

Novelty of Parent Lines

- Survey Outcome -

Oct. 2023



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CAJ Oct. 2022 – Joint Presentation by Breeders

Art 6: ‘....propagating or harvested material of the variety and the exploitation of the variety....’

Hybrid & parent lines are different varieties - both the parents and the hybrid are entitled to protection on its own thus also the protection criteria need to be applied for them separately.

Hybrid is **NOT** propagating or harvested material of the parent line: genetically & morphologically entirely different; F1 exhibits heterosis; seeds harvested on F1 represent segregating mix

=> In other words, the exploitation of the hybrid should not affect the novelty of the parents.



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CAJ Oct. 2022

Novelty of parent lines with regard to the exploitation of the hybrid variety (document CAJ/79/4)

44. The CAJ considered document CAJ/79/4 and the joint presentation made by the International Seed Federation (ISF), CropLife International, SAA, Asia and Pacific Seed Association (APSA), African Seed Trade Association (AFSTA) and Euroseeds on the novelty of parent lines with regard to the exploitation of the hybrid variety.

45. The CAJ agreed with the proposal for ISF, CropLife International, SAA, APSA, AFSTA and Euroseeds to **conduct a survey** on **commercial practices** relating to the impact of commercial exploitation of the hybrid on the novelty of parent lines and to provide to the Office of the Union the results of the survey two months in advance of the eightieth session of the CAJ.

46. The CAJ agreed to include an item on “Novelty of parent lines with regard to the exploitation of the hybrid variety”, at its eightieth session, to consider the results of the survey and any next steps for the development of possible guidance on the novelty of parent lines with regard to the exploitation of the hybrid variety



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Novelty of Parent Lines



- Survey to all members of global & regional seed associations (May/June 2023)
- 9 questions
- 77 responses
- Q1 – Countries: AR, AT, AU, BE, BR, CA, CH, CN, DE, ES, FR, IL, IN, JP, KR, MX, NL, PH, TR, UK, ZA



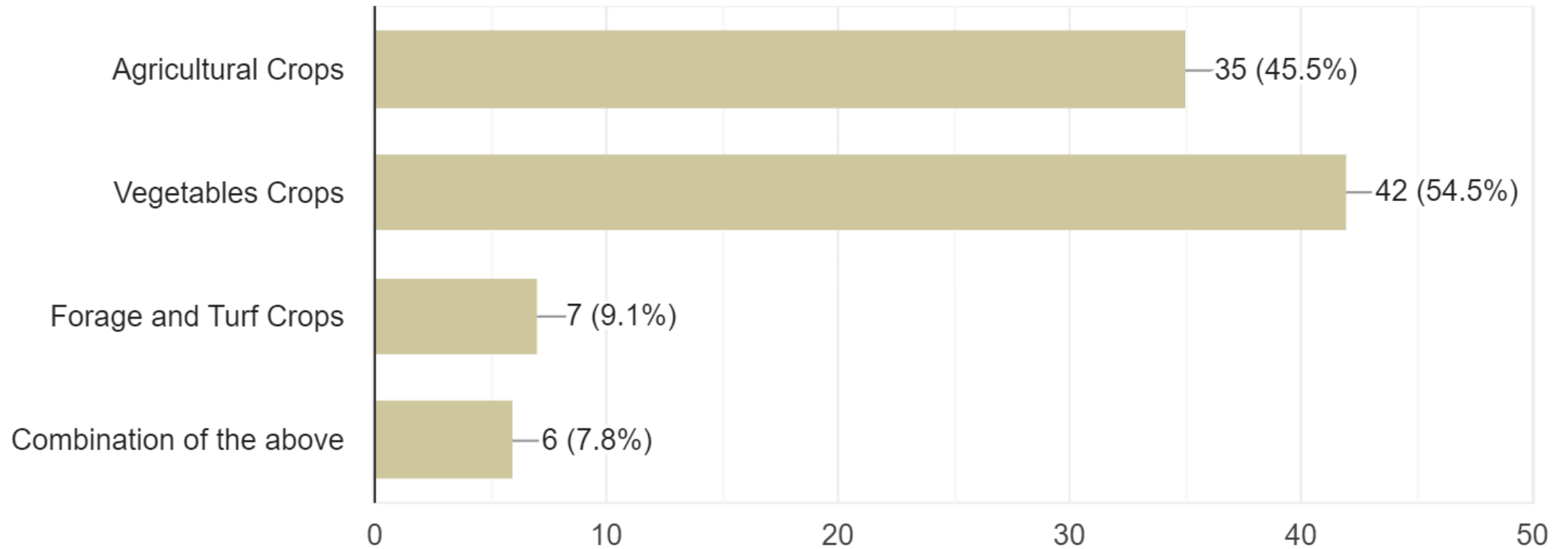
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Q2: Crops you work on

