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THE CONCEPT OF TREE AND VINE IN THE PROVISIONS ON NOVELTY AND  
DURATION OF PROTECTION

*Document prepared by the Office of the Union*

Introduction

1. The UPOV Convention treats trees and vines in a manner different from those plants that do not belong to the category of trees and vines with respect to two elements in the system of protection:

(a) Novelty. – A variety remains new if at the date of the application (or of priority) it has not been the subject of certain acts of exploitation abroad earlier than six years before that date in the case of trees or of vines or earlier than four years in the case of other plants (see Article 6(1)(b) of the 1978 Act and Article 6 of the 1991 Act).

(b) Minimum duration of protection. – In the 1978 Act, the term of protection is 18 years in the case of trees and vines and 15 years in the case of other plants (see Article 8) and, in the 1991 Act, 25 years in the case of trees and vines and 20 years in the case of other plants (see Article 19).

2. The present document has been drawn up as the result of an inquiry put in hand by the Australian Plant Breeders' Rights Office in view of the interest for all the member States of the interpretation of the words "tree" and "vine."

### The Concept of Tree

3. The concept of tree is more a matter of everyday usage than of scientific terminology. In everyday language, tree refers to a large size perennial woody plant normally having a single stem of varying length but generally large (trunk); ramification (branching) begins as from a certain height above the ground, but the trunk may also be surmounted by a crown of leaves as in the case of palms.

4. It would be vain to search for a closer definition since there is no clear-cut dividing line between trees and shrubs, the plant category immediately below. Of the other problems that arise, the following would seem the most significant:

(a) A plant may take the shape of a tree or a shrub depending on the natural or artificial growing conditions. Such is the case, for example, of the tea plant which is a tree in its natural state, but is kept as a shrub when cultivated.

(b) Some plants, known as arborescent plants, have the form of a tree without in fact being trees. Such is the case, for example, of various ferns or of the banana.

(c) Some plants are or may be wrongly considered as trees due to ignorance of their characteristics or for reasons of language. Such is the case, in particular, of bananas (banana tree in English or *Bananenbaum* in German).

5. It may be added, however, that for the needs of the plant variety protection system, the assimilation of certain plants, such as bamboo, to trees would not be altogether without reason.

### The Concept of Vine

6. The original French and German texts of the Convention refer to the plant of the genus *Vitis* that produces grapes, and more particularly to *Vitis vinifera*. The English text, on the other hand, is more ambiguous in that it uses the word “vines” (and what is more in the plural): that refers to the grapevine, but may also cover other - woody or herbaceous - climbing or creeping plants, or even herbaceous plants of spreading growth such as tomato or potato.

7. According to Article 41(1) of the 1991 Act of the Convention (and Article 42(1) of the 1978 Act), the French text prevails in the event of discrepancy between the texts. The extensive interpretation enabled by the English wording cannot therefore be accepted. However, plants such as wisteria (*Wisteria* Nutt.) strongly resemble vine in their morphology and it would be altogether justified to assimilate them to vine.

### Activities at UPOV Level

8. It is highly desirable that the words “tree” and “vine” be interpreted in the same way by all the member States of the Union. This is a matter both of the credibility of the system of protection at international level and also of the legal security of breeders.

9. In the view of the Office of the Union, activity should be undertaken at UPOV level with respect to the following points:

(a) The search for a common approach to the concepts of tree and vine: the aim would be to achieve a consensus, at a general level, on the types of plant to be included in the categories concerned or to be excluded from them. One approach could be to take decisions on a species-by-species basis, to rely on one or more reference works and finally, to adopt an extensive interpretation of the concept of tree to include those shrubs that are capable of taking the form of a tree. The aim would also be to decide special cases such as those of the arborescent ferns and the banana plants.

(b) Setting up a consultation and notification procedure: the aim would be to define the procedure to be followed to ensure that the initial request for information on the status of a given species or the first application for protection filed for a variety of a given species should lead, where appropriate, to consultation between the offices of the member States and to notification of the decision.

(c) Production and publication of a list of species considered to be included in the category of trees and vines: the UPOV CD-ROM would seem the proper medium for such information.

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