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FOR SELECTION ACHIEVEMENTS TEST AND PROTECTION

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To: UPOV Office

September 23, 2011

Subj: in reply to e-mail of September 12, 2011

**(Further Discussion on Act in Respect of Harvested Material)**

Dear Mr. Button,

First of all, I thank you for your letter of August 12, 2011. and warm words concerning a visit in Moscow.

I was very glad to have a meeting with you to have possibility to discuss a whole number of important questions, including those concerning acts in respect of harvested material (document UPOV/EXN/HRV Draft 5 Corr.).

I also thank you for the information in your e-mail of September 12, 2011. with attachment of a new draft of document on harvested material.

Further to our discussion and in reply to your last letter I have to note that the new draft of document on harvested material UPOV/EXN/HRV Draft 6 contains disputable Examples 1 – 6 as before. Formulations of those Examples contravene provision of Article 16(1) of the UPOV Convention, because they may cover the situations of production of harvested material from propagating material, that has been marketed by a breeder or with his consent, what is not a violence of PBR (breeder's right).

I am not sure that addition of my Example below may change the document essentially.

*Example 9: harvested material produced in the territory unprotected is imported, with consent the breeder, into the territory protected*

*Variety 9 is protected in Country P, but the variety propagating material is not produced there, because the variety belongs to genus/specie that does not grow in the territory of Country P (e.g., orchid, banana, orange etc.). Harvested material of Variety 9 (flower cutting, fruit of banana, orange etc.) is produced in Country R, where is no protection of the variety and, imported into protection Country P regularly under license granted by the breeder.*

In Example 9, the breeder can exercise his right on acts in respect of the harvested material in Country P because:

- i)* the breeder did not have a reasonable opportunity to exercise his right in relation to the propagating material in the territory protected by the reason of its production absence there;
- ii)* he has right in relation to harvested material imported into territory protected, i.e. in Country P.

Thank you for your attention and hope for your understanding.

Yours sincerely,

Dr. Y. Rogovskiy,  
Deputy Chairman