

Administrative and Legal Committee

CAJ/77/6

**Seventy-Seventh Session
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to be considered by correspondence

NOVELTY OF PARENT LINES WITH REGARD TO THE EXPLOITATION OF THE HYBRID VARIETY

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 present the status of the novelty of parent lines in relation to exploitation of the hybrid in members of the Union based on the replies to a survey issued by Circular E-19/232 of December 23, 2019 and to invite the Administrative and Legal Committee (CAJ) to consider a proposal to provide an explanation on that topic in the “Explanatory Notes on Novelty under the UPOV Convention” (document [UPOV/EXN/NOV/1](#)).
2. The CAJ is invited to:
 - (a) note the replies to the survey to explore the status of the novelty of parent lines in relation to exploitation of the hybrid in members of the Union, as presented in this document and its Annexes; and
 - (b) consider the proposal to provide an explanation on this topic, as set out in paragraph 12.

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BACKGROUND

3. The Administrative and Legal Committee (CAJ), at its seventy-sixth session¹, noted that the Office of the Union had received a number of requests for clarification concerning the novelty of parent lines in relation to exploitation of the hybrid. The CAJ agreed that the Office of the Union should send a survey to explore the status of that matter in members of the Union. Based on the replies to the survey, the Office of the Union would prepare a document providing information from the survey and, if appropriate, proposals to explore the development of guidance on that topic (see document CAJ/76/9 “Report”, paragraph 55).

¹ Held in Geneva on October 30, 2019.

REPLIES TO THE SURVEY ON THE NOVELTY OF PARENT LINES IN RELATION TO EXPLOITATION OF THE HYBRID

4. On December 23, 2019, the Office of the Union issued Circular E-19/232² with an invitation to the members of the Union to complete a survey to explore the status of the novelty of parent lines in relation to exploitation of the hybrid in members of the Union.

5. The survey on novelty of parent lines with regard to the exploitation of the hybrid variety was provided in Appendix II of Circular E-19/232 (reproduced in Annex I to this document), as follows:

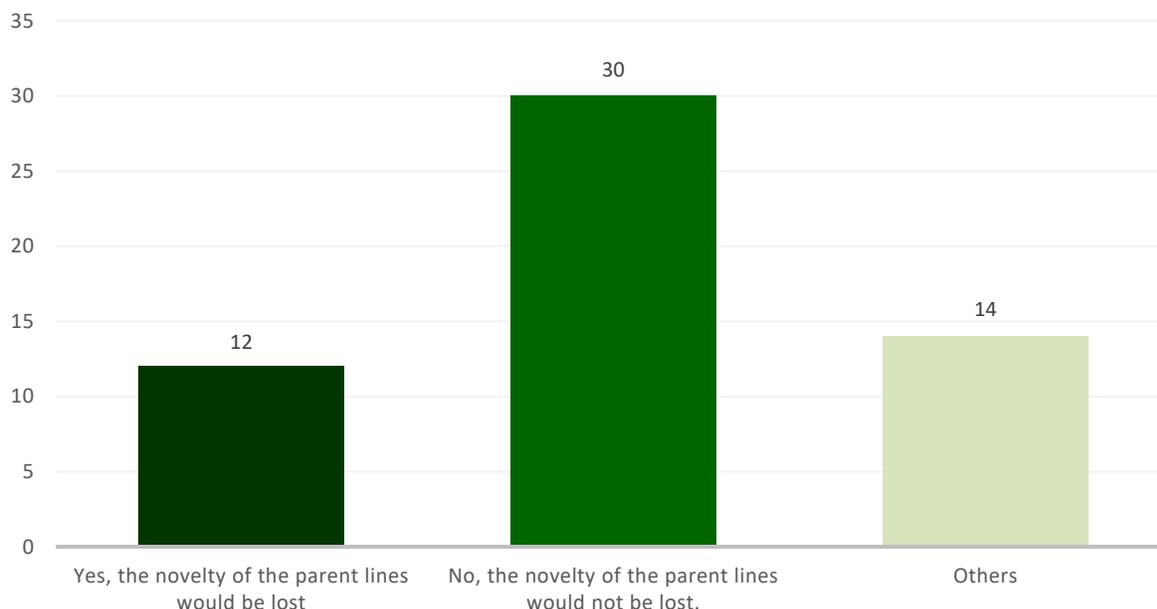
“In accordance with the legislation and or policy governing breeders’ rights of [UPOV member] , if the hybrid has been [sold or otherwise disposed of to others, by or with the consent of the breeder, for purposes of exploitation of the variety]¹ / [offered for sale or marketed, with the agreement of the breeder]², beyond the relevant period,³ would the novelty of the parental lines of that hybrid variety be lost?”

