



CAJ/66/3

ORIGINAL: English

DATE: October 11, 2012

INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

Geneva

ADMINISTRATIVE AND LEGAL COMMITTEE

Sixty-Sixth Session
Geneva, October 29, 2012

VARIETY DENOMINATIONS

Document prepared by the Office of the Union

1. The Administrative and Legal Committee (CAJ) at its sixty-fifth session, held in Geneva on March 29, 2012, noted the report made at the forty-eighth session of the Technical Committee (TC), held in Geneva from March 26 to 28, 2012, by the Delegation of Japan that the International Commission for the Nomenclature of Cultivated Plants of the International Union for Biological Sciences (IUBS Commission) was in the process of initiating the revision of the International Code of Nomenclature for Cultivated Plants (ICNCP) at a meeting of the IUBS Commission to be held in Beijing, China in 2013. The CAJ agreed with the TC that the Office of the Union should contact the IUBS Commission in order to explain the guidance provided by UPOV in document UPOV/INF/12 "Explanatory notes on variety denominations under the UPOV Convention" (see document CAJ/65/12 "Report on the Conclusions", paragraph 72).

2. The Sixth International Symposium on the Taxonomy and Nomenclature of Cultivated Plants is scheduled to take place from July 15 to 18, 2013, in Beijing. The Symposium will be followed by a meeting of the IUBS Commission on July 19 and 20, 2013, where the IUBS Commission will consider all proposals to amend the Code that have been submitted prior to May 2013. Those proposals will be published in the journal "Hanburyana" and will also be made available electronically.

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BACKGROUND

3. The IUBS Commission is responsible for the adoption and revision of the International Code of Nomenclature for Cultivated Plants (ICNCP). A copy of the Eighth Edition of the ICNCP is posted on the CAJ/66 page of the website for information.

4. In 2000, UPOV initiated a revision of the "UPOV Recommendations on Variety Denominations" (document UPOV/INF/12 Rev.). That revision was undertaken by the CAJ, which established an *ad hoc* Working Group on Variety Denominations ("Working Group") to formulate proposals. In order to incorporate the views of breeders, the observers to the Working Group included the International Community of Breeders of Asexually Reproduced Ornamental and Fruit-Tree Varieties (CIOPORA) and the International Seed Federation (ISF). Furthermore, in order to seek to ensure international harmonization in variety denomination guidance, UPOV invited the IUBS Commission to contribute to the revision by participating as an observer in the Working Group. In October 2006, the Council of UPOV adopted the "Explanatory Notes on Variety Denominations under the UPOV Convention" (document UPOV/INF/12/1), which replaced the "UPOV Recommendations on Variety Denominations" (document UPOV/INF/12 Rev.). Since the adoption of UPOV/INF/12/1, UPOV has twice revised the document in order to introduce new variety denomination classes. The latest version is document UPOV/INF/12/3 (http://www.upov.int/edocs/infdocs/en/upov_inf_12_3.pdf).

5. The status of the UPOV Convention is recognized by the ICNCP, which clarifies in Principle 5 that:

[...]

"Under some national and international legislation such as that providing for National Listing or Plant Breeders' Rights (Plant Variety Rights), names may be established for taxa of plants using terminology peculiar to such legislation. This *Code* does not regulate the use of such terminology or the formation of such names but recognizes that, under such legislation, these names take precedence over names formed under the provisions of this *Code*."

That principle is reinforced by Appendix VIII of the ICNCP:

"1. CULTIVAR EPITHETS

"1 Has the plant to which the "epithet" is being applied been protected under a grant of Plant Breeders' Rights or an award of a Plant Patent? (Principle 5)
YES: → 34 NO: → 2

"[...]

"34 Has a statutory plant registration authority denominated a different epithet for the cultivar? (Principle 5)
NO: → 37 YES: → STOP REJECT AS NOT ACCEPTABLE: THE STATUTORY DENOMINATION IS AUTOMATICALLY THE ACCEPTED EPITHET."

6. The ICNCP also makes reference to the role of the members of the Union in Division IV "Registration of Names" and Appendix II "Directory of statutory plant registration authorities":

"DIVISION IV: REGISTRATION OF NAMES

"[...]

"3. A statutory plant registration authority is an organization established by national legal enactment or by international treaty, which, as part of its remit, establishes variety denominations or other names for plants (see Appendix II for a list of such statutory authorities). Names established by statutory plant registration authorities must be cited in the relevant register and checklist."

