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|  |  | E  CAJ/70/2  **ORIGINAL:** English  DATE: September 10, 2014 |
| INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS | | |
| Geneva | | |

ADministrative and legal committee

Seventieth Session  
Geneva, October 13, 2014

Development of information materials concerning the UPOV Convention

Document prepared by the Office of the Union  
  
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**Executive Summary[[1]](#endnote-2)**

The purpose of this document is to provide a report for information on the program for the development of information materials.

In particular the document reports that:

1. new drafts of explanatory notes concerning propagation and propagating material, harvested material, essentially derived varieties, cancellation, nullity, variety denominations and provisional protection were circulated in May 2014, and comments were received by CAJ members and observers; on the basis of comments received, new drafts of the above explanatory notes will be posted by August 29, 2014, which will be considered by the CAJ-AG, at its ninth session to be held on October 14 and 17, 2014; a report on the work of the CAJ-AG, at its ninth session, will be presented to the CAJ, at its seventy-first session, to be held in March 2015; and
2. the Spanish, French and German versions of the proceedings of the “Seminar on essentially derived varieties”, (UPOV Publication No. 358) held in Geneva on October 22, 2013, have now been posted on the UPOV website (<http://www.upov.int/meetings/en/details.jsp?meeting_id=29782>).

The document further reports that developments concerning the following matters are not considered in this document, but in documents CAJ/70/3 and CAJ/70/5, respectively:

1. developments concerning the revision of document UPOV/INF/5 “UPOV Model Plant Breeders’ Rights Gazette” (see document CAJ/70/3); and
2. developments concerning the revision of document UPOV/INF/15 “Guidance for Members of UPOV on Ongoing Obligations and Related Notifications and on the Provision of Information to Facilitate Cooperation” (see document CAJ/70/5).

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# BACKGROUND

The CAJ[[2]](#footnote-2) agreed an approach for the preparation of information materials concerning the UPOV Convention[[3]](#footnote-3). 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[[4]](#footnote-4).

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.

# OVERVIEW OF THE DEVELOPMENT OF INFORMATION MATERIALS

An overview of the development of the information materials is provided in the Annex to this document.

# MATTERS TO BE CONSIDERED BY THE CAJ-AG AT ITS NINTH SESSION

The CAJ[[5]](#footnote-5) approved the work program for the development of information materials for the ninth session[[6]](#footnote-6) of the CAJ‑AG[[7]](#footnote-7).

The CAJ agreed that the following new drafts of explanatory notes be provided to the CAJ-AG by May 9, 2014, and that CAJ members and observers would also be given the opportunity to provide comments[[8]](#footnote-8):

Explanatory Notes on Essentially Derived Varieties under the 1991 Act of the UPOV Convention (document UPOV/EXN/EDV/2 Draft 4)

Comments were received from Argentina, Norway, the Association for Plant Breeding for the Benefit of Society (APBREBES), the International Community of Breeders of Asexually Reproduced Ornamental and Fruit Varieties (CIOPORA), CropLife International and the European Seed Association (ESA).

Explanatory Notes on Propagation and Propagating Material under the UPOV Convention (document UPOV/EXN/PPM Draft 2)

Comments were received from New Zealand, APBREBES, CIOPORA, CropLife International and ESA.

Explanatory Notes on Acts in Respect of Harvested Material under the 1991 Act of the UPOV Convention (document UPOV/EXN/HRV/2 Draft 1)

Comments were received from Argentina, the Russian Federation, the United States of America, APBREBES, CIOPORA, CropLife International and ESA.

Explanatory Notes on Cancellation of the Breeder's Right under the UPOV Convention (document UPOV/EXN/CAN/2 Draft 1)

Comments were received from New Zealand and CropLife International.

Explanatory Notes on Nullity of the Breeder's Right under the UPOV Convention (document UPOV/EXN/NUL/2 Draft 1)

Comments were received from ESA.

Explanatory Notes on Variety Denominations under the UPOV Convention (document UPOV/INF/12/5 Draft 1)

Comments were received from Argentina, New Zealand, APBREBES and ESA.

Explanatory Notes on Provisional Protection under the UPOV Convention (document UPOV/EXN/PRP/2 Draft 1)

Comments were received from CropLife International.

The above comments and explanatory notes are available at the CAJ-AG/13 section under “Consideration by Correspondence”: <http://www.upov.int/meetings/en/details.jsp?meeting_id=29783>.

