

**Administrative and Legal Committee****CAJ/75/6****Seventy-Fifth Session  
Geneva, October 31, 2018****Original:** English  
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**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**

1. The purpose of this document is to provide background information to assist the Administrative and Legal Committee (CAJ) in its consideration of relevant matters at its seventy-fifth session and to present a tentative program for the development of information materials.

2. The CAJ is invited to:

(a) note that information on the presentations on essentially derived varieties, conditions and limitations concerning the breeder's authorization in respect of propagating material and scope of provisional protection, is provided in documents CAJ/75/3, CAJ/75/4 and CAJ/75/5, respectively;

(b) note that there have been no developments concerning a possible meeting of the Office of the Union with CIOPORA, ISF and WIPO in order to explore the possible role of UPOV in alternative dispute settlement mechanisms for matters concerning essentially derived varieties, including the provision of experts on EDV matters;

(c) consider the revision of document UPOV/INF/5 "UPOV Model Plant Breeders' Rights Gazette" as set out in document UPOV/INF/5/2 Draft 1 "UPOV Model Plant Breeders' Rights Publication (Revision)";

(d) note that a report on the work concerning the possible development of a UPOV similarity search tool for variety denomination purposes and proposals concerning a possible revision of document UPOV/INF/12 "Explanatory Notes on Variety Denominations under the UPOV Convention" are provided in document CAJ/75/7 "Variety denominations"; and

(e) consider the program for the development of information materials in conjunction with the discussions under the item "Program for the seventy-sixth session".

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## INTRODUCTION

3. The CAJ, at its fifty-second session,<sup>1</sup> agreed an approach for the preparation of information materials concerning the UPOV Convention<sup>2</sup>. 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<sup>3</sup>. 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.

4. The CAJ, at its seventieth session,<sup>4</sup> agreed that all matters under consideration by the CAJ-AG at its ninth session<sup>5</sup> should, following the ninth session of the CAJ-AG, be considered by the CAJ and that the CAJ-AG should only be convened, on an *ad hoc* basis, as considered appropriate by the CAJ.<sup>6</sup>

## OVERVIEW OF THE DEVELOPMENT OF INFORMATION MATERIALS

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

## INFORMATION MATERIALS

6. At its seventy-fourth session,<sup>7</sup> the CAJ considered comments on document UPOV/EXN/EDV/2 "Explanatory Notes on Essentially Derived Varieties under the 1991 Act of the UPOV Convention", document UPOV/EXN/CAL/1 "Explanatory Notes on Conditions and Limitations Concerning the Breeder's Authorization in Respect of Propagating Material under the UPOV Convention" and document UPOV/EXN/PRP/2 "Explanatory Notes on Provisional Protection under the UPOV Convention". The background to those comments is provided in document CAJ/74/2 "Development of information materials concerning the UPOV Convention", paragraphs 6 to 29.

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<sup>1</sup> Held in Geneva on October 24, 2005.

<sup>2</sup> See document [CAJ/52/4](#) "Approach for the development of information materials concerning the UPOV Convention", paragraphs 8 to 10.

<sup>3</sup> See document [CAJ/52/4](#), paragraphs 11 to 14 and document [CAJ/52/5](#) "Report", paragraph 67.

<sup>4</sup> Held in Geneva on October 13, 2014.

<sup>5</sup> Held in Geneva on October 14 and 17, 2014.

<sup>6</sup> See document [CAJ/70/10](#) "Report on the Conclusions", paragraphs 38 to 41.

<sup>7</sup> Held in Geneva on October 23 and 24, 2017.

7. After discussion of the comments in document CAJ/74/2, the CAJ agreed to include in the program for its seventy-fifth session the following three items and to invite presentations by members and observers to share their perspectives on the indicated substantive matters:

“(a) Essentially Derived Varieties

- (i) essential characteristics
- (ii) predominantly derived
- (iii) indirect derivation, including in relation to parent lines and hybrids
- (iv) assessment of essentially derived varieties

(b) Conditions and Limitations Concerning the Breeder’s Authorization in Respect of Propagating Material

- suitable examples of conditions and limitations

(c) Scope of Provisional Protection.”

8. On the above basis, the CAJ will be invited to consider, at its seventy-fifth session, the need for a revision of the current guidance<sup>8</sup>. Information on the presentations on essentially derived varieties, conditions and limitations concerning the breeder’s authorization in respect of propagating material and scope of provisional protection, is provided in documents CAJ/75/3, CAJ/75/4 and CAJ/75/5, respectively.

