



UPOV/EXN/CAL Draft 1

ORIGINAL: English

DATE: October 6, 2009

INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

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**EXPLANATORY NOTES ON
CONDITIONS AND LIMITATIONS CONCERNING THE BREEDER'S
AUTHORIZATION IN RESPECT OF PROPAGATING MATERIAL
UNDER THE UPOV CONVENTION**

*Document prepared by the Office of the Union
to be considered by the Administrative and Legal Committee Advisory Group
at its fourth session to be held in Geneva on October 23, 2009*

Note for Draft version

Footnotes will be retained in published document.

Endnotes are background information to help in the consideration of this draft and will not appear in the final, published document.

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EXPLANATORY NOTES ON CONDITIONS AND LIMITATIONS CONCERNING THE
BREEDER'S AUTHORIZATION IN RESPECT OF PROPAGATING MATERIAL UNDER
THE UPOV CONVENTION

PREAMBLE

1. The purpose of these Explanatory Notes is to provide guidance concerning the conditions and limitations to which the breeder's authorization may be subject, for acts in respect of propagating material (Article 14(1) of the 1991 Act and Article 5(2) of the 1978 Act), under the International Convention for the Protection of New Varieties of Plants (UPOV Convention). The only binding obligations on members of the Union are those contained in the text of the UPOV Convention itself, and these Explanatory Notes must not be interpreted in a way that is inconsistent with the relevant Act for the member of the Union concerned.

(a) *Relevant articles*

1991 Act of the UPOV Convention

Article 14

Scope of the Breeder's Right

(1) [Acts in respect of the propagating material] (a) Subject to Articles 15 and 16, the following acts in respect of the propagating material of the protected variety shall require the authorization of the breeder:

- (i) production or reproduction (multiplication),
- (ii) conditioning for the purpose of propagation,
- (iii) offering for sale,
- (iv) selling or other marketing,
- (v) exporting,
- (vi) importing,
- (vii) stocking for any of the purposes mentioned in (i) to (vi), above.

(b) The breeder may make his authorization subject to conditions and limitations.

1978 Act of the UPOV Convention

Article 5

Rights protected; Scope of Protection

(1) The effect of the right granted to the breeder is that his prior authorisation shall be required for

- the production for purposes of commercial marketing
- the offering for sale
- the marketing

of the reproductive or vegetative propagating material, as such, of the variety.

Vegetative propagating material shall be deemed to include whole plants. The right of the breeder shall extend to ornamental plants or parts thereof normally marketed for purposes other than propagation when they are used commercially as propagating material in the production of ornamental plants or cut flowers.

(2) The authorisation given by the breeder may be made subject to such conditions as he may specify.

(b) Notes

2. The UPOV Convention establishes the right of the breeder to make his authorization, for acts in respect of propagating material, subject to conditions and limitations (see Article 14(1) of the 1991 Act and Article 5(4) of the 1978 Act). The conditions and limitations according to which a breeder may authorize the acts in respect of the propagating material are a matter for the breeder to decide.

3. For illustrative purposes, examples of conditions and limitations which a breeder might include are:

(i) remuneration – level of remuneration (e.g. linked to quantity of propagating material, area sown with the propagating material, amount or value of material produced from the propagating material etc.), timing and method of payment, etc.;

(ii) period of authorization;

(iii) method by which the authorized acts may be undertaken (e.g. method of production or reproduction, export routes etc.);

(iv) quality and quantity of material to be produced;

(v) territory(ies) covered by the authorization for export;

(vi) conditions under which the person authorized may license/sub-license other parties to conduct the authorized acts on their behalf;

etc.

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