Certain delegations would be requested to contribute to the finalization of the text, in particular from the linguistic point of view.

43. The Committee decided to hold its next session in the spring of 1996, unless the Consultative Committee referred to it matters to be considered in October next.

**End of Term**

44. Ms. Bustin (France) noted that, on the assumption that the Committee would not meet in October, Mr. Kunhardt would have accomplished his term of office as President of the Committee. To general applause, she thanked him for his able chairmanship.

*45. This report has been adopted by  
correspondence.*

[Annex follows]

**LISTE DES PARTICIPANTS/LIST OF PARTICIPANTS/TEILNEHMERLISTE**

(dans l'ordre alphabétique des noms français des États/  
in the alphabetical order of the names in French of the States/  
in alphabetischer Reihenfolge der französischen Namen der Staaten)

**I. ÉTATS MEMBRES/MEMBER STATES/VERBANDSSTAATEN****ALLEMAGNE/GERMANY/DEUTSCHLAND**

Henning KUNHARDT, Leitender Regierungsdirektor, Bundessortenamt, Osterfelddamm 80, 30627 Hannover

Ernst BLEIBAUM, Oberregierungsrat, Bundesministerium für Ernährung, Landwirtschaft und Forsten, Rochusstraße 1, 53123 Bonn

**ARGENTINE/ARGENTINA/ARGENTINIEN**

Adelaida HARRIES (Sra.), Presidente, Instituto Nacional de Semillas, Ministerio de Economía, Secretaría de Agricultura, Ganadería y Pesca, Avenida Paseo Colón 922, 3° Piso, Oficina 302, 1063 Buenos Aires

Carmen GIANNI (Sra.), Director de Asuntos Jurídicos, Instituto Nacional de Semillas, Ministerio de Economía, Secretaría de Agricultura, Ganadería y Pesca, Avenida Paseo Colón 922, 1063 Buenos Aires

Diego MALPEDE, Segundo Secretario, Misión Permanente, 10, route de l'Aéroport, 1215 Geneva, Switzerland

**AUTRICHE/AUSTRIA/ÖSTERREICH**

Reiner HRON, Direktor, Leiter des Sortenschutzamtes, Bundesamt und Forschungszentrum für Landwirtschaft, Alliiertenstr. 1, Postfach 64, 1201 Wien

Birgit KUSCHER (Frau), Referentin in der Rechtsabteilung, Bundesministerium für Land- und Forstwirtschaft, Referat IA2a, Stubenring 1, 1010 Wien

**BELGIQUE/BELGIUM/BELGIEN**

Françoise BEDORET (Mlle), Ingénieur agronome, Service de la protection des obtentions végétales et du Catalogue national des variétés, Ministère de l'agriculture, Manhattan Office Tower, 21, avenue du Boulevard, 1210 Bruxelles



CANADA/KANADA

Glenn HANSEN, Commissioner of Plant Breeders' Rights, Agriculture and Agri-Food Canada, Food Production Inspection Branch, Plant Industry Directorate, Camelot Court, 59 Camelot Drive, Nepean, Ontario K1A 0Y9

DANEMARK/DENMARK/DÄNEMARK

Flemming ESPENHAIN, Chairman, Plant Novelty Board, Plant Directorate, Ministry of Agriculture, Skovbrynet 20, 2800 Lyngby

ESPAGNE/SPAIN/SPANIEN

José M. ELENA ROSSELLO, Jefe de Área de Registro, Registro de Variedades, Instituto Nacional de Semillas y Plantas de Vivero, José Abascal 56, 28003 Madrid

ÉTATS-UNIS D'AMÉRIQUE/UNITED STATES OF AMERICA/VEREINIGTE STAATEN VON AMERIKA

H. Dieter HOINKES, Senior Counsel, United States Patent and Trademark Office, Office of Legislation & International Affairs, Washington, D.C. 20231

Alan A. ATCHLEY, Plant Variety Examiner, Plant Variety Protection Office, Department of Agriculture, Room 500, NAL Building, 10301 Baltimore Blvd., Beltsville, MD 20705