9. The CAJ, at its seventy-fourth session, noted the request of the International Community of Breeders of Asexually Reproduced Ornamental and Fruit Varieties (CIOPORA) and the International Seed Federation (ISF) to postpone the meeting of the Office of the Union with CIOPORA, ISF and the World Intellectual Property Organization (WIPO) in order to explore the possible role of UPOV in alternative dispute settlement mechanisms for matters concerning essentially derived varieties, including the provision of experts on EDV matters. The CAJ noted that any developments with regard to a meeting would be reported at future sessions of the CAJ<sup>9</sup>. There is no development to report concerning this matter.

10. *The CAJ is invited to note:*

*(a) that information on the presentations on essentially derived varieties, conditions and limitations concerning the breeder’s authorization in respect of propagating material and scope of provisional protection, is provided in documents CAJ/75/3, CAJ/75/4 and CAJ/75/5, respectively; and*

*(b) that there have been no developments concerning a possible meeting of the Office of the Union with CIOPORA, ISF and WIPO in order to explore the possible role of UPOV in alternative dispute settlement mechanisms for matters concerning essentially derived varieties, including the provision of experts on EDV matters.*

#### UPOV Model Plant Breeders’ Rights Gazette (Revision)

11. The “UPOV Model Plant Breeders’ Rights Gazette” (document UPOV/INF/5) was adopted by the Council on October 18, 1979 (see document C/XIII/17, paragraphs 12 and 12a). A copy of document UPOV/INF/5 is available in the UPOV Collection (see [http://www.upov.int/upov\\_collection/en/](http://www.upov.int/upov_collection/en/)).

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<sup>8</sup> See document [CAJ/74/10](#) “Report”, paragraphs 10 and 11.

<sup>9</sup> See document [CAJ/74/10](#) “Report”, paragraph 9.

12. The CAJ, at its sixty-fourth session,<sup>10</sup> agreed that document UPOV/INF/5 should be updated in order to:

“(a) reflect the wording of the 1991 Act of the UPOV Convention and of documents recently adopted by the Council (e.g. UPOV Model Form for the Application of Plant Breeders’ Rights (document TGP/5 Section 2/3));

(b) address relevant developments in the formats of national/regional Gazettes of members of the Union; and

(c) simplify the structure of the document.”<sup>11</sup>

13. The CAJ, at its seventy-third session<sup>12</sup>, agreed to continue to defer the preparation of a draft revision of document UPOV/INF/5 “UPOV Model Plant Breeders’ Rights Gazette (Revision)” (document UPOV/INF/5/1 Draft 1), pending developments in relation to the development of a prototype electronic form (see document CAJ/73/4 “Electronic application form”).<sup>13</sup>

14. The Council, at its fiftieth ordinary session, held in Geneva on October 28, 2016, approved the launch of the Electronic Application Form (EAF) in January 2017.<sup>14</sup>

15. The CAJ, at its sixty-eighth session<sup>15</sup>, approved the amendments to the program for improvements to the PLUTO database (“Program”) (see document CAJ/69/6 “UPOV Information Databases”, Annex I).<sup>16</sup>

16. The CAJ, at its seventy-fourth session<sup>17</sup>, requested the Office of the Union to prepare proposals, for consideration by the CAJ, at its seventy-fifth session, for the revision of document UPOV/INF/5 “UPOV Model Plant Breeders’ Rights Gazette (Revision)”, taking into consideration matters for updating identified by the CAJ at its sixty-fourth session and reflecting developments concerning the EAF, and relevant fields of the PLUTO Database, as follows:

(a) reflect the wording of the 1991 Act of the UPOV Convention and of documents recently adopted by the Council (e.g. UPOV Model Form for the Application of Plant Breeders’ Rights (document TGP/5 Section 2/3) and developments concerning the Electronic Application Form (EAF));

(b) address relevant developments in the formats of national/regional Gazettes of members of the Union and relevant fields of the PLUTO Database as an additional tool to inform the public of information concerning applications for and grants of breeders’ rights, and proposed and approved denominations;

(c) simplify the structure of the document.<sup>18</sup>

17. Taking into consideration the different means (i.e. paper and/or electronic) used by members of the Union to inform the public on matters concerning breeders’ rights including electronic publications, it is proposed to change the title for the revised version of document UPOV/INF/5 by replacing the word “Gazette” by the word “Publication”, to read as follows: “UPOV Model Plant Breeders’ Rights Publication”.

18. As document UPOV/INF/5/2 Draft 1, “UPOV Model Plant Breeders’ Rights Publication” has been prepared following a simplified structure and the developments identified in paragraph 16 above, the proposals are not presented in revision mode.

