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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**Disclaimer: this document does not represent UPOV policies or guidance***Executive Summary^a**

1. The purpose of this document is to provide a report for information on the program for the development of information materials.
2. In particular the document reports that:
 - (a) 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
 - (b) 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).
3. 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:
 - (a) developments concerning the revision of document UPOV/INF/5 "UPOV Model Plant Breeders' Rights Gazette" (see document CAJ/70/3); and
 - (b) 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

4. The CAJ¹ agreed an approach for the preparation of information materials concerning the UPOV Convention². It also agreed to the establishment of an advisory group to the CAJ (CAJ-AG) to assist in the preparation of documents concerning such materials³.

5. 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

6. 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

7. The CAJ⁴ approved the work program for the development of information materials for the ninth session⁵ of the CAJ-AG⁶.

8. 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 comments⁷:

¹ At its fifty-second session, held in Geneva on October 24, 2005.

² See document CAJ/52/4 "Approach for the development of information materials concerning the UPOV Convention", paragraphs 8 to 10.

³ See document CAJ/52/4, paragraphs 11 to 14 and document CAJ/52/5 "Report", paragraph 67.

⁴ At its sixty-ninth session, held in Geneva on April 10, 2014.

⁵ To be held on October 14 and 17, 2014.

⁶ 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.

⁷ 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.

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

9. Comments were received from Argentina, Norway, the Association for Plant Breeding for the Benefit of Society (APBEBES), the International Community of Breeders of Asexually Reproduced Ornamental and Fruit Varieties (CIOFORA), 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)

10. Comments were received from New Zealand, APBEBES, CIOFORA, 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)

11. Comments were received from Argentina, the Russian Federation, the United States of America, APBEBES, CIOFORA, CropLife International and ESA.

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

12. 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)

13. Comments were received from ESA.

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

14. Comments were received from Argentina, New Zealand, APBEBES and ESA.

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

15. Comments were received from CropLife International.

16. 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.

17. 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.⁸

18. 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)

⁸ See document CAJ/69/12 "Report on the Conclusions", paragraph 28.

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

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

19. 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".

20. 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"

21. 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"

22. 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

23. 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 2014.⁹

24. 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).

25. *The CAJ is invited to note that:*

(a) 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;

(b) 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;

(c) 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);

(d) 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;

(e) 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]

⁹ See UPOV Circular E-14/038 of February 25, 2014.

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

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- ^a 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.

[End of Annex and of document]