6. The Office of the Union received contributions in reply to the survey from the following members: African Intellectual Property Organization (OAPI), Australia, Austria, Belgium, Bolivia (Plurinational State of), Bosnia and Herzegovina, Brazil, Canada, Chile, China, Colombia, Costa Rica, Croatia, Czech Republic, Denmark, Dominican Republic, Ecuador, Egypt, European Union, Finland, France, Georgia, Germany, Hungary, Ireland, Israel, Japan, Jordan, Kenya, Kyrgyzstan, Latvia, Lithuania, Mexico, Montenegro, Morocco, Netherlands, New Zealand, Paraguay, Peru, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Serbia, Singapore, South Africa, Spain, Sweden, Switzerland, Trinidad and Tobago, Tunisia, Turkey, United States of America and Viet Nam (56).

7. A summary of the contributions to Circular E-19/232 received from members of the Union is presented in Annex II.

8. The following figure provides an overview of the result of the contributions to Circular E-19/232 received from members of the Union.

Overview of the result of the contributions to Circular E-19/232 received from 56 members of the Union



9. The comments provided by the members of the Union concerning the selected category (“yes”; “no” and “others”) are presented in Annexes III to V. The category “others” include members of the Union that indicated that they had limited experience on this topic; their policy was being reviewed; or their policy contained specific exceptions (see Annex V).

² Circular E-19/232 of December 23, 2019, on “Contributions on policy issues relevant for essentially derived varieties (EDVs); Information and proposals on the term “unauthorized use of propagating material”, in relation to trees, in Article 14(2) of the 1991 Act; Survey on novelty of parent lines with regard to the exploitation of the hybrid variety”.

PROPOSAL TO DEVELOP GUIDANCE ON THIS TOPIC

10. The CAJ, at its forty-first session³, discussed the links between a hybrid variety and its components from the point of view of novelty. The CAJ considered documents CAJ/41/5 “Links between a hybrid variety and its components from the point of view of novelty” and CAJ/41/5 Add. “Addendum to CAJ/41/5: views from ASSINSEL - links between a hybrid variety and its components from the point of view of novelty” in reaching the following conclusion (see document CAJ/41/9 “Report”, paragraph 50):

“50. The Chairman concluded that, as expressed by several member States, the basic view on this issue seemed to be that the novelty of the inbred lines was lost by the exploitation of the hybrid variety. He also stated, however, that note should be taken of the different positions expressed in the session. He considered that the Committee [Administrative and Legal Committee] had exhausted its discussions and could not go further at this stage.”

11. The CAJ, at its forty-third session⁴, concluded that the text of the Convention allowed for both interpretations and therefore it was not possible to reach a common conclusion and the CAJ summed up that after the discussions it was not necessary to change the previous interpretation on that matter (see document CAJ/43/8 “Report”, paragraphs 77 and 78, reproduced below).

“77. The Vice Secretary-General concluded that the text of the Convention allowed for both interpretations and therefore it was not possible to reach a common conclusion.

“78. The Chairman summed up that after the discussions it was not necessary to change the previous interpretation on that matter.”

