



CAJ-AG/10/5/2

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**INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS**  
GENEVA

**ADMINISTRATIVE AND LEGAL COMMITTEE  
ADVISORY GROUP**

**Fifth Session  
Geneva, October 18, 2010**

EXPLANATORY NOTES

*Document prepared by the Office of the Union*

Introduction

1. The Administrative and Legal Committee (CAJ), at its fifty-second session, held in Geneva on October 24, 2005, agreed an approach for the preparation of information materials concerning the UPOV Convention, as explained in paragraphs 8 to 10 of document CAJ/52/4. The CAJ also agreed to the establishment of an advisory group to the CAJ (“CAJ-AG”) to assist in the preparation of documents concerning such materials, as proposed in paragraphs 11 to 14 of document CAJ/52/4 (see paragraph 67 of document CAJ/52/5, Report).

2. The purpose of this document is to provide background information to assist the CAJ-AG in its consideration of the following draft Explanatory Notes at its fifth session to be held in Geneva on October 18, 2010:

- (i) UPOV/EXN/BRD: Explanatory Notes on the Definition of Breeder under the 1991 Act of the UPOV Convention  
(document UPOV/EXN/BRD Draft 3)
  
- (ii) UPOV/EXN/HRV: Explanatory Notes on Acts in Respect of Harvested Material under the UPOV Convention  
(document UPOV/EXN/HRV Draft 5)

Explanatory Notes on the Definition of Breeder under the 1991 Act of the UPOV Convention (document UPOV/EXN/BRD Draft 3)

3. The CAJ-AG, at its fourth session, considered documents CAJ-AG/09/4/2 and UPOV/EXN/BRD Draft 2 and agreed the following concerning document UPOV/EXN/BRD Draft 2 (see document CAJ-AG/09/4/4 “Report”, paragraph 6):

Section (d) (i)	<p>to include the following examples of “discovered and developed”:</p> <ul style="list-style-type: none"> <li>- the discovery of a plant in a population, and the multiplication of that individual plant to obtain a variety that differs from the initial population,</li> <li>- the discovery of a mutant in a population and the multiplication of that individual mutant plant to obtain a variety that differs from the initial population.</li> </ul> <p>In addition it was agreed that the Office of the Union would also consider the examples provided in the document “Clarification of Plant Breeding Issues under the Plant Breeder’s Rights Act 1991”, December 2002, prepared by the Expert Panel on Breeding of IP Australia (available at <a href="http://www.anbg.gov.au/breeders/plant-breeders-rights-act-report.pdf">http://www.anbg.gov.au/breeders/plant-breeders-rights-act-report.pdf</a>) and any other examples provided by members of the Union.</p>
Section (d) (ii)	<p>to read (new text underlined):</p> <p>“9. In accordance with the second indent of Article 1(iv) of the 1991 Act of the UPOV Convention, where the person who bred, or discovered and developed, a variety is an employee, the employer, <u>or the person who has commissioned the latter’s work</u>, may be the person entitled to obtain a breeder’s right, where the applicable law so provides.”</p>
Section (d) (iii)	<p>To ensure that the wording of paragraph 10 covers the following situation: if the person entitled to a breeder’s right dies, the heir of the aforementioned person would be the one entitled to transfer the title to another person.</p>

4. The CAJ-AG requested the preparation of a new draft of document UPOV/EXN/BRD (document UPOV/EXN/BRD Draft 3), on the basis of the conclusions by the CAJ-AG at its fourth session, for consideration by the CAJ-AG at its fifth session (see document CAJ-AG/09/4/4 “Report”, paragraph 7).

Explanatory Notes on Acts in Respect of Harvested Material under the UPOV Convention (document UPOV/EXN/HRV Draft 5)

5. The CAJ-AG, at its fourth session, considered documents CAJ-AG/09/4/2 and UPOV/EXN/HRV Draft 4 and agreed the following concerning document UPOV/EXN/HRV Draft 4 (see document CAJ-AG/09/4/4 “Report”, paragraph 17):

SECTION I	to reproduce Article 14(1) of the UPOV convention at the beginning of the document
SECTION I (d) General	to place the titles before the examples and to create meaningful titles for each example
	to specify in examples 1 to 6 that the breeder did not have a reasonable opportunity to exercise his right on the propagating material
	to add an example as presented in paragraph 15 above
	CIOPORA to propose examples to clarify the notion of “unauthorized use”
SECTION I (d) Examples 3 and 4	to clarify that the exported material, whilst indicated as “harvested material”, was in fact used as propagating material, and there was no authorization for export of propagating material
SECTION I (d) Example 3	to replace colon with “and”
SECTION II	to provide an example where the right could not be exercised because it had been exhausted

6. The CAJ-AG agreed that, based on the conclusions of the CAJ-AG at its fourth session, the Office of the Union should prepare a revised version of the “Explanatory Notes on Acts in Respect of Harvested Material under the 1991 Act of the UPOV Convention” (document UPOV/EXN/HRV Draft 5) for circulation to the CAJ-AG and, in the absence of substantial concerns, a draft of the Explanatory Notes on Acts in Respect of Harvested Material would be submitted to the CAJ at its sixty-second session, to be held in Geneva on October 18 and 19, 2010. In the case of substantial concerns, the Explanatory Notes on Acts in Respect of Harvested Material would be re-discussed by the CAJ-AG at its fifth session (see document CAJ/61/3, paragraph 17, and document CAJ/61/11 “Report on the Conclusions”, paragraph 35).

7. Following the fourth session of the CAJ-AG, the Office of the Union received comments from the Russian Federation and CIOPORA, which have been posted on the webpage of the fourth session of the CAJ-AG. On the basis of those comments, it was concluded that it would not be appropriate to seek approval of document UPOV/EXN/HRV Draft 5 by correspondence. Furthermore, the CAJ-AG will meet before the sixty-second session of the CAJ to be held in Geneva on October 19, 2010, which provides an opportunity for the CAJ-AG to consider document UPOV/EXN/HRV Draft 5, at its fifth session, and to report its conclusions to the CAJ at its sixty-second session.

8. At its sixty-second session, the CAJ will be invited to consider document UPOV/EXN/HRV Draft 5 in conjunction with the conclusions of the CAJ-AG on that document. If the approval of the CAJ-AG, at its fifth session, and the CAJ, at its sixty-second session, is obtained on the basis of document UPOV/EXN/HRV Draft 5, a draft of document UPOV/EXN/HRV will be prepared for adoption of document UPOV/EXN/HRV by the Council, at its twenty-eighth extraordinary session to be held in Geneva on April 8, 2011.

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