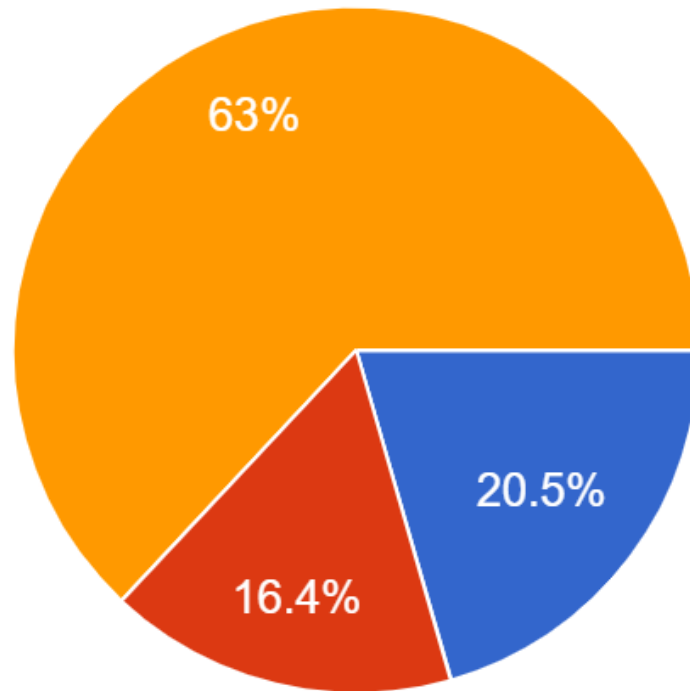


77 responses



Q3: In the case of hybrid crops, do you file for PBR on:

73 responses

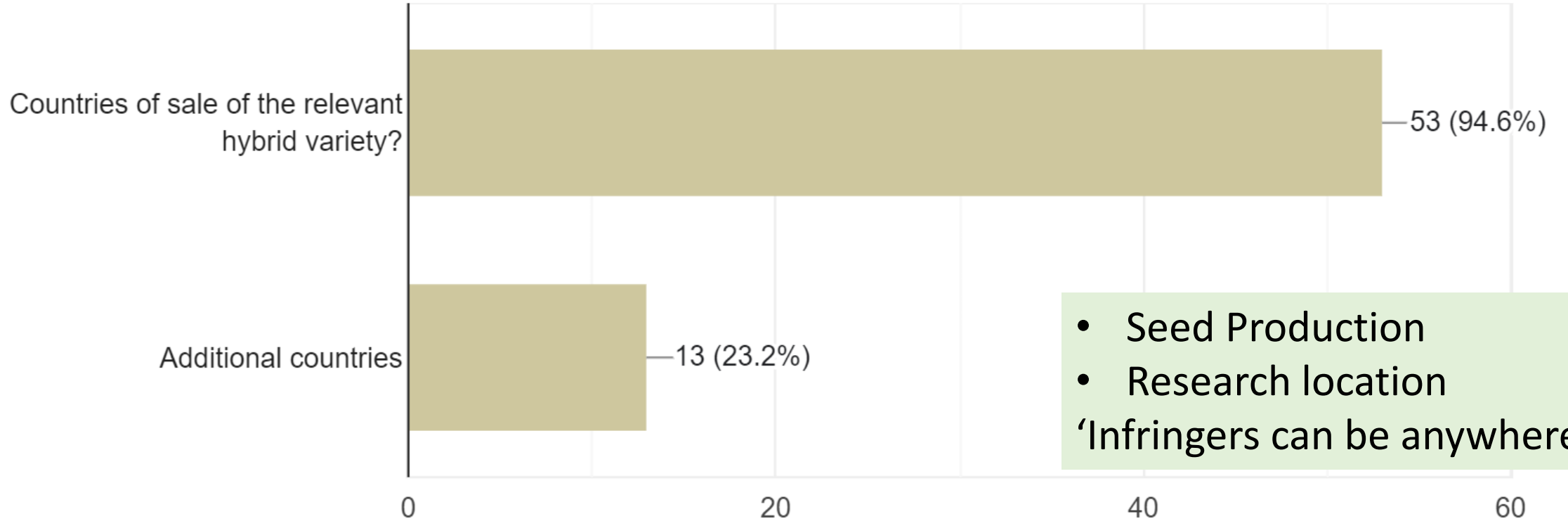


- Hybrid varieties only
- Parent lines only
- Both

Almost 80% of breeders file for PBR on parent lines

Q4: If you file for PBR on parent lines, where do you file for PBR on the parent lines?