12. Subject to the agreement of the CAJ, it is proposed to include an explanation in the “Explanatory Notes on Novelty under the UPOV Convention” (document UPOV/EXN/NOV/1) (see at https://www.upov.int/edocs/expndocs/en/upov_exn_nov.pdf), as follows (new text appears highlighted in grey):

“SECTION I: NOVELTY PROVISIONS

“[...]

“(c) *Sale or otherwise disposal of to others, by or with the consent of the breeder, for purposes of exploitation of the variety (offering for sale and marketing, with the agreement of the breeder)*”

“[...]

“[New paragraph 7] It is a matter for each member of the Union to interpret the text of the UPOV Convention in relation to whether the novelty of the parent lines is or not lost by the exploitation of the hybrid variety. On December 23, 2019, the Office of the Union issued Circular E-19/232 with an invitation to the members of the Union to complete a survey on the status of the novelty of parent lines in relation to exploitation of the hybrid. Fifty-six members of the Union replied to the survey. Thirty members of the Union replied that the novelty of parent lines was not lost by the exploitation of the hybrid variety. Twelve members of the Union replied that the novelty of the parent lines was lost by the exploitation of the hybrid variety. Fourteen members of the Union replied under “others” with an indication that they had limited experience on this topic; their policy was being reviewed; or their policy contained specific exceptions. The replies to the survey are available at https://www.upov.int/meetings/en/doc_details.jsp?meeting_id=55678&doc_id=511632. For more information on developments on the policy in individual members of the Union, please contact the authorities entrusted with the task of granting breeders’ rights (see https://www.upov.int/members/en/pvp_offices.html).”

13. *The CAJ is invited to:*

(a) *note the replies to the survey to explore the status of the novelty of parent lines in relation to exploitation of the hybrid in members of the Union, as presented in this document and its Annexes; and*

(b) *consider the proposal to provide an explanation on this topic, as set out in paragraph 12.*

[Annexes follow]

³ Held in Geneva on April 6, 2000.

⁴ Held in Geneva on April 5, 2001.

[EXTRACT OF APPENDIX II OF UPOV CIRCULAR E-19/232,
DATED DECEMBER 23, 2019]

Please complete the survey below on novelty of parent lines with regard to the exploitation of the hybrid variety and submit your reply to the survey by **February 17, 2020**, to upov.mail@upov.int

In accordance with the legislation and or policy governing breeders' rights of [please insert name of UPOV member], if the hybrid has been [sold or otherwise disposed of to others, by or with the consent of the breeder, for purposes of exploitation of the variety]¹ / [offered for sale or marketed, with the agreement of the breeder]², beyond the relevant period,³ would the novelty of the parental lines of that hybrid variety be lost?

Yes, the novelty of the parent lines would be lost.

Comments:

No, the novelty of the parent lines would not be lost.

Comments:

Other (please explain)

1. Article 6(1) of the 1991 Act of the UPOV Convention.
2. Article 6(1)(b) of the 1978 Act of the UPOV Convention.
3. See Article 6(1) (i) and (ii) of the 1991 Act and Article 6(1)(b) (i) and (ii) of the 1978 Act.

[Annex II follows]

