

From: [Chris Barnaby](#)
To: [mail_Upov](#)
Cc: [Huerta, Yolanda](#)
Subject: RE: Circular E-14/182 - Comments on draft Explanatory Notes
Date: Monday, July 14, 2014 5:06:35 AM
Attachments: [NZ Comments on Explanatory Notes 2014.docx](#)

I attach comments from New Zealand regarding variety denominations, cancellation and propagating material.
Chris Barnaby

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Subject: Comments on draft Explanatory Notes
UPOV Circular E-14/182 June 25, 2014

Madam,
Sir,

The purpose of this circular is to recall that the deadline for comments on the draft explanatory notes posted on the [CAJ-AG/13/8](#) section of the UPOV website has now passed (see circulars E-14/128, of May 12, 2014, E-14/136, of May 20, 2014, and E-14/143, of May 23, 2014, and the list of draft explanatory notes concerned, below).

In order for us to plan the preparation of new drafts of the relevant explanatory notes for consideration by the Administrative and Legal Committee Advisory Group (CAJ-AG) at its ninth session, to be held in Geneva on October 14 and 17, 2014, please could you let us know whether you are still planning to provide comments and, if so, by when (unless you have already done so).

[UPOV/EXN/CAN/2 DRAFT 1](#) Explanatory Notes on the Cancellation of the Breeder's Right under the 1991 Act of the UPOV Convention
[UPOV/EXN/EDV/2 DRAFT 4](#) Explanatory Notes on Essentially Derived Varieties under the 1991 Act of the UPOV Convention
[UPOV/EXN/HRV/2 DRAFT 1](#) Explanatory Notes on Acts in Respect of Harvested Material under the 1991 Act of the UPOV Convention
[UPOV/EXN/NUL/2 DRAFT 1](#) Explanatory Notes on the Nullity of the Breeder's Right under the UPOV Convention
[UPOV/EXN/PPM DRAFT 2](#) Explanatory Notes on Propagation and Propagating Material under the UPOV Convention
[UPOV/EXN/PRP/2 DRAFT 1](#) Explanatory Notes on Provisional Protection under the UPOV Convention
[UPOV/INF/12/5 DRAFT 1](#) Explanatory Notes on Variety Denominations under the UPOV Convention

Yours sincerely,
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Comments from New Zealand on the following draft Explanatory Notes July 2014

UPOV/INF/12/5 Draft 1 Explanatory Notes on Variety Denominations

Paragraph 2

The current notes are silent on the use of a Latin name or a common name as part of a denomination for a variety of that genus. The use of a denomination which includes the name of the genus or common name for that variety might lead to confusion.

Article 19.23 and 19.24 of ICNCP 7th edition provide further information.

A new 2.3.1 (d)

(d) contain the Latin or common name of the genus to which that variety belongs. The identity of the denomination and that of the genus to which it belongs could become unclear and confusing.

Example: *Carex* variety 'Sedge'. This could possibly be referred to as 'Sedge' *Carex* and without the use of italics or single quotes the identity of the denomination and the genus may not be clear.

UPOV/INF/PPM Draft 2 Explanatory notes on Propagation and Propagating Material

Paragraph 3

Propagation technology continues to change rapidly and techniques not previously applied to the propagation of a genus or species are now being applied. Paragraph 3. (i) and (iii) cover what has been done with respect to tradition and accepted practice but the current text does not cover recent developments and the future practice.

An example. A variegated foliage plant was traditionally propagated by division. To do this you need whole plants or plantlets. With the development of *in vitro* technology it is now possible to propagate from cut leaves. Working through 3 (i) – (v) we may come to the conclusion that a leaf is not propagating material but considering very recent developments now is.

The paragraph could be improved by adding:

(vi) whether the material is subject to recent developments in propagation technology or change in custom/practice

UPOV/EXN/CAN/2 draft 1 Explanatory notes on Cancellation of the Breeders Right

6.of the breeder's right. *Cancellation is a decision and action of the granting authority in contrast to surrender or renunciation.....*

It is important to emphasise that cancellation is an official action of the authority where surrender is voluntary and entirely the responsibility of the title holder.