On the basis of the comments received, new drafts of the above explanatory notes have been posted on September 10, 2014 and will be considered by the CAJ-AG at its ninth session. CAJ members and observers have been notified accordingly.[[9]](#footnote-9)

The draft agenda of the CAJ-AG for the ninth session is contained in document CAJ-AG/14/9/1 (reproduced below):

1. Opening of the session
2. Adoption of the agenda
3. Essentially Derived Varieties

(a) Explanatory Notes on Essentially Derived Varieties under the 1991 Act of the UPOV Convention (Revision) (documents CAJ-AG/14/9/2 and UPOV/EXN/EDV/2 Draft 5)

(b) Possible alternative dispute settlement mechanisms for essentially derived varieties (document CAJ-AG/14/9/3)

1. Explanatory Notes on Propagation and Propagating Material under the UPOV Convention (document UPOV/EXN/PPM/1 Draft 3)
2. Explanatory Notes on Acts in Respect of Harvested Material under the 1991 Act of the UPOV Convention (Revision) (document UPOV/EXN/HRV/2 Draft 2)
3. Explanatory Notes on Cancellation of the Breeder's Right under the UPOV Convention (Revision) (document UPOV/EXN/CAN/2 Draft 2)
4. Explanatory Notes on Nullity of the Breeder's Right under the UPOV Convention (Revision) (document UPOV/EXN/NUL/2 Draft 2)
5. Explanatory Notes on Variety Denominations under the UPOV Convention (Revision) (document UPOV/INF/12/5 Draft 2)
6. Matters concerning variety descriptions (document CAJ-AG/14/9/4)
7. Explanatory Notes on Provisional Protection under the UPOV Convention (Revision) (document UPOV/EXN/PRP/2 Draft 2)
8. Matters concerning observers in the CAJ-AG (document CAJ-AG/14/9/5)
9. Matters referred by the CAJ to the CAJ-AG for consideration since the eighth session of the CAJ-AG
10. Date and program for the tenth session

The CAJ may wish to note that a further review of document UPOV/INF/12 “Explanatory Notes on Variety Denominations under the UPOV Convention” might be necessary in relation to the development of an effective UPOV similarity search tool. The latest developments concerning this topic are provided in document CAJ/70/4 “Variety Denominations”.

A report on the work of the CAJ-AG, at its ninth session, will be presented to the CAJ, at its seventy‑first session, to be held in March 2015.

# UPDATING OF DOCUMENT UPOV/INF/5 “UPOV MODEL PLANT BREEDERS’ RIGHTS GAZETTE”

Developments concerning the revision of document UPOV/INF/5 “UPOV Model Plant Breeders’ Rights Gazette” are provided in document CAJ/70/3.

# REVISION OF DOCUMENT UPOV/INF/15 “GUIDANCE FOR MEMBERS OF UPOV ON ONGOING OBLIGATIONS AND RELATED NOTIFICATIONS AND ON THE PROVISION OF INFORMATION TO FACILITATE COOPERATION”

The latest developments concerning the revision of document UPOV/INF/15 “Guidance for Members of UPOV on Ongoing Obligations and Related Notifications and on the Provision of Information to Facilitate Cooperation” are provided in document CAJ/70/5.

# PROCEEDINGS OF THE SEMINAR ON ESSENTIALLY DERIVED VARIETIES IN FRENCH, GERMAN AND SPANISH

The Seminar on Essentially Derived Varieties was held in Geneva, on October 22, 2013. The English version of the Proceedings (Publication 358) became available in February 2014.[[10]](#footnote-10)

Publication 358 in French, German and Spanish has been posted on the UPOV website (<http://www.upov.int/meetings/en/details.jsp?meeting_id=29782>).

The CAJ is invited to note that:

1. new drafts of explanatory notes concerning propagation and propagating material, harvested material, essentially derived varieties, cancellation, nullity, variety denominations and provisional protection were circulated in May 2014, and comments were received by CAJ members and observers, as set out in paragraphs 9 to 16 above;
2. on the basis of comments received, new drafts of the above explanatory notes have been posted on September 10, 2014, to be considered by the CAJ-AG, at its ninth session to be held on October 14 and 17, 2014;
3. a further review of document UPOV/INF/12 “Explanatory Notes on Variety Denominations under the UPOV Convention” might be necessary in relation to the development of an effective UPOV similarity search tool (see document CAJ/70/4);
4. a report on the work of the CAJ-AG, at its ninth session, will be presented to the CAJ, at its seventy-first session, to be held in March 2015;
5. developments concerning the revision of document UPOV/INF/5 “UPOV Model Plant Breeders’ Rights Gazette” are provided in document CAJ/70/3;

(f) developments concerning the revision of document UPOV/INF/15 “Guidance for Members of UPOV on Ongoing Obligations and Related Notifications and on the Provision of Information to Facilitate Cooperation” are provided in document CAJ/70/5; and

(g) the Spanish, French and German versions of the proceedings of the “Seminar on essentially derived varieties”, (UPOV Publication No. 358) held in Geneva on October 22, 2013, have now been posted on the UPOV website <http://www.upov.int/meetings/en/details.jsp?meeting_id=29782>).