SUMMARY OF CONTRIBUTIONS TO CIRCULAR E-19/232
RECEIVED FROM MEMBERS OF THE UNION

Member of the Union	Yes, the novelty of the parent lines would be lost by the exploitation of the hybrid variety	No, the novelty of the parent lines would not be lost by the exploitation of the hybrid variety	Others	to consult the comments, see relevant Annex to this document
African Intellectual Property Organization (OAPI)			✓	Annex V
Australia		✓		
Austria			✓	Annex V
Belgium			✓	Annex V
Bolivia (Plurinational State of)		✓		Annex IV
Bosnia and Herzegovina	✓			Annex III
Brazil		✓		Annex IV
Canada	✓			Annex III
Chile		✓		Annex IV
China ⁵	✓			
Colombia		✓		Annex IV
Costa Rica		✓		Annex IV
Croatia	✓			Annex III
Czech Republic		✓		Annex IV
Denmark		✓		Annex IV
Dominican Republic			✓	Annex V
Ecuador		✓		Annex IV
Egypt		✓		Annex IV
European Union			✓	Annex V
Finland			✓	Annex V
France			✓	Annex V
Georgia			✓	Annex V
Germany	✓			Annex III
Hungary		✓		Annex IV
Ireland		✓		Annex IV
Israel		✓		Annex IV
Japan		✓		
Jordan			✓	Annex V
Kenya	✓			Annex III
Kyrgyzstan		✓		Annex IV
Latvia		✓		

⁵ Reply provided by the Ministry of Agriculture and Rural Affairs (MARA) of China with the policy applicable to agricultural crops.

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Member of the Union	Yes, the novelty of the parent lines would be lost by the exploitation of the hybrid variety	No, the novelty of the parent lines would not be lost by the exploitation of the hybrid variety	Others	to consult the comments, see relevant Annex to this document
Lithuania	✓			Annex III
Mexico		✓		Annex IV
Montenegro			✓	Annex V
Morocco		✓		Annex IV
Netherlands		✓		Annex IV
New Zealand			✓	Annex V
Paraguay			✓	Annex V
Peru		✓		Annex IV
Poland	✓			Annex III
Portugal		✓		Annex IV
Republic of Korea		✓		Annex IV
Republic of Moldova	✓			Annex III
Romania	✓			
Russian Federation	✓			Annex III
Serbia		✓		Annex IV
Singapore		✓		Annex IV
South Africa		✓		Annex IV
Spain			✓	Annex V
Sweden		✓		Annex IV
Switzerland			✓	Annex V
Trinidad and Tobago		✓		Annex IV
Tunisia		✓		Annex IV
Turkey		✓		Annex IV
United States of America	✓			Annex III
Viet Nam		✓		Annex IV

[Annex III follows]

COMMENTS OF THE MEMBERS OF THE UNION IN RESPONSE TO CATEGORY
 “YES, THE NOVELTY OF THE PARENT LINES WOULD BE LOST”
 OF UPOV CIRCULAR E-19/232

The following table provides a summary of the comments of the members of the Union in response to the category “Yes, the novelty of the parent lines would be lost”, as set out in Figure 2 of this document.

<u>Member of Union</u>	<u>Comments to “Yes, the novelty of the parent lines would be lost”</u>
Bosnia and Herzegovina	As prescribed in the provisions of Article 6 of the Convention parental lines may lose their novelty. Using the hybrid, parent line components are also used.
Canada	<p>Article 6 (1) of UPOV’91 sets forth the criteria for “novelty” including the concept of “exploitation of the variety”.</p> <p>The use of protected parental lines in hybrid combination for sale in the marketplace would constitute exploitation of the variety with consent of the breeder/title holder. Failure to consider this aspect could have the effect of dramatically extending novelty and protection for a given variety.</p> <p>For example, a breeder protects hybrid C, the resulting cross of parents A x B. After 20 years of protection, the term for hybrid C ends and it is no longer protected. However, if exploitation of the parental lines is not considered to be within the scope of novelty, the breeder could then decide to protect the parental lines (A and/or B).</p> <p>As per Article 14 (5)(a)(iii), the benefits and exclusive rights of protecting A and/or B would be extended to the hybrid C. The net result, conceivably hybrid C could benefit from two full terms protection.</p>
Croatia	if the parent line(s) is/are filed for protection and has/have not been exploited as such but only the hybrid has been exploited, the novelty of parent line(s) would be lost.
Germany	<p>Regulated in Article 6 of the German PVP Law:</p> <p>Propagating material of a variety that is continuously used for the production of another variety shall not be deemed to have been delivered within the meaning of subsection (1)*) until plants or parts of plants of the other variety have been delivered.</p> <p>[*) corresponds to Article 6(1) of the 1991 Act of the UPOV Convention]</p>
Kenya	Since the parental lines are protected for specific period.
Lithuania	As it has been sold or otherwise disposed of to others.
Poland	<p>The relevant article of our Act on the Legal Protection of Plant Varieties reads as follows:</p> <p>8.3. “The components of a hybrid variety shall be deemed to be new if, at the date of application for the grant of an exclusive right, the hybrid propagating material produced thereof have not been sold by the breeder or otherwise disposed of to others for commercial purposes:</p> <ol style="list-style-type: none"> 1) within the territory of the Republic of Poland – earlier than one year; 2) in other states – earlier than four years <p>- before the date of application for the grant of an exclusive right.”</p>
Republic of Moldova	Under the condition that parent lines were used repeatedly to obtain hybrids.