FINLANDE/FINLAND/FINNLAND

Arto VUORI, Director, Plant Variety Rights Office, Plant Variety Board, Ministry of Agriculture and Forestry, Liisankatu 8, 00170 Helsinki

FRANCE/FRANKREICH

Joseph ANCEL, Président, Comité de la protection des obtentions végétales (CPOV), Ministère de l'agriculture, 11, rue Jean Nicot, 75007 Paris

Nicole BUSTIN (Mlle), Secrétaire général, Comité de la protection des obtentions végétales (CPOV), Ministère de l'agriculture, 11, rue Jean Nicot, 75007 Paris

HONGRIE/HUNGARY/UNGARN

László DUHAY, Oberrat, National Office of Inventions, Garibaldi u. 2, 1054 Budapest

György MATÓK, Senior Technical Officer, National Institute for Agricultural Quality Control,  
P.O. Box 30.93, 1525 Budapest 114

IRLANDE/IRELAND/IRLAND

John V. CARVILL, Controller, Plant Breeders' Rights, Department of Agriculture, Food and  
Forestry, National Crop Variety Testing Centre, Backweston, Leixlip, Co. Kildare

ISRAEL

Shalom BERLAND, Legal Adviser, Registrar of Plant Breeders' Rights, Ministry of  
Agriculture, Arania St. 8, Hakiria, Tel Aviv 61070

ITALIE/ITALY/ITALIEN

Pasquale IANNANTUONO, Conseiller juridique, Service des accords de propriété  
intellectuelle, Ministère des affaires étrangères, Palazzo Farnesina, 00100 Rome

JAPON/JAPAN

Ryusuke YOSHIMURA, Advisor, Ministry of Agriculture, Forestry and Fisheries, 1-2-1  
Kasumigaseki, Chiyoda-ku, Tokyo

Hidenori MURAKAMI, Director, Seeds and Seedlings Division, Agricultural Production  
Bureau, Ministry of Agriculture, Forestry and Fisheries, 1-2-1 Kasumigaseki, Chiyoda-ku,  
Tokyo

Masashi HATAE, Assistant Director, Seeds and Seedlings Division, Agricultural Production  
Bureau, Ministry of Agriculture, Forestry and Fisheries, 1-2-1 Kasumigaseki, Chiyoda-ku,  
Tokyo

Eiryu SANATANI, First Secretary, Permanent Mission, 3, chemin des Fins, 1211 Geneva 19,  
Switzerland

NOUVELLE-ZÉLANDE/NEW ZEALAND/NEUSEELAND

Bill WHITMORE, Commissioner of Plant Variety Rights, Plant Variety Rights Office, P.O.  
Box 24, Lincoln

PAYS-BAS/NETHERLANDS/NIEDERLANDE

Bart P. KIEWIET, Chairman, Board for Plant Breeders' Rights, Postbus 104, 6700 AC Wageningen

Johan P. PLUIM MENTZ, Secretary, Board for Plant Breeders' Rights, Postbus 104, 6700 AC Wageningen

ROYAUME-UNI/UNITED KINGDOM/VEREINIGTES KÖNIGREICH

Richard J. STAWARD, Senior Executive Officer, Plant Variety Rights Office, White House Lane, Huntingdon Road, Cambridge CB3 0LF

SLOVAQUIE/SLOVAKIA/SLOWAKEI

Roman SUCHÝ, Chief of Multilateral Cooperation, Ministry of Agriculture, Dobrovicova 12, 812 66 Bratislava

Vladimir DOVICA, Third Secretary, Permanent Mission, 9, chemin de l'Ancienne-Route, 1218 Geneva, Switzerland

SUÈDE/SWEDEN/SCHWEDEN

Evan WESTERLIND, Head of Office, National Plant Variety Board, Box 1247, 171 24 Solna

SUISSE/SWITZERLAND/SCHWEIZ

Paul STEFFEN, Chef Forschungsstab, Bundesamt für Landwirtschaft, Mattenhofstraße 5, 3003 Bern