[Annex follows]

CAJ/70/2

ANNEX

OVERVIEW OF THE DEVELOPMENT OF INFORMATION MATERIALS

EXPLANATORY NOTES

|  |  |  |
| --- | --- | --- |
| Reference | Explanatory Notes on: | Status |
| UPOV/EXN/BRD | Definition of Breeder under the 1991 Act of the UPOV Convention | UPOV/EXN/BRD/1 adopted in October 2013 |
| UPOV/EXN/CAL | Conditions and Limitations Concerning the Breeder’s Authorization in Respect of Propagating Material under the UPOV Convention | UPOV/EXN/CAL/1 adopted in October 2010 |
| UPOV/EXN/CAN | Cancellation of the Breeder’s Right under the UPOV Convention | UPOV/EXN/CAN/1 adopted in October 2009  UPOV/EXN/CAN/2 Draft 1 considered by the CAJ-AG by correspondence  UPOV/EXN/CAN/2 Draft 2 to be considered by the CAJ-AG in October 2014 |
| UPOV/EXN/EDV | Essentially Derived Varieties under the 1991 Act of the UPOV Convention | UPOV/EXN/EDV/1 adopted in October 2009  UPOV/EXN/EDV/2 Draft 4 considered by the CAJ-AG by correspondence  UPOV/EXN/EDV/2 Draft 5 to be considered by the CAJ-AG in October 2014 |
| UPOV/EXN/ENF | Enforcement of Breeders’ Rights under the UPOV Convention | UPOV/EXN/ENF/1 adopted in October 2009 |
| UPOV/EXN/EXC | Exceptions to the Breeder’s Right under the 1991 Act of the UPOV Convention | UPOV/EXN/EXC/1 adopted in October 2009 |
| UPOV/EXN/GEN | Genera and Species to be Protected under the 1991 Act of the UPOV Convention | UPOV/EXN/GEN/1 adopted in October 2009 |
| UPOV/EXN/HRV | Acts in Respect of Harvested Material under the 1991 Act of the UPOV Convention | UPOV/EXN/HRV/1 adopted in October 2013  UPOV/EXN/HRV/2 Draft 1 considered by the CAJ-AG by correspondence  UPOV/EXN/HRV/2 Draft 2 to be considered by the CAJ-AG in October 2014 |
| UPOV/EXN/NAT | National Treatment under the 1991 Act of the UPOV Convention | UPOV/EXN/NAT/1 adopted in October 2009 |
| UPOV/EXN/NOV | Novelty under the UPOV Convention | UPOV/EXN/NOV/1 adopted in October 2009 |
| UPOV/EXN/NUL | Nullity of the Breeder’s Right under the UPOV Convention | UPOV/EXN/NUL/1 adopted in October 2009  UPOV/EXN/NUL/2 Draft 1 considered by the CAJ-AG by correspondence  UPOV/EXN/NUL/2 Draft 2 to be considered by the CAJ-AG in October 2014 |
| UPOV/EXN/PPM | Propagation and Propagating Material under the UPOV Convention | UPOV/EXN/PPM Draft 2 considered by the CAJ-AG by correspondence  UPOV/EXN/PPM/1 Draft 3 to be considered by the CAJ-AG in October 2014 |
| UPOV/EXN/PRI | Right of Priority under the UPOV Convention | UPOV/EXN/PRI/1 adopted in October 2009 |
| UPOV/EXN/PRP | Provisional Protection under the UPOV Convention | UPOV/EXN/PRP/1 adopted in October 2009 UPOV/EXN/PRP/2 Draft 1 considered by the CAJ-AG by correspondence  UPOV/EXN/PRP/2 Draft 2 to be considered by the CAJ-AG in October 2014 |
| UPOV/EXN/VAR | Definition of Variety under the 1991 Act of the UPOV Convention | UPOV/EXN/VAR/1 adopted in October 2010 |