<u>Member of Union</u>	<u>Comments to “Yes, the novelty of the parent lines would be lost”</u>
Russian Federation	<p>The Russian Federation considers that, in accordance with Article 6(i) and (ii) of the 1991 Act of the UPOV Convention, the novelty of the parent lines of the hybrid must be established depend on the duration of the period of use directly of hybrid/the first hybrid associated with this line.</p> <p>The period duration of the breeding process of the first hybrid (even by the third parties) does not affect the novelty of the line.</p> <p>Application for PBR granting for the line in the Russian Federation may be filed before the creation of the first hybrid associated with this line and, the start date of usage of a hybrid is considered as start using this line. Upon registration of a hybrid in the National List the parent lines/ forms of this hybrid are registered at the same time.</p>
United States of America	Please refer to the United States Plant Variety Protection Act, Sections 41(b)(3) and 42(a)(1).

[Annex IV follows]

COMMENTS OF THE MEMBERS OF THE UNION IN RESPONSE TO CATEGORY
 “NO, THE NOVELTY OF THE PARENT LINES WOULD NOT BE LOST”
 OF UPOV CIRCULAR E-19/232

The following table provides a summary of the comments of the members of the Union in response to the category “No, the novelty of the parent lines would not be lost”, as set out in Figure 2 of this document.

Member of the Union	Comments to <i>“No, the novelty of the parent lines would not be lost”</i>
Bolivia (Plurinational State of)	The novelty of the parent lines would not be lost.
Brazil	This is not clearly stated in our legislation, but it is the logical interpretation that we can have analyzing the provisions of the Law and the Decree.
Chile	In our country, the novelty of the variety is only considered lost when the variety has been marketed for the period indicated in the legislation in force and the parent lines or the hybrid obtained are not taken into account.
Colombia	As the hybrid variety is the product of the parent lines and differs in its genetic composition, there are therefore different phenotypic characteristics that make it possible to differentiate clearly between the hybrid variety and its parent lines.
Costa Rica	The parent lines are different varieties from the hybrid and, as such, shall not be affected by the loss of novelty of the hybrid. As varieties in their own right, they have their own novelty provisions.
Czech Republic	Generally, as regards „traditional hybrid species“ (maize, sunflower, vegetable hybrids....) we do not consider the commercialization of the hybrid as damaging the novelty of the parent lines, unless the parent line used for the production of the hybrid was not in the possession of the applicant at that moment or has really been commercialized before. However, the attention should be pay to „new hybrid species“, e.g. wheat, barley. Due to different techniques of the hybrid production high number of off- types, which are usually parent lines, is allowed during DUS test of the new hybrid. According to TG/3/12 wheat and TG/19/11 barley for the assessment of uniformity of the hybrid varieties a population standard of 10% and an acceptance probability of at least 95% should be applied. In case of a sample size of 200 plants, 27 off-types are allowed. In such a case, theoretically a mixture of the pure hybrid and lines could be commercialized.
Denmark	In Denmark PBR is given to the specific variety. A hybrid is considered different from its parental lines. This means that hybrids and parent varieties are different varieties and can be protected separately. The novelty is therefore also separate.

