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REVIEW OF UPOV-ROM PLANT VARIETY DATABASE

Document prepared by the Office of the Union

1. The purpose of this document is to report on the results of a questionnaire designed to investigate how the effectiveness of the UPOV-ROM might be improved. This document also presents proposals on how the results of the questionnaire might be developed into a program of activity.

BACKGROUND

2. In December 2001, at the request of the *Ad hoc* Working Group on Variety Denominations (WG-VD), the Office of the Union (hereinafter referred to as “the Office”) issued an initial questionnaire to those authorities participating in the WG-VD to identify common practices and areas of divergence concerning decisions on variety denominations. The issues arising from the responses to this initial questionnaire were reported in document WG-VD/02/1 and included the need to consider how the effectiveness of the UPOV-ROM might be improved.

3. At its second meeting, held in Geneva, on April 18, 2002, the WG-VD discussed document WG-VD/02/1 and concluded that the best way to consider this issue would be for:

“The Office to draft a questionnaire for all members of the Union and other interested organizations, seeking information on how the effectiveness of the UPOV-ROM (or similar web-based database) might be improved. It would also seek advice from members on how important and relevant they consider this mechanism to be for complying with Article 20(6) of the 1991 Act of the Convention. This draft questionnaire would be sent to the members of the WG-VD for comment, with the aim of issuing a questionnaire by August 2002 in order that the responses can be analyzed by the WG-VD and its recommendations reported to the Administrative and Legal Committee (hereinafter referred to as “the CAJ”) during its session in October 2002.”

4. The Office has, after consultation with the WG-VD, produced and circulated this second questionnaire on how the effectiveness of the UPOV-ROM might be improved. The questionnaire was produced in two versions: version (a) for authorities (Circular U 3256) and version (b) for breeders and other subscribers (Circular U 3257).

RESULTS OF THE QUESTIONNAIRE

5. Version (a), for authorities, drew responses from 31 members of the Union and the Community Plant Variety Office (CPVO). Those authorities which responded had issued around 89% of the titles of protection in existence. A list of the members of the Union which responded is reproduced in Annex I. Version (b), for breeders and other subscribers, drew 11 responses originating in a total of seven countries, all of which were located within Europe.

6. A summary of the responses to the individual questions is provided in Annex II of this document.

PROPOSAL FOR A PROGRAM TO IMPROVE THE EFFECTIVENESS OF THE UPOV-ROM

7. The proposals for a program to improve the effectiveness of the UPOV-ROM have been divided into three sections, relating to:

- I. Existing projects which are already underway and which address some of the issues raised;
- II. Matters which are specifically related to the work of the WG-VD;
- III. General aspects not covered by the other sections.

I. Existing Projects to Improve the Effectiveness of the UPOV-ROM

8. Certain projects already underway within UPOV are intended, at least in part, to improve the effectiveness of the UPOV-ROM.

Development of a UPOV Taxon Code (see document TC/37/6)

9. The response to question (d) of the questionnaire showed the support of 85% of authorities for the introduction of a UPOV Taxon Code. Many of those supporting the code emphasized the importance of this step for improving the effectiveness of the UPOV-ROM.

10. The questionnaire indicated the following aspects which should be considered in this project:

(a) ensure there is an easy way of adding new codes;

(b) ensure that the code can operate at the genus level to avoid problems where a plant cannot be clearly allocated to a species.

11. The response to question (g) of the questionnaire also indicated that it might be appropriate to introduce a code for variety denomination classes (see Annex II, question (g), item (xiv)). Whether this should be incorporated within the UPOV Taxon Code, or as a separate code for searching purposes, will need to be considered alongside discussions on the development of the UPOV Taxon Code itself.

Publication of Variety Descriptions

12. Proposals received under question (g) of the questionnaire covered the inclusion of variety descriptions and photographs in the database.

II. Matters Specifically Concerning Variety Denominations

13. The responses to the questionnaire raised certain matters specifically concerning variety denominations which will be considered by the WG-VD at its fourth meeting to be held on April 10, 2003. The views of the WG-VD will be reported to the CAJ at its forty-seventh session. These matters are explored below.

Different Variety Denominations in Different Territories

14. Article 20(5) of the 1991 Act provides for the same variety denomination to be submitted in all UPOV members, unless the denomination is unsuitable.

15. Responses to question 3 of the questionnaire indicated that it is currently not possible to check if the same variety has a different denomination in different territories, because there is no unique variety identifier and the breeder's reference is not reliable for this purpose.

16. Some breeders suggested that each variety should be attributed a unique code and then it might have different variety names / synonyms / trade names in different territories.

