



International Community of Breeders of Asexually Reproduced Ornamental and Fruit Plants

Considerations on propagating material, harvested material and EDV

Geneva, 18 October 2011

Agenda

- Essentially Derived Varieties
 - The purpose of the EDV concept
 - No limitation to one or a few phenotypic differences
 - UPOV must protect innovation
 - Determination of EDV is task of the breeders
- Propagating material and Harvested material

The purpose of the EDV concept

- The basic purpose of the EDV concept is to strengthen the right of the breeder (IOM/IV/2, page 2, no. B. 5. (i)).
- The very objective of dependence is to give to the breeder of an original genotype an additional source of remuneration ((IOM/IV/2, page 12, no. 6. (iv))

The purpose of the EDV concept

- Strengthening the rights of the breeders of vegetatively reproduced ornamental and fruit varieties and giving to a breeder of an original genotype an additional source of remuneration means for CIOPORA:
 - Control over mutations
 - Avoiding of plagiarism
 - Balancing rights of breeders and biotech-inventors

No limitation to one or a few phenotypic differences

- There is no limit in the phenotypic differences between an Initial Variety and an EDV, as long as the differences result from the act of derivation
- Undoubted contradiction between Article 14 (5) (b) (i) and (iii) of the UPOV 1991 Act
- The explicit attempt of the delegation of Germany in the Diplomatic Conference to limit the differences to a “very small number of modifications” (see DC/91/92 on page 132 of the Records) was rejected by the vast majority of votes (see No. 1092 of the Records).

No limitation to one or a few phenotypic differences

IOM/6/2, No. 13:...

- The first condition [14 (5) (b) (i)] is accordingly concerned with the genetic origin of the later variety.
- The third condition [14 (5) (b) (iii)] is accordingly concerned with the degree of similarity of the later variety to the initial variety.
- Whilst the first condition also makes reference to the degree of similarity, the primary function of the first condition is to establish a requirement relating to the genetic origin of the variety.

No limitation to one or a few phenotypic differences

- EDV in vegetatively reproduced ornamental and fruit varieties is not only about plagiarism
- Nowadays mutants are not only punctual mutations, but can look completely different than its Initial Variety, without altering its genome and its structure significantly.
- GMO are covered by EDV, too, and they are not plagiarism

No limitation to one or a few phenotypic differences

- Both mutations and GMO build solely on the original genotype of the Initial Variety
- A GMO may look the same than its Initial Variety, but may contain a much higher value than an induced mutation which may look completely different than its Initial Variety.
- Why GMO are considered to be EDV in any case, but some mutations not?

UPOV must protect innovation

- An Intellectual Property Right must provide a true and robust “exclusive right” to its holder
- The breeders’ exemption in the PBR poses a unique limitation to that exclusive right
- The breeders’ exemption requires a corrective as regards the commercialization of the breeding result.
- The EDV concept is such a corrective, and its significance must not be diminished by a limitation of its scope.

UPOV must protect innovation

- UPOV must protect innovation
- The only protection of innovation is IP protection
- Not granting robust IP protection is particularly disadvantageous for small innovative breeders, because they do not have other means to commercialize their products
- If somebody wishes to built his new product solely on the original genotype of someone else, he may chose a free variety, or share his profit

Determination of EDV is the task of the breeders

- It is a common understanding among the UPOV members that it is up to the breeders to determine when there is essential derivation between varieties
- In the area of vegetatively reproduced ornamental and fruit varieties CIOPORA has developed a solution, that is both balanced and simple and avoids lengthy disputes on whether a variety is an EDV or not.
- Jurisprudence must not have the lead in solving the EDV problem – its not affordable

Determination of EDV is the task of the breeders

- Defining clear rules on EDV opens the possibility for breeders to significant financial savings
- In many cases a separate protection for the EDV is not necessary
- This requires clear and certain rules, in order to avoid the challenging of a variety as not being an EDV

Propagating and harvested material

- Numerous different definitions of the term “propagating material”, the key term in the UPOV system, causes concern in the business.
- UPOV should develop one clear, sufficiently broad definition of “propagating material”
- One and the same material should be qualified either as propagating material or as harvested material
- If this is not possible for all species, at least it is necessary for vegetatively reproduced ornamental and fruit varieties.

Propagating material

- The PBR must cover the main products of the variety
- The PBR must cover *entire plants or parts of plants as far as such parts are capable of producing entire plants = propagating material*



- A harmonization within the UPOV members is urgently required – on a sufficiently high level.

Harvested material

- The CPVR must cover the main products of the variety



- Breeders must be able to control the import of harvested material of their protected varieties into territories, where such protection exists.

Harvested material

- 70 out of 195 countries are UPOV members, but in several non-member-countries production of ornamental and fruits takes place.
- The UPOV 1991 Act must not deter breeders from exercising their rights on harvested material – at least at the borders of protected territories.
- Production and trade of harvested material, which is not authorized by the breeder, constitutes “unfair competition” to licensees.

Harvested material

- Associations of growers and traders have asked CIOPORA and its members to take action against such “unauthorized business”.
- Safeguarding fair trade is in the benefit of society.
- Not safeguarding fair trade does only protect dishonest players and countries, who do not join the international standards of IP protection.

Thank you for your attention

CIOPORA