Member of the Union	Comments to <i>“No, the novelty of the parent lines would not be lost”</i>
Ecuador	<p>The novelty of varieties is explicitly provided for in national legislation (Organic Code on the Social Economy of Knowledge, Creativity and Innovation), regional legislation (Decision No. 345 of the Andean Community) and the 1978 Act of the UPOV Convention. As a result, the novelty of the parent lines is not affected as long as they are not sold, disposed of or offered for sale and their seeds are not marketed for purposes of exploitation, beyond the period established for novelty under the law.</p> <p>When we refer to hybrid varieties, this includes the entire plant, harvested material and parts of the plant used for propagation, irrespective of whether it is a single-cross hybrid, double-cross hybrid, triple-cross hybrid, etc., for sexual or asexual reproduction.</p> <p>It should be noted that the parent lines are the genetic pool from which not only a heterozygous or homozygous hybrid variety shall be derived, but also many other varieties, depending on the needs of the market. It is for this reason that the parent lines are almost never or, in our case, never protected; they are kept anonymous by the breeder or may even be protected as trade secrets.</p>
Egypt	<p>Parental lines may be used in developing new hybrids, which will require protection, so novelty should not be lost.</p>
Hungary	<p>The novelty of the parent lines will not be lost unless the propagating material of the parent lines has also been sold or disposed.</p>
Ireland	<p>Only the novelty of the hybrid would be lost.</p>
Israel	<p>The PBR system in Israel has not been used for registration of parental lines.</p>
Kyrgyzstan	<p>In accordance with Article 4 the Law of the Kyrgyz Republic on Legal Protection of Selection Achievements, selection achievement is considered new if, at the date of filing the application for a patent, the seeds or breeding material of this selection achievement were not sold or otherwise transferred to other persons by the breeder, his successor, or with their consent to use the selection achievement:</p> <ul style="list-style-type: none"> - On the territory of the Kyrgyz Republic – earlier than one year before that date; - On the territory of another State – earlier than four years or, if it concerns grapes, decorative wood, fruit crops, earlier than six years before the specified date; <p>The novelty of a selection achievement is not lost if the sale of any material of a variety is made by other persons before the deadline:</p> <ul style="list-style-type: none"> - In order to intentionally harm the applicant; - When fulfilling an agreement on transfer of the right to obtain a patent; - When fulfilling an agreement under which a third party carries out additional deliveries of material for reproduction of a variety with the consent of the applicant, provided that such deliveries are carried out under the control of the applicant; - When fulfilling an agreement by which a third party conducts field tests or laboratory tests, or control tests to assess the variety; <p>Parent lines of hybrid can act as independent variety which can also be eligible for legal protection in the territories of the various countries. Thus, if the parental lines of hybrids were not previously disclosed (sold or transferred in accordance with the Law) by the breeder, they will not destroy the “novelty” and such varieties can be legally protected.</p>