URUGUAY

Gustavo BLANCO DEMARCO, Director, Dirección de Semillas, Ministerio de Ganadería, Agricultura y Pesca, Avenida Millán 4703, 12.900 Montevideo

II. ÉTATS OBSERVATEURS/OBSERVER STATES/BEOBACHTERSTAATEN

BÉLARUS/BELARUS

Aleg IVANOU, Counsellor, Permanent Mission, 15, avenue de la Paix, 1211 Geneva, Switzerland

CHILI

Rosa MESSINA CRUZ (Sra.), Directora, Departamento Semillas, Servicio Agrícola y Ganadero, Ministerio de Agricultura, 140, Avenida Bulnes, Santiago

COLOMBIE/COLOMBIA/KOLUMBIEN

Juan C. ESPINOSA, Premier secrétaire, Mission permanente, 17-19, chemin du Champ-d'Anier, 1209 Genève, Suisse

FÉDÉRATION DE RUSSIE/RUSSIAN FEDERATION/RUSSISCHE FÖDERATION

Yurij A. ROGOVSKY, Deputy Chairman, State Commission for Selection Achievements Test and Protection, 3a, Orlikov per., 107139 Moscow

Tatjana GORPINCHENKO (Mrs.), Director, Centre for Quality Control of Plant Varieties, Listvenicnmaya Allee 6, 127550 Moscow

INDE/INDIA/INDIEN

Ramarao NUTHAKKI, Joint Secretary, Department of Agriculture and Co-operation, Ministry of Agriculture, Krishi Bhavan, New Delhi 110001

Mangala RAI, Assistant Director General, Policy and Perspective Planning, Indian Council for Agricultural Research, Ministry of Agriculture, Krishi Bhavan, New Delhi 110001

MEXIQUE/MEXICO/MEXIKO

Eréndira PAZ CAMPOS, Ministro, Misión Permanente, 10A, avenue de Budé, 1202 Geneva, Switzerland

PÉROU/PERU

Javier PRADO, Second Secretary, Permanent Mission, 63, rue de Lausanne, 1202 Geneva, Switzerland

RÉPUBLIQUE DE CORÉE/REPUBLIC OF KOREA/REPUBLIK KOREA

Jung-Ho KIM, Agricultural Counsellor, Permanent Mission, 20, route de Pré-Bois, 1215 Geneva 15, Switzerland

Yang Sup CHUNG, Counsellor, Permanent Mission, 20, route de Pré-Bois, 1215 Geneva 15, Switzerland

Young-Rack NAM, Division of Seed Production, Office of Seed Production and Distribution, 433 Anyang 6 Dong, Manan-Ku, Anyang-City, Kyunggi-Do, Seoul

Chong Seo PARK, Assistant Director, Division of Horticulture, Ministry of Agriculture, Forestry and Fisheries, Kyongi-Do, Gwa Chun City, Seoul

Dae-Geun OH, Plant Breeder, National Horticultural Research Institute, 540 Tap-Dong, Kwonson-Gu, Suwon 441-440

ROUMANIE/ROMANIA/RUMÄNIEN

Adriana PARASCHIV (Mrs.), Head of Division, Examination Department, State Office for Inventions and Trademarks, 5, Ion Ghica, Sector 3, 70018 Bucharest

Constanta MORARU (Mme), Conseiller juridique, Office d'État pour les inventions et les marques, 5, Ion Ghica, Secteur 3, 70018 Bucarest

III. BUREAU/OFFICERS/VORSITZ

Henning KUNHARDT, Vorsitzender  
H. Dieter HOINKES, Vice-Chairman

IV. BUREAU DE L'UPOV/OFFICE OF UPOV/BÜRO DER UPOV

Barry GREENGRASS, Vice Secretary-General  
André HEITZ, Director-Counsellor  
Max-Heinrich THIELE-WITTIG, Senior Counsellor  
Makoto TABATA, Senior Program Officer

[Fin du document/  
End of document/  
Ende des Dokuments]