56 responses



- Seed Production
- Research location
- 'Infringers can be anywhere'



Q5: If you do not file for PBR on parent lines, please explain why not

‘They have inherent protection’

‘Hybrids are the commercial product, and we see no need to also protect the parents’

‘Company policy’

‘We do not file for PBR on parental lines, because it is not a commercial product. For protection of elite parental lines, we would follow fingerprinting as a means to protect IP.’

‘At our company, we do not register parent line varieties for varieties with small sales amounts.’

‘Parental lines can be used in different hybrids, which registration of lines will cause confusion. Hybrids are genotypically different from the parents. There is no need to register the parent lines to protect the hybrids.’

‘PBR on the hybrids themselves have always been sufficient in regard to local need’

‘In some countries we are not sure whether authorities might distribute parental line seed.’

‘Keep them secret as much as possible and sometimes we have to provide too much information (material/pedigree details)’

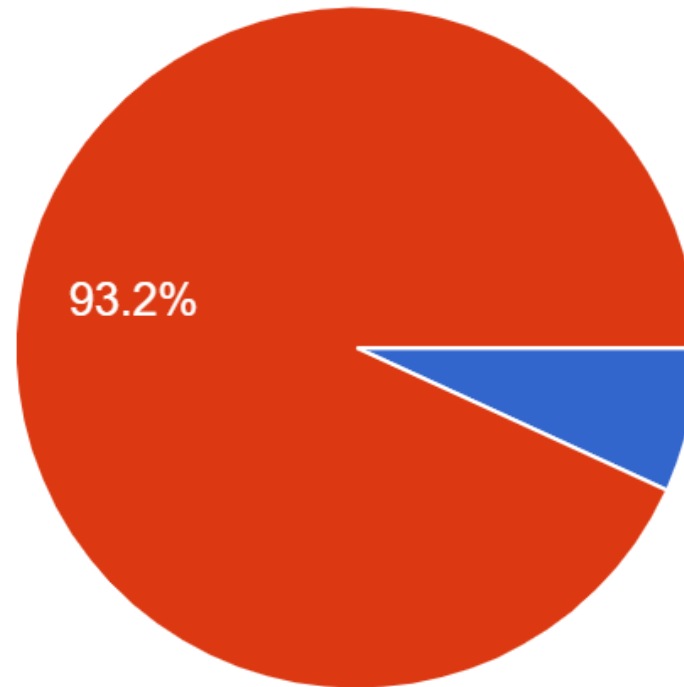
‘In most vegetable crops we work with, we prefer to keep the parental parents trade secret. PBR is sometimes more difficult to enforce than keeping your parental lines trade secret.’



Q6: Have you experienced cases where the novelty of a parent line PBR application was questioned or the PBR application on that parent line refused over the sale of the relevant hybrid variety?