Member of the Union	<u>Comments to “No, the novelty of the parent lines would not be lost”</u>
Mexico	<p>The product that is marketed is the hybrid, while the parent lines act as progenitors that may give rise to other hybrids when combined with other parent lines. The parent lines shall not be marketed as they are closely guarded by the breeders, with the intention of their acting as a germplasm bank for other plant innovations, as a result of which a parent line will not lose its novelty even when it is part of one or more hybrids.</p> <p><u>Other (please explain):</u></p> <p>Companies enter into contracts with parties specifying that if access is provided to the parent lines, it shall only be for the purposes of making progress towards producing the hybrid and in no case will consent be given for them to be marketed; they remain subject to the provisions established in the contracts.</p>
Morocco	<p>The parent lines are considered separate genetic material and the maintenance of their novelty would encourage the development of research work in the field of genetic improvement.</p>
Netherlands	<p>In the Netherlands we consider the hybrid and the parent lines as different and independent varieties as far as it concerns the novelty issue.</p>
Peru	<p>The hybrid variety is a plant population that differs from the parent lines; although the hybrid variety has 50 per cent of the alleles of each parent line, the expression of characteristics in the new plant population will be different, owing to interactions with the genes that govern the characteristics of the parent lines.</p>
Portugal	<p>The article ruling about novelty is silent about any possible implications which might result from the use of parental lines. It only makes reference to the consequences of the marketing or the offer for sale of the candidate variety and it doesn't establish any difference between hybrids or any other variety. The Portuguese PBR Office has never received any application for parental lines, so our experience with this specific situation is quite limited.</p>
Republic of Korea	<p>KR has several cases of the application and registration of the parental lines. KR doesn't relate the novelty of F1 variety with that of parental lines. If the parent lines were also sold or disposed of to others/offered for sale, the novelty of the parent lines would be lost.</p>
Serbia	<p>If the parental lines of hybrid variety in question haven't been sold beyond the relevant period (4 years), their novelty wouldn't be lost</p>
Singapore	<p>Pursuant to Section 22(1)(a) of the Singapore Plant Varieties Protection Act, the following applies:</p> <ul style="list-style-type: none"> <li data-bbox="492 1549 1408 1665">(i) The hybrid plant variety is new if harvested or propagating material of the hybrid plant variety has not been sold or otherwise disposed of to another person, by or with the consent of the breeder for the purposes of exploitation of the plant variety beyond the period mentioned. <li data-bbox="492 1696 1408 1864">(ii) On whether the parental lines of the hybrid variety are new in the scenarios provided, the same applies i.e. The parental lines are new if the harvested or propagating material of the parental lines have not been sold or otherwise disposed of to another person, by or with the consent of the breeder for the purposes of exploitation of the plant variety beyond the period mentioned.

<u>Member of the Union</u>	<u>Comments to “No, the novelty of the parent lines would not be lost”</u>
South Africa	It is only when applications for parental lines are received that we apply the issue of novelty, as with any other application.
Sweden	Sweden does not control novelty of parent lines, only of varieties. Parent lines need to be used and re-used in order to make new hybrid combinations. If their novelty would be lost, a major incentive for hybrid breeding would disappear.
Trinidad and Tobago	TT national law does not make such specific provisions regarding the novelty of parent lines. The only thing affecting their novelty would be the timing of their availability to the local market (more than one (1) year before filing) and the foreign market (more than four (4) years before filing).
Tunisia	The parent lines are available only to the breeder.
Turkey	Turkey evaluates parental lines of a hybrid variety as independent varieties as long as they hold criteria's of being a variety.
Viet Nam	<p>According to our Law, F1 and parent lines of the F1 are different varieties. That means F1, mother, father are 3 different varieties thus the Novelty of F1 hybrid is independent with its parent lines</p> <p><u>Other (please explain)</u></p> <p>Parent lines are high value because they are used as breeding material so normally breeders keep them very careful and secret. Almost all breeders do not use parent lines for the purpose of exploitation or sold in the market.</p>

[Annex V follows]

COMMENTS OF THE MEMBERS OF THE UNION IN RESPONSE TO CATEGORY
"OTHERS" OF UPOV CIRCULAR E-19/232

The following table provides a summary of the comments of the members of the Union in response to the category "Others", as set out in Figure 2 of this document.