“APPENDIX II
“DIRECTORY OF STATUTORY PLANT REGISTRATION AUTHORITIES”

“For the latest details, users are referred to the webpages of the International Union for the Protection of New Varieties of Plants (Union internationale pour la protection des obtentions végétales; UPOV) at <http://www.upov.int>

[...]”

7. There is also recognition of the UPOV definition of variety (Article 1(vi) of the 1991 Act of the UPOV Convention) in Article 2 of the ICNCP, which states that:

[...]

“Note 4. Notwithstanding Art. 2.2, in certain national and international legislation or other legal conventions the word “variety” or its equivalent in other languages is a statutory or otherwise legal term used to denominate a proven variant that is distinct, uniform, and stable and is exactly equivalent to the word “cultivar” as defined in this Code.”

MEETING WITH MEMBERS OF THE IUBS COMMISSION

8. On October 8, 2012, the Office of the Union met with Mr. Christopher D. Brickell (Chairman of the IUBS Commission), Mr. John C. David (IUBS Commission member), Mr. Alan C. Leslie (IUBS Commission member) and Mr. James D. Armitage (Chairman of Hortax¹) at the Royal Horticultural Society, London.

9. The aim of the meeting was to review differences between the guidance on variety denominations provided by UPOV in document UPOV/INF/12/3 “Explanatory notes on variety denominations under the UPOV Convention” (UPOV Explanatory Notes on Variety Denominations) and the Rules and Recommendations in the ICNCP, in order to consider whether it would be important and feasible to seek harmonization and the mechanisms by which that might be achieved.

Potential Areas for Harmonization and Cooperation

10. In many instances, it was noted that the differences between the UPOV Explanatory Notes on Variety Denominations and ICNCP posed no practical problems for UPOV, ICNCP or breeders. In the following aspects, it was observed that greater harmonization might be beneficial.

Re-use of denominations / databases

11. Document UPOV/INF/12/3 states as follows:

“2.3.3 (c) In order to provide clarity and certainty in relation to variety denominations, the re-use of denominations is, in general, discouraged, since the re-use of a denomination, even where that relates to a variety which no longer exists (see section 2.4.2) may, nevertheless, cause confusion. In some limited cases an exception may be acceptable, for example a variety which was never commercialized, or was only commercialized in a limited way for a very short time. In those cases, a suitable period of time after discontinued commercialization of the variety would be required before the re-use of the denomination in order to avoid causing confusion in relation to the identity and/or the characteristics of the variety.” [...]

12. The ICNCP states as follows:

“30.2 An International Cultivar Registration Authority may only accept re-use of a cultivar, Group or grex epithet if that authority is satisfied that the original cultivar, Group, or grex (a) is no longer in cultivation, and (b) has ceased to exist as breeding material, and (c) may not be found in a gene or seed bank, and (d) is not a known component in the pedigree of other cultivars, Groups, or grexes, and (e) the name has rarely been used in publications, and (f) re-use is unlikely to cause confusion.”

¹ Hortax is a small committee of European plant taxonomists and horticulturists with a professional interest in the classification and nomenclature of cultivated plants (see <http://www.hortax.org.uk/>).

13. In discussions concerning the difference between the UPOV and ICNCP text it was noted that, although the ICNCP text is more stringent, the emphasis in the UPOV text was that the re-use of denominations was exceptional and should avoid causing confusion in relation to the identity and/or the characteristics of the variety. On that basis, it was concluded that, in practice, different decisions on re-use should be rare. However, the discussion also indicated that re-use of a denomination could occur through a lack of awareness of denominations in registers operated by International Cultivar Registration Authorities (ICRAs).

14. With regard to information on variety denominations, the Office of the Union reported on the recent decision by UPOV to make its Plant Variety Database (PLUTO) freely available on the UPOV website, thereby facilitating the checking of denominations of existing varieties considered within the UPOV system. It also explained that harmonized decisions on variety denominations within UPOV, and elsewhere, had been aided by the introduction of the UPOV code.