73 responses

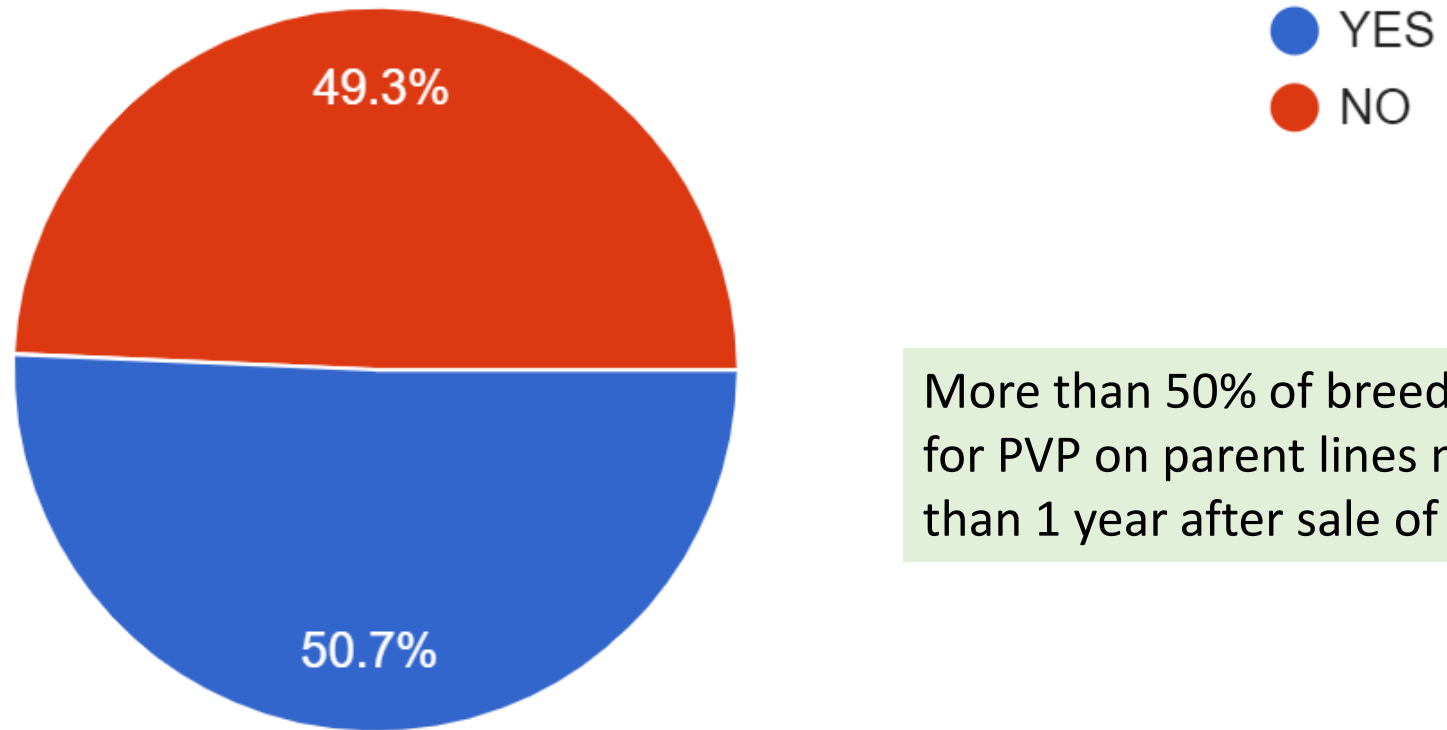
● YES
● NO



- Novelty problems with parent lines do exist (7% of all answers)
- 7% does not include breeders who refrain from filing for PBR on parent lines, due to novelty interpretation in national PBR law
- Cross check with UPOV survey (CAJ 77-06): novelty problems are concern for breeders.

Q7: Do you sometimes file for PBR on a parent line, more than one year after the commercialization of the relevant hybrid variety?

73 responses

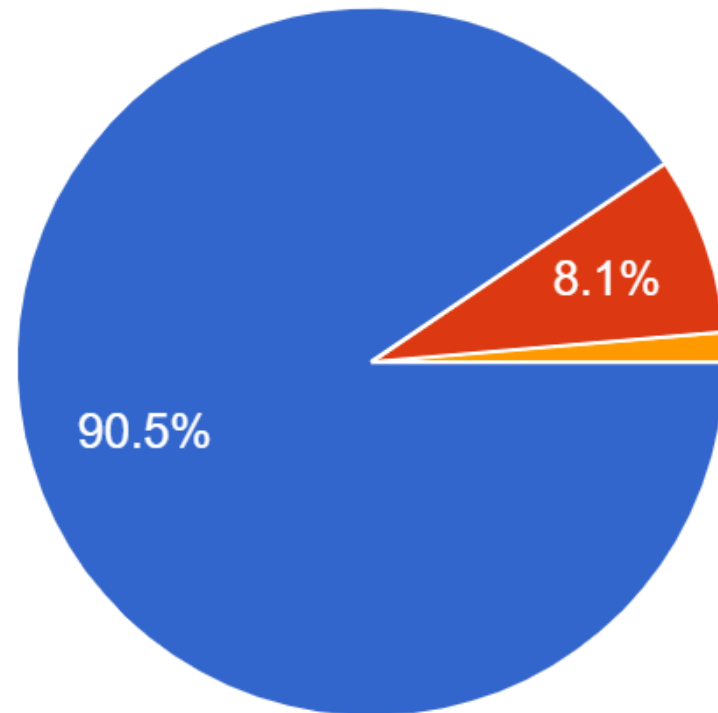


More than 50% of breeders files for PVP on parent lines more than 1 year after sale of hybrid.



