

Administrative and Legal Committee

CAJ/81/5 Add.

Eighty-First Session
Geneva, October 23, 2024

Original: English
Date: October 22, 2024

ADDENDUM – REPORT ON THE WORKING GROUP ON HARVESTED MATERIAL AND UNAUTHORIZED USE OF PROPAGATING MATERIAL (WG-HRV)

Document prepared by the Office of the Union

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1. The purpose of this addendum is to report to the CAJ/81 the latest developments concerning the work of the Working Group on Harvested Material and Unauthorized use of Propagating Material (WG- HRV).
2. The Administrative and Legal Committee (CAJ) is invited to note the latest developments concerning the sixth meeting of the WG-HRV, that took place on October 22, 2024.

SIXTH MEETING OF THE WG-HRV (OCTOBER 22, 2024)

3. The WG-HRV held its sixth meeting in Geneva, on October 22, 2024, by hybrid means. The WG-HRV/6 documents are available at: https://www.upov.int/meetings/en/details.jsp?meeting_id=83693.
4. The main conclusion of the meeting is summarized below:
 - (a) the WG-HRV considered the matters presented in document WG-HRV/6/2;
 - (b) the WG-HRV agreed that the Office of the Union commissions a study to assist in the WG-HRV deliberations on the “Scope of the Breeder’s Right” in Article 14(1) and (2) of the 1991 Act, including the notions of “unauthorized use” and “reasonable opportunity” and the relationship with the “Exhaustion of the Breeder’s Right” in Article 16 of the 1991 Act;
 - (c) the WG-HRV approved the draft Terms of Reference of the study, as presented in document [WG- HRV/6/2, Annex](#), with the following update in the section “Scope”:

“- a first part with an analysis of the intentions of the drafters of the 1991 Act of the UPOV Convention in relation to the “Scope of the Breeder’s Right” in Article 14(1) and (2) of the 1991 Act, including the notions of “unauthorized use” and “reasonable opportunity” and the relationship with the “Exhaustion of the Breeder’s Right” in and Article 16 of the 1991 Act”;
 - (d) the WG-HRV agreed that the study be carried out in accordance with the approved Terms of Reference, reproduced in the Annex of this document.

5. *The CAJ is invited to note the latest developments concerning the sixth meeting of the WG- HRV, as reported in this document.*

[Annex follows]

ANNEX

TERMS OF REFERENCE OF THE STUDY ON THE "SCOPE OF THE BREEDER'S RIGHT" AND THE RELATIONSHIP WITH THE "EXHAUSTION OF THE BREEDER'S RIGHT"

SCOPE:

The study to include:

- a first part with an analysis of the intentions of the drafters of the 1991 Act of the UPOV Convention in relation to the "Scope of the Breeder's Right" in Article 14(1) and (2) of the 1991 Act, including the notions of "unauthorized use" and "reasonable opportunity" and the relationship with the "Exhaustion of the Breeder's Right" in Article 16 of the 1991 Act; and
- a second part with summaries of relevant court cases from UPOV members bound by the 1991 Act.

COMPOSITION:

The study should be carried out by the five authors mentioned below. The authors should agree on one of them to be coordinating their work.

The working language of the authors should be English and the study should be drafted in English.

Experts (alphabetic order)
Mr. Huib Ghijsen
Ms. Vivianne Kunisawa
Mr. Charles Lawson
Mr. Axel Metzger
Mr. Joseph Straus

MODUS OPERANDI:

Independence:

The authors are independent in drafting the study, in the sense that the authors should not receive individual instructions from anyone and that the authors should be impartial and objective.

The five authors should draft one study and should follow a collaborative working method following academic standards. Following such standards, the authors should manage potential different perspectives or analysis and, if applicable, how such matters should be reflected in the study.

Having received the study, it is up to the WG-HRV to consider a possible follow-up and to request further guidance from the CAJ, as appropriate.

UPOV members are not bound by the content and/or conclusions drawn in the study.

Timeline:

The authors will be asked to deliver the draft study by latest February 28, 2025, for consideration at the seventh meeting of the WG-HRV, expected to take place in Geneva in March 20, 2025. The final version of the study to be delivered by latest September 1st, 2025.

The time could be prolonged upon request by the authors.

Financial support:

55,000 Swiss Francs which would include:

- Honorarium of 10,000 Swiss francs for each of the 5 authors.
- Travel expenses up to 5,000 Swiss francs in total for the 5 authors. The purpose of the travel could be to convene a meeting amongst the authors or to support travel to come to Geneva to present the findings of the study or any other unforeseen travel expenses.

The overall estimation of the cost to be shared as follows: UPOV regular budget would cover 30,000 Swiss francs and the Funds-in-Trust Agreement between the Government of Japan and UPOV (JP-FIT) would cover 25,000 Swiss francs.

[End of Annex and of document]