<u>Member of the Union</u>	<u>Comment to "Others (please explain)"</u>
African Intellectual Property Organization (OAPI)	<p><u>Yes, the novelty of the parent lines would be lost.</u> Comment: For the variety in general, if the period of one year in the territory of the member states of the Organization has elapsed; or if the period of four to six years outside the member states has elapsed.</p> <p><u>No, the novelty of the parent lines would not be lost.</u> For the variety in general, if the above-mentioned periods have not elapsed.</p> <p><u>Other (please explain)</u> In response to your questionnaire, please note that the provisions of the Bangui Agreement do not specifically address the novelty of hybrid varieties.</p>
Austria	<p>I have to reply that the question has not been relevant for Austria so far. There are no hybrids registered on the national list, only one parent line.</p> <p>The question of the novelty of parent lines has not been raised in Austria so far. If applicable, Austria takes the regulations of the CPVO of the European Union.</p> <p>Therefore we suggest, to use the answer of the CPVO to the survey for Austria.</p>
Belgium	<p>In Belgium, this question has not yet been officially decided upon at the level of the legislation or policy governing breeders' rights.</p> <p>Furthermore, the Belgian Intellectual Property Office has not received notification yet of any case-law ruling on this question.</p>
Dominican Republic	<p>In the national territory, as long as the application has been made more than a year before the date.</p> <p>In other territories, more than four years or, in the case of trees and vines, more than six years.</p> <p>Article 8(i) and (ii) of Law No. 450-06.</p>
European Union (Community Plant Variety Office (CPVO))	<p>The EU legislation article 10 is interpreted in a way that if a breeder disposes parental lines to a third party for the production of the hybrid variety without transferring the ownership of those parental lines and subsequently seeds of the hybrid is sold, such disposal is affecting the novelty of the parental lines.</p> <p>However in case the hybrids are produced on the land of the breeder (own premises), or on behalf of the breeder, without having disposed the parental lines to the multiplier and the seeds produced are recovered by the breeder, the disposal of seed of the hybrid variety does not affect the novelty of the parental line.</p>
Finland	<p>Finnish Plant Breeder's Right Act does not provide for eventuality where the selling or disposal to others of the hybrid variety, by or with the consent of the breeder, would have a consequence on the novelty of the parent lines. Case like that has not yet arisen and thus no judicial decisions are available.</p>
France	<p>Policy matters under consideration.</p>
Georgia	<p>The current legislation remains silent about said issue.</p>

ANNEX V

<u>Member of the Union</u>	<u>Comment to “Others (please explain)”</u>
Jordan	It is not included yet but we intend to amend the legislation and we are working on it.
Montenegro	Parental line become a part of the new variety. Novelty of Parental line was given in some process before.
New Zealand	New Zealand has very limited experience with parental lines and has no specific policy, currently or considered, in this area.
Paraguay	Regarding the novelty of parent lines in relation to the exploitation of hybrid varieties, no applications to protect hybrids have been made in Paraguay to date.
Spain	<p>It depends on the manner in which the breeder exploits their hybrid variety. If only the hybrid seed is marketed, and all operations required to produce this seed are carried out by the breeder, the novelty of the parent line will not be lost.</p> <p>However, if the hybrid variety is disposed of by the breeder to third parties, including the exploitation of the parent lines, the novelty will be lost if the period provided for in article 6 of the 1991 Act has elapsed.</p> <p>Take, for example, a license granted to a propagator by the breeder to cross the parent lines and produce hybrid seeds that shall also be marketed. The ultimate goal is to exploit the hybrid, but the parent lines are also being exploited in this process, which results in the loss of novelty if the corresponding period has elapsed.</p>
Switzerland	<p>In practice, we have never had to answer this question in Switzerland.</p> <p>For hybrid varieties whose propagating material is produced by propagation organizations (generally the case for hybrid maize, for example), we would answer this question in the affirmative, since the seed of the parent varieties is supplied to the propagation organization with the consent of the breeder. The propagation organization uses this to produce F1 seeds and in so doing evaluates the seeds obtained. The provision of the seed for evaluation purposes argues against the novelty of the parent varieties.</p> <p>If, on the other hand, the breeder produces the F1 seed, it would be difficult to argue that the parent varieties should no longer be considered as novel, since no propagating material has been supplied. The novelty criterion refers to the parent variety to be protected and not to its selection achievement (hybrid).</p>

[End of Annex V and of document]