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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
GENEVA

**ADMINISTRATIVE AND LEGAL COMMITTEE
ADVISORY GROUP**

**Third Session
Geneva, November 1, 2008**

**GUIDANCE FOR THE PREPARATION OF LAWS
BASED ON THE 1991 ACT OF THE UPOV CONVENTION**

Document prepared by the Office of the Union

1. The Administrative and Legal Committee (CAJ), at its fifty-seventh session held in Geneva on April 10, 2008, agreed that the Office of the Union should prepare a document to provide guidance for the preparation of laws using, as far as possible, the text of the relevant provisions of the 1991 Act of the UPOV Convention with reference to relevant information materials (e.g. explanatory notes) (see paragraph 60 of document CAJ/57/7 "Report").
2. At that session, the CAJ agreed that a draft of that guidance document should be considered by the Administrative and Legal Committee Advisory Group (CAJ-AG) at its third session, to be held in Geneva on November 1, 2008, and subsequently by the CAJ in 2009. Document UPOV/INF/6/1 Draft 1 contains a draft of that guidance document entitled "Guidance for the Preparation of Laws Based on the 1991 Act of the UPOV Convention".

Structure of document “Guidance for the Preparation of Laws Based on the 1991 Act of the UPOV Convention”

3. The document “Guidance for the Preparation of Laws Based on the 1991 Act of the UPOV Convention” (guidance document) is intended to provide assistance to States/intergovernmental organizations wishing to draft a law in accordance with the 1991 Act of the UPOV Convention. The guidance document would be relevant for future members of UPOV and members of UPOV bound by an earlier Act of the UPOV Convention wishing to draft a law in accordance with the 1991 Act. The guidance document contains two parts:

- Part I- Example text for Articles for consideration in the preparation of laws based on the corresponding Articles of the 1991 Act of the UPOV Convention; and
- Part II - Notes based on information materials concerning certain Articles of the 1991 Act of the UPOV Convention.

Part I- Example text for Articles for consideration in the preparation of laws based on the corresponding Articles of the 1991 Act of the UPOV Convention

4. Part I of the guidance document follows, where possible, the structure, content and numbering of the corresponding Articles in the 1991 Act of the UPOV Convention. Any variations to the text of the 1991 Act of the UPOV Convention in Part I of the guidance document are explained in the following paragraphs.

Draft version of the guidance document

5. The following aspects of the draft are provided for the CAJ-AG and CAJ to assist in their consideration of the draft version of the document and would not be retained in the approved version of the document:

(i) Changes to the text of the 1991 Act of the UPOV Convention in Part I of the document: additional text has been underlined and text to be deleted is shown in strikethrough mode; and

(ii) endnotes provide background information.

6. The Office of the Union would like to draw the attention of the CAJ-AG to the text of paragraph 4 of Article 11 of the 1991 Act concerning the right of priority:

“(4) [Events occurring during the period] Events occurring within the period provided for in paragraph (1), such as the filing of another application or the publication or use of the variety that is the subject of the first application, shall not constitute a ground for rejecting the subsequent application. Such events shall also not give rise to any third-party right.”

7. While the text of paragraph 4 of Article 11 of the 1991 Act has been left in Part I of the guidance document, it should be noted that such a provision is, in general, not included in the laws governing breeders’ rights. Therefore, it is proposed not to retain paragraph 4 of Article 11 of the 1991 Act in the next version of the guidance document.

Proposed format of published version of the guidance document

8. The highlighted text in square brackets in Part I of the document and the footnotes would be retained in the published version of the document.

9. The highlighted text in square brackets is intended for drafters involved in the preparation of laws and identifies the following:

(i) text to be completed (e.g. [name of the State/Intergovernmental Organization] or [name of the authority]);

(ii) optional provisions of the 1991 Act (e.g. [(2) [Varieties of recent creation] or [(2) [Optional exception]]);

(iii) provisions of the 1991 Act providing for a minimum level of protection and/or a choice (e.g. see Article 13 on provisional protection and Article 19 on the duration of the breeder's right);

(iv) cross references in the relevant example provisions of Part I of the document to the corresponding explanations in Part II of the document (e.g. Genera and Species to be Protected [NOTES – ARTICLE 3]);

(v) numbering of provisions that might need to be modified (e.g. in the example text corresponding to Article 15(1)(iii) of the 1991 Act “acts done for the purpose of breeding other varieties, and, except where the provisions of Article [14(5)] apply, acts referred to in Article [14(1) to (4)] in respect of such other varieties.”).

10. The title of the specific provisions of the 1991 Act of the UPOV Convention relevant for intergovernmental organizations have been kept in Part I of the guidance document. The contents of those provisions, and, if appropriate, the corresponding explanations can be found in Part II of the guidance document.

11. Numbers corresponding to the example text for Articles 23 to 27 in Part I of the guidance document, which do not correspond to the number of Articles of the 1991 Act of the UPOV Convention, are preceded by an asterisk. A corresponding footnote has been added for this purpose in the relevant Articles of Part I of the guidance document.

Part II - Notes based on information materials concerning certain Articles of the 1991 Act of the UPOV Convention

12. Part II of the guidance document contains notes based on information materials concerning certain Articles of the 1991 Act of the UPOV Convention (e.g. Council document, draft explanatory notes, distance learning material). In using the information materials, the necessary formatting changes have been introduced and references to previous Acts of the UPOV Convention have been omitted. As explained in the endnotes, it is proposed that the Notes in Part II of the guidance document would be updated to reflect any development in the contents and/or the status of the source (new explanatory notes, revisions to explanatory notes, CAJ approved text, etc.).

13. The proposed structure of the guidance document allows cross references between Parts I and II (e.g. in the title of the Articles of Part I reference is made to the pages in Part II that contain notes corresponding to that provision). A future electronic version would enable electronic links between Part I and Part II.

New Proposals for Information Materials

Explanatory Notes

14. During the preparation of Part II of the guidance document, the Office of the Union has identified the need to develop explanatory notes, or additional text, on the following:

(i) Article 3 “Genera and Species to be Protected” (additional guidance concerning the specification of “plant genera and species”);

(ii) Article 4 of the 1991 Act “National Treatment”;

(iii) Article 6(2) of the 1991 Act “Varieties of recent creation” (example provision(s), based on the available explanatory notes);

(iv) Article 17 of the 1991 Act “Restrictions on the Exercise of the Breeder’s Right”;

(v) Article 13 of the 1991 Act “Provisional Protection” (example provision(s), based on the available explanatory notes).

Guidance on procedures to ratify, or accede to, the 1991 Act of the UPOV Convention

15. The Office of the Union is often requested to provide information on:

(i) how to become a member of UPOV and accede to the 1991 Act of the UPOV Convention;

(ii) how to ratify, or accede to, the 1991 Act of the UPOV Convention (for members of UPOV only).

16. It is proposed to prepare, based on existing information materials, a guidance document for each of these procedures.

17. Subject to the endorsement of the CAJ-AG, at its third session of November 1, 2008, it is proposed that the CAJ considers the proposals, presented in paragraphs 14 and 16, at its fifty-ninth session in 2009.

18. *The CAJ-AG is invited to:*

(a) comment on document “Guidance for the Preparation of Laws Based on the 1991 Act of the UPOV Convention” (document UPOV/INF/6/1 Draft 1); and

(b) consider the proposals in paragraphs 7, 14 and 16.

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