*19. The CAJ is invited to consider the revision of document UPOV/INF/5 “UPOV Model Plant Breeders’ Rights Gazette” as set out in document UPOV/INF/5/2 Draft 1 “UPOV Model Plant Breeders’ Rights Publication (Revision)”.*

<sup>10</sup> Held in Geneva on October 17, 2011.

<sup>11</sup> See document [CAJ/64/2](#) “Development of Information Materials Concerning the UPOV Convention”, paragraph 8.

<sup>12</sup> Held in Geneva on October 25, 2016.

<sup>13</sup> See document [CAJ/73/10](#) “Report on the Conclusions”, paragraph 21.

<sup>14</sup> See document [C/50/20](#) “Report”, paragraph 10(d).

<sup>15</sup> Held in Geneva on October 21, 2013.

<sup>16</sup> See document [CAJ/68/10](#) “Report on the Conclusions”, paragraphs 23 to 26.

<sup>17</sup> Held in Geneva on October 23 and 24, 2017.

<sup>18</sup> See document [CAJ/74/10](#) “Report”, paragraph 12.

Explanatory Notes on Variety Denominations under the UPOV Convention (Revision)

20. The CAJ is invited to note that a report on the work concerning the possible development of a UPOV similarity search tool for variety denomination purposes and proposals concerning a possible revision of document UPOV/INF/12 "Explanatory Notes on Variety Denominations under the UPOV Convention" is provided in document CAJ/75/7 "Variety denominations"<sup>19</sup>.

*21. The CAJ is invited to note that a report on the work concerning the possible development of a UPOV similarity search tool for variety denomination purposes and proposals concerning a possible revision of document UPOV/INF/12 "Explanatory Notes on Variety Denominations under the UPOV Convention" are provided in document CAJ/75/7 "Variety denominations".*

TENTATIVE PROGRAM FOR THE DEVELOPMENT OF INFORMATION MATERIALS

22. The CAJ is invited to consider the program for the development of information materials, as proposed in the Annex to this document, on the basis of the conclusions at its seventy-fifth session on the matters raised above, and in conjunction with the discussions under the item "Program for the seventy-sixth session".

*23. The CAJ is invited to consider the program for the development of information materials in conjunction with the discussions under the item "Program for the seventy-sixth session".*

[Annex follows]

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<sup>19</sup> See document CAJ/74/10 "Report", paragraph 13.

## 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 <i>The need for a revision will be considered by the CAJ in October 2018</i>
UPOV/EXN/CAN	Cancellation of the Breeder's Right under the UPOV Convention	UPOV/EXN/CAN/2 adopted in October 2015
UPOV/EXN/EDV	Essentially Derived Varieties under the 1991 Act of the UPOV Convention	UPOV/EXN/EDV/2 adopted in April 2017 <i>The need for a revision will be considered by the CAJ in October 2018</i>
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/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/2 adopted in October 2015
UPOV/EXN/PPM	Propagating Material under the 1991 Act of the UPOV Convention	UPOV/EXN/PPM/1 adopted in April 2017
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/2 adopted in October 2015 <i>The need for a revision will be considered by the CAJ in October 2018</i>
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/11 adopted in October 2017 <i>UPOV/INF-EXN/12 Draft 1 to be considered by the Council in November 2018</i>
UPOV/INF/4	Financial Regulations and Rules of UPOV	UPOV/INF/4/4 adopted in March 2015 <i>UPOV/INF/4/5 Draft 1 to be considered by the Council in November 2018</i>
UPOV/INF/5	UPOV model plant breeders' rights gazette	UPOV/INF/5 adopted in October 1979 UPOV/INF/5/2 Draft 1 to be considered by the CAJ in October 2018
UPOV/INF/6	Guidance for the preparation of laws based on the 1991 Act of the UPOV Convention	UPOV/INF/6/5 adopted in April 2017
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/12/5 adopted in October 2015 <i>UPOV/EXN/DEN/1 Draft 1 to be considered by the WG-DEN in October 2018</i>
UPOV/INF/13	Guidance on how to become a member of UPOV	UPOV/INF/13/2 adopted in October 2017
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/15/3 adopted in March 2015
UPOV/INF/16	Exchangeable Software	UPOV/INF/16/7 adopted in October 2017 UPOV/INF/16/8 Draft 1 to be considered by the CAJ and the Council in November 2018
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/22/4 adopted in October 2017 <i>UPOV/INF/22/5 Draft 1 to be considered by the CAJ and the Council in November 2018</i>

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