17. At the second meeting of the WG-VD, the representatives of both China and Japan expressed the need to take into consideration the difficulty in translating roman-script based names into either Chinese or Japanese script and vice versa. The WG-VD could consider whether the introduction of a unique variety identifier might offer a potential solution to this problem. Thus, *where considered necessary*, a variety might be "registered" with a unique variety identifier which is acceptable as an identifier to *all* members (e.g. numerical

identifier). A “field” for this unique variety identifier would then be included in the UPOV-ROM, UPOV model application forms, etc. This would then allow, where this was necessary, the variety to be allocated different denominations in different territories.

18. Proposals for the introduction of a unique variety identifier would need to take into account the potential advantages, but also the additional work this would entail and the risk of losing the simple effectiveness of the current system in those crops where there is currently no problem. Guidance on what to consider “unsuitable” and whether different denominations would be necessary is a matter which will be considered further in the development of the draft explanatory notes on Article 20 of the 1991 Act of the UPOV Convention, concerning variety denominations.

Informing other Members of the Union Concerning Variety Denominations

19. Responses to question 4 of the questionnaire indicated that whilst 50% of authorities used the UPOV-ROM to inform other members of the Union of matters concerning variety denominations, the Gazettes were always the *official* means by which their obligations were met. Some authorities clearly stated that their Gazette would always be their official means. However, some authorities indicated that they would like to replace completely their Gazettes with the UPOV-ROM.

20. The WG-VD could consider, with respect to the responses to questions 4 and 5 of the questionnaire, whether to examine the feasibility of the UPOV-ROM becoming one means by which authorities can comply with the requirement of Article 20(6) of the 1991 Act of the UPOV Convention, to inform other members of the Union of matters concerning variety denominations.

III. General Aspects

21. The questionnaire raised a number of other aspects where the UPOV-ROM might be improved.

22. Certain aspects raised by the responses to the questionnaire might be improved without any structural changes to the UPOV-ROM and could be undertaken by the Office within the “short term,” i.e. during the course of 2003. However, other aspects would require major structural improvements, which could not be done in the short term, and/or would need careful consideration in terms of resource requirements for both the Office and the members of the Union who contribute data. Nevertheless, it might be appropriate for the Office to investigate these aspects and provide a preliminary assessment of benefits and costs during the course of 2003.

Short-Term Improvements

23. The following short-term improvements are proposed:

(a) revise the user’s guide, including translation into all four UPOV languages, in order to:

(i) provide guidance for common uses indicated by the responses to the questionnaire (see responses to question 7 of the questionnaire);

- (ii) identify the contributors of data;
 - (iii) identify additional information included in the UPOV-ROM (e.g. pdf files),
 - (iv) explain how to conduct important search functions including, in particular, those mentioned in question (e) of the questionnaire,
 - (v) explain how to retrieve raw data for uploading into other databases;
- (b) provide the user's guide on the UPOV Website;
- (c) consider the feasibility of introducing an additional charge for other users to have access to raw data (see responses to question 6 of the questionnaire);
- (d) include UPOV documents which provide information on members of the Union with experience of a particular species (e.g. documents C/36/5, C/36/6 and TC/38/4) (see responses to question 7 of the questionnaire);
- (e) develop a "leaflet" summarizing the uses of the UPOV-ROM for authorities and other users, including, in particular, those uses identified in question 7 of the questionnaire. (This should also be supported by clear instructions on how to use the UPOV-ROM for these particular uses.) Such a leaflet would be widely distributed to potential paying subscribers;
- (f) encourage existing contributors to provide both PBR and official registration data and to provide data on varieties currently being examined (see responses to question (a) of the questionnaire);
- (g) encourage contributors to complete all fields in order to improve search facilities and to reconsider which fields should be mandatory (e.g. to be able to identify all new records) (see responses to question 5 of the questionnaire);
- (h) investigate the possibility of saving or printing lists of sorted / selected data (see responses to question (e) of the questionnaire);
- (i) obtain a cost for introducing the ANSI 1252 "Western European Character Set" (see responses to question (f) of the questionnaire);
- (j) develop proposals for training provisions for contributing data to the UPOV-ROM and for use of the UPOV-ROM (see responses to question (g) of the questionnaire);
- (k) investigate the possibility of including the set-up software with each UPOV-ROM (see responses to question (g) of the questionnaire).

Structural Improvements

24. Many of the proposed structural improvements are linked to the UPOV-ROM database being transferred to the UPOV Website and made available over the Internet. The main benefits of a web-based database are the following:

- (a) Scope for contributors to continuously update data at their chosen frequency:

Some authorities expressed concern that increasing the frequency of updating the UPOV-ROM would lead to increased cost and workload (see responses to question (c) of the questionnaire). A web-based system would be designed to allow contributors to update their data at their own rate. For example, some authorities indicated that they would wish to do this on a daily basis, which would not be possible with a CD-ROM-based database.

- (b) Constant access to the most up-to-date information for users of the database.