Q8: Do you file for PBR protection on the parent lines towards the end of the protected lifetime of a hybrid variety (typically after 20 years), to extend the protected lifetime of the hybrid?

74 responses



- Never
- Sometimes
- Always

>90% of breeders never files for PBR on parent lines towards end of PBR life of hybrid.

'Sometimes' and 'Always' answers were analysed in detail

Q8: Elaborate – categories ('Never')

- Hybrids do not last that long - 13 answers
- No PBR on parent lines (keep parent lines a trade secret) – 5 answers
- PBR on parent lines only – 3 answers
- Parent is used in several hybrids – 2 answers
- PBR on hybrids is independent from PBR on parent lines – 2 answers
- Company policy – 2 answers
- Not a reason for filing – 2 answers
- We apply for PBR at the beginning – 2 answers
- If PBR on parent is filed at the end of a hybrid, then to protect a new hybrid
- 'This is not what the PBR system should be used for'



Q8: Analysis of 'Sometimes' and 'Always' answers

'SOMETIMES': THIS ANSWER WAS GIVEN 6 TIMES:

1. 'I didn't have this case, seems logic if you want to maintain PBR on crop variety that the R&D took more than 20 years to develop.'
2. 'Vary according to the lifespan of the variety'
3. 'N/A'
4. 'extremely rare and has been more unintentionally'
5. 'If our variety is still being traded, we sometimes renew our application according to the country's agricultural laws.'
6. 'We file for PBR on parent line, due to PBR strategy update'

'ALWAYS': ONLY 1x ANSWER, BUT NO ELABORATION

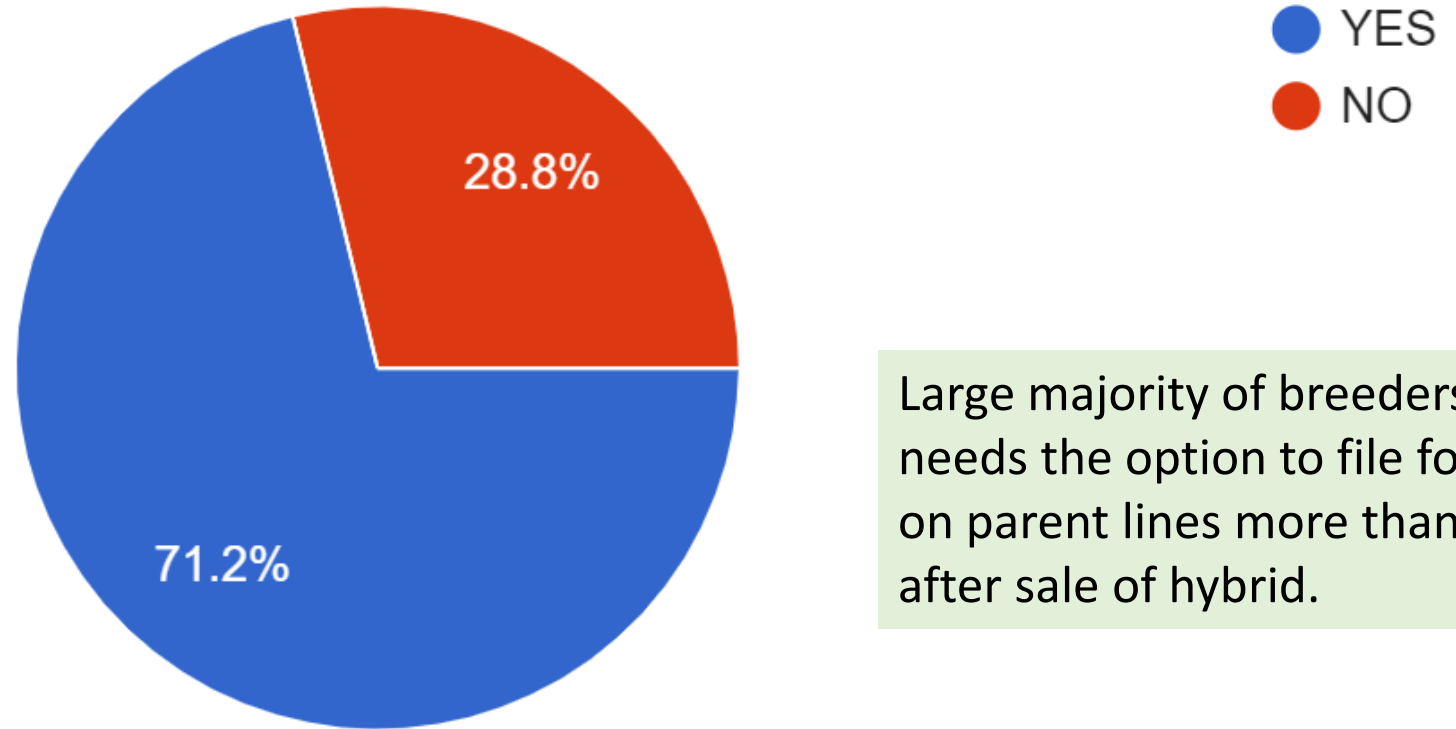
Doubtful if question was well understood. Especially 'always' is hard to believe. Difficult to imagine a company which, as a standard protocol, waits till the end of all its hybrid PBR applications and then files for PBR on the parent lines.