15. With regard to the availability of information from ICRA's, the Office of the Union recalled that cooperation between operators of databases containing information relevant for variety denomination purposes, such as the ICRAs, PlantScope (Netherlands), etc., was discussed at the Fifth International Symposium on the Taxonomy of Cultivated Plants, held in Wageningen, Netherlands, from October 15 to 19, 2007. At that symposium, the President of the International Association for Cultivated Plant Taxonomy (IACPT), Mr. Kees van Ettehoven (Netherlands), agreed to organize a meeting with relevant partners to discuss the development of a common search platform (see document CAJ/57/6, paragraph 20 and www.iacpt.net). Mr. van Ettehoven had subsequently agreed that it would be useful for UPOV to initiate such a meeting once UPOV was in a position to provide technical support for the development of a common search platform, as set out in the program for improvements to the UPOV-ROM Plant Variety Database (see document CAJ/61/6, paragraph 18).

16. At the meeting with members of the IUBS Commission on October 8, 2012, the Office of the Union explained that one of the concerns expressed by members of the Union about such an approach was that there would need to be a suitable form of quality assurance on the quality of data to be included in such a platform. The participants in the meeting noted the importance of that requirement and recalled that the International Society for Horticultural Science (ISHS) Commission for Nomenclature and Cultivar Registration (ISHS Commission) was responsible for the appointment of all ICRA's and for the monitoring of their work. Therefore, the Executive Committee of the ISHS Commission would have the possibility to play such a role in any initiative.

Denomination Classes

17. In October 2006, the adoption of document UPOV/INF/12/1, resulted in greater harmonization with the ICNCP with regard to the approach to denomination classes. Document UPOV/INF/12/1 introduced the concept of the General Rule (one genus / one class) for genera and species not covered by the List of Classes, whereby a genus is considered to be a class, with exceptions for: (i) classes within a genus; and (ii) classes encompassing more than one genus (see document UPOV/INF/12/3, Explanatory Note 2.5.2 and List of classes in Annex I). That approach is in accordance with ICNCP, Article 6.2, which states that:

"6.2 A denomination class under the provisions of this *Code* is a single genus or hybrid genus unless a special denomination class has been determined by the ISHS Commission for Nomenclature and Cultivar Registration (see Appendix V for the list of current denomination classes that are not a single genus or hybrid genus)."

18. The Office of the Union explained that the adoption of that approach had been accompanied by an intensive discussion on denomination classes, including an emphasis on reducing the number of "exceptional" classes to those that were clearly justified. It was also noted that, since 2006, a small number of additional "exceptional" classes had been introduced to reflect breeding and taxonomic developments. The Office of the Union offered to explain the rationale for the UPOV "exceptional" classes to the ISHS Commission with a view to achieving greater harmonization between the two sets of denomination classes.

Relationship between UPOV and IUBS

19. The IUBS Commission has observer status in the UPOV Council (<http://www.upov.int/members/en/observers.html>). However, the nature of responsibilities within the IUBS

Commission has meant that the focal point has changed without UPOV being informed, as a result of which the IUBS Commission has been unaware of developments in UPOV.

20. Currently, UPOV does not have observer status with the IUBS Commission, which is why UPOV was unaware of the plans for the Sixth International Symposium on the Nomenclature of Cultivated Plants.

POSSIBLE NEXT STEPS

21. On the basis of discussions at the meeting on October 8, 2012, the following steps were considered, subject to agreement by the CAJ:

(a) Members of the IUBS Commission and the Office of the Union to draft a brief, joint notice for publication in *Hanburyana*² in order to inform the Sixth International Symposium on the Nomenclature of Cultivated Plants of the areas where greater cooperation and harmonization between UPOV and the IUBS Commission could be beneficial, on the basis set out above;

(b) Members of the IUBS Commission to approach Ms. Janet Cubey, Chairperson of the ISHS Commission with a view to UPOV organizing a meeting with ISHS and other relevant partners to discuss denomination classes and the concept of a common search platform for variety denomination searching purposes;

(c) Members of the IUBS Commission to inform UPOV of appropriate contact details for the IUBS Commission;

(d) Members of the IUBS Commission to consider how to initiate the process for UPOV to have observer status in the IUBS Commission; and

(e) further meetings, preferably using web conferencing, between members of the IUBS Commission, ISHS Commission and the Office of the Union, as necessary, in order to advance the points in (a) to (d).

22. The CAJ is invited to approve the steps proposed in paragraph 20.

[End of document]

² *Hanburyana*, published annually by the RHS Science Department, is a serial dedicated to horticultural taxonomy (see <http://www.rhs.org.uk/Plants/RHS-Publications/Journals/Hanburyana>). John David is the Editor.