INFORMATION DOCUMENTS

|  |  |  |
| --- | --- | --- |
| Latest reference | INF documents | Status |
| UPOV/INF-EXN | List of UPOV/INF-EXN Documents and Latest Issue Dates | UPOV/INF-EXN/5 adopted in October 2013 UPOV/INF-EXN/6 Draft 1 to be considered by the Council in October 2014 |
| UPOV/INF/4 | Financial Regulations and Rules of UPOV | UPOV/INF/4/3 adopted in March 2013 |
| UPOV/INF/5 | UPOV model plant breeders' rights gazette | UPOV/INF/5 adopted in October 1979  (Revision of document UPOV/INF/5 to be considered by the CAJ in March 2015 – see document CAJ/70/3) |
| UPOV/INF/6 | Guidance for the preparation of laws based on the 1991 Act of the UPOV Convention | UPOV/INF/6/3 adopted in October 2013 |
| UPOV/INF/7 | Rules of Procedure of the Council | UPOV/INF/7 adopted in October 1982 |
| UPOV/INF/8 | Agreement between the World Intellectual Property Organization and the International Union for the Protection of New Varieties of Plants | UPOV/INF/8 signed in November 1982 |
| UPOV/INF/9 | Agreement between the International Union for the Protection of New Varieties of Plants and the Swiss Federal Council to Determine the Legal Status in Switzerland of that Union (Headquarters Agreement) | UPOV/INF/9 signed in November 1983 |
| UPOV/INF/10 | Internal Audit | UPOV/INF/10/1 adopted in October 2010 |
| UPOV/INF/12 | Explanatory Notes on Variety Denominations under the UPOV Convention | UPOV/INF/12/4 adopted in November 2012  UPOV/INF/12/5 Draft 1 to be considered by the CAJ-AG by correspondence  UPOV/INF/12/5 Draft 2 to be considered by the CAJ-AG in October 2014 |
| UPOV/INF/13 | Guidance on how to become a member of UPOV | UPOV/INF/13/1 adopted in October 2009 |
| UPOV/INF/14 | Guidance for members of UPOV on how to ratify, or accede to, the 1991 Act of the UPOV Convention | UPOV/INF/14/1 adopted in October 2009 |
| UPOV/INF/15 | Guidance for Members of UPOV on Ongoing Obligations and Related Notifications | UPOV/INF/15/2 adopted in March 2013  (Revision of document UPOV/INF/15 to be considered by the CAJ in October 2014 - documents CAJ/70/5 and UPOV/INF/15/3 Draft 1) |
| UPOV/INF/16 | Exchangeable Software | UPOV/INF/16/3 adopted in October 2013 (Adoption of document UPOV/INF/16/4 to be considered by the Council in October 2014 – see document UPOV/INF/16/4 Draft 1) |
| UPOV/INF/17 | Guidelines for DNA-Profiling: Molecular Marker Selection and Database Construction (“BMT Guidelines”) | UPOV/INF/17/1 adopted in October 2010 |
| UPOV/INF/18 | Possible use of Molecular Markers in the Examination of Distinctness, Uniformity and Stability (DUS) | UPOV/INF/18/1 adopted in October 2011 |
| UPOV/INF/19 | Rules governing the granting of observer status to States, intergovernmental organizations and international non-governmental organizations in UPOV bodies | UPOV/INF/19/1 adopted in November 2012 |
| UPOV/INF/20 | Rules governing access to UPOV documents | UPOV/INF/20/1 adopted in November 2012 |
| UPOV/INF/21 | Alternative Dispute Settlement Mechanisms | UPOV/INF/21/1 adopted in November 2012 |
| UPOV/INF/22 | Software and Equipment Used by Members of the Union | UPOV/INF/22/1 Draft 1 to be considered by the Council in October 2014 |

[End of Annex and of document]

1. The CAJ, at its sixty-ninth session, held in Geneva on April 10, 2014, agreed to consider the possibility to modify CAJ documents in order to:

   * include an executive summary
   * make reference to previous documents in footnotes
   * use presentations
   * combine decision paragraphs relating to matters for information.

   The CAJ requested the Office of the Union to develop examples for consideration by the CAJ at its seventieth session and to provide information on resource implication for the Office of the Union (see document CAJ/69/12 “Report on the Conclusions”, paragraphs 95 and 96).

   This document is intended to provide an example. Information on resource implication for the Office of the Union would be provided in a document for consideration at the CAJ session in March 2015. [↑](#endnote-ref-2)
2. At its fifty-second session, held in Geneva on October 24, 2005. [↑](#footnote-ref-2)
3. See document CAJ/52/4” Approach for the development of information materials concerning the UPOV Convention”, paragraphs 8 to 10. [↑](#footnote-ref-3)
4. See document CAJ/52/4, paragraphs 11 to 14 and document CAJ/52/5 “Report”, paragraph 67. [↑](#footnote-ref-4)
5. At its sixty-ninth session, held in Geneva on April 10, 2014. [↑](#footnote-ref-5)
6. To be held on October 14 and 17, 2014. [↑](#footnote-ref-6)
7. See document CAJ/69/2” development of information materials concerning the UPOV Convention”, paragraphs 65 and 66, and document CAJ/69/12 “Report on the Conclusions”, paragraph 26. [↑](#footnote-ref-7)
8. See document CAJ/69/12 “Report on the Conclusions”, paragraph 27 and UPOV Circulars E-14/128 of May 12, 2014, E-14/136 of May 20, 2014, and E-14/143 of May 23, 2014. [↑](#footnote-ref-8)
9. See document CAJ/69/12 “Report on the Conclusions”, paragraph 28. [↑](#footnote-ref-9)
10. See UPOV Circular E-14/038 of February 25, 2014. [↑](#footnote-ref-10)