At Q9 ('Do you need the possibility...'), the company replied 'NO'. Likely question was misunderstood.



Q9: If you had the option, do you need the possibility to file for PBR on a parent line, more than 1 year after the sale of the relevant hybrid variety?

73 responses



Large majority of breeders needs the option to file for PBR on parent lines more than 1 year after sale of hybrid.

Q9: Comments

- Parent line can be used in multiple hybrids (Flexibility is needed) – 7 answers
- Assess commercial relevance of hybrid: schedule too tight – 14 answers
- ‘Only protect parent line in case the expected turnover for the relevant hybrid is above a certain threshold. The first hybrid may not reach that threshold, but a subsequent hybrid may. In the meantime, the first hybrid may be sold longer than one year.’
- For certain crops: difficult to keep parent lines un-available from others, so PBR on parental lines is preferred
- Helps less experienced breeders to catch up with the system in case of any delay or mistakenly missed application timing



Conclusion



- Majority of breeders file for PBR, both on hybrids & on parent lines and approx. 80% file PBR on parent lines
- PBR on parent lines: not only in country of sale of F1 but also in other countries
- Unexpected novelty problems with parent lines do occur (7%)
- > 90% answered that they never apply for protection on the parent line toward the end of the protection period of the hybrid with the aim of extending the protection period for the hybrid.
- In 50% of the cases breeders file for protection on the parent line more than 1 year after the first commercialization of the hybrid, for reasons linked to the re-use of the parent lines in a later hybrid, but also linked to the estimation of the commercial success of the hybrid and/or the parent line. Breeders thus need the ability to file for PBR on parent lines more than 1 year after first commercialization of the F1 hybrid



Considerations

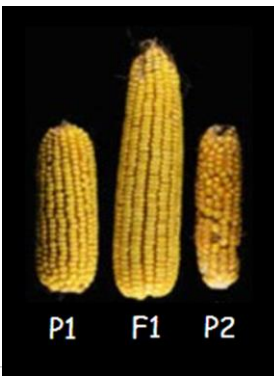


- UPOV 91: PBR granted for a ‘fixed period’ of protection (Art. 19.1).
E.g. in UPOV 1991, Art. 19.2: 20 years (25 yrs for trees & vines)
- Is it possible to describe in an EXN that protected life of hybrid cannot extend beyond that ‘fixed period’?
- Art. 14.5.a.iii “5) [Essentially derived and certain other varieties] (a) The provisions of paragraphs (1) to (4) shall also apply in relation to
-
- (iii) varieties whose production requires the repeated use of the protected variety”
- EXN: Art. 14.5.a.iii cannot be used to over-rule the ‘fixed period’ in art 19.1.
=>align 14.5.a.iii with 19.1, without significant restriction of 14.5.a.iii.



Next Steps

- Breeders would welcome the possibility to further exchange on this matter with UPOV members to:
 - Consider outcome of presented survey
 - Address any concerns that may still remaining, and
 - Discuss what next steps could be taken to clarify – at UPOV level – that commercial exploitation of the hybrid variety does not affect the novelty of parental lines (e.g. through EXN, explaining ‘fixed period’)



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Thank you for your attention



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