25. Developing a web-based database would mean the establishment of a new database structure. Thus, other structural improvements, whilst not linked *per se* to a web-based system, could be considered if this conversion is made and if considered to be appropriate. These include:

(a) improve the ease of submitting data (see responses to question (g) of the questionnaire);

(b) the Office to investigate manual inputting of data from the Gazettes for those members of the Union who do not contribute data to the UPOV-ROM, or only do so on an irregular basis. In addition, investigate whether existing contributors might be prepared to help in this work;

(c) improve the ease of uploading data into other databases (see responses to question (g) of the questionnaire);

(d) present the database in other languages and alphabets (see responses to question (g) of the questionnaire);

(e) facilitate submission of data to the database in other languages and alphabets (see responses to question (g) of the questionnaire);

(f) provide scope to include data from new sources (see responses to question (b) of the questionnaire).

During the course of 2003, the Office would approach these sources to see if they would be willing to contribute data to the UPOV-ROM and on what basis. It would also consider whether this data might be incorporated into the database, or whether it might be provided in separate, supplementary databases or whether it would be more appropriate to provide links to other Websites;

(f) provide access to raw data for other users on the basis of a charge to reflect the responses made to question 6 of the questionnaire;

(g) provide new search functions as identified in the responses to question (e) of the questionnaire and improved possibilities for viewing and printing selected / sorted data.

26. During the course of 2003, the Office would, in addition to those specific activities mentioned above, conduct a preliminary feasibility study on moving to a web-based database. It is anticipated that this study would be conducted "in-house" with the help of the

Information Technology (IT) Department of the World Intellectual Property Organization (WIPO).

27. The TC is invited to note the results of the questionnaire and comment on the proposed program of activity for improving the effectiveness of the UPOV-ROM and, in particular, on Section I “Existing Projects to Improve the Effectiveness of the UPOV-ROM” and Section III “General Aspects”.

28. The CAJ is invited to note the results of the questionnaire and comment on the proposed program of activity for improving the effectiveness of the UPOV-ROM.

[Annex I follows]

ANNEX I

LIST OF MEMBERS OF THE UNION AND OTHER AUTHORITIES
WHICH RESPONDED TO THE QUESTIONNAIRE

| | |
|-----------------------|--------------------------|
| Members of the Union: | Austria |
| | Belgium |
| | Bolivia |
| | Canada |
| | Chile |
| | Colombia |
| | Czech Republic |
| | Denmark |
| | Ecuador |
| | Estonia |
| | Finland |
| | France |
| | Germany |
| | Hungary |
| | Ireland |
| | Japan |
| | Mexico |
| | Netherlands |
| | New Zealand |
| | Norway |
| | Paraguay |
| | Poland |
| | Republic of Korea |
| | Republic of Moldova |
| | Russian Federation |
| | Slovenia |
| | South Africa |
| | Sweden |
| | Switzerland |
| | United Kingdom |
| | United States of America |
| Other Authority: | CPVO |

[Annex II follows]

ANNEX II

SUMMARY OF THE RESPONSES

NOTE: Comments made *exclusively* by breeders and other subscribers (“other users”) are indicated by an asterisk (*).

QUESTION 1. The UPOV Convention¹ requires that a variety denomination must be different from every denomination which designates, in the territory of any member of the Union, an existing variety of the same plant species or a closely related species.

Do you use the UPOV-ROM to check if a proposed variety denomination fulfills this requirement?

Summary of responses

| | (a) Authorities | (b) Other Users |
|-------|-----------------|-----------------|
| Yes | 30 (94%) | 9 (82%) |
| No | 2 | 2 |
| Total | 32 | 11 |

Comments

Some authorities are unable to incorporate the data contained in the UPOV-ROM into the database they use for variety denomination searches.

QUESTION 2. The UPOV Convention² specifies that a variety denomination may not consist solely of figures except where this is an established practice for designating varieties.

Do you use the UPOV-ROM to check if a denomination consisting “solely of figures” has already been registered by a member of the Union?

Summary of responses

| | (a) Authorities | (b) Other Users |
|-------|-----------------|-----------------|
| Yes | 19 (59%) | 4 (36%) |
| No | 13 | 7 |
| Total | 32 | 11 |

¹ Article 20(2) of the 1991 Act / Article 13(2) of the 1978 Act

² Article 20(2) of the 1991 Act / Article 13(2) of the 1978 Act

Comments

Very few authorities have received proposed denominations consisting “solely of figures.”

QUESTION 3. The UPOV Convention³ requires that a variety must be submitted to all members of the Union under the same denomination and that the authority of each member of the Union shall register the denomination so submitted, unless it considers the denomination unsuitable within its territory. In the latter case, the variety may have a different denomination in different territories.

Do you use the UPOV-ROM to check if a variety has a different denomination in different territories?

Summary of responses

| | (a) Authorities | (b) Other Users |
|-------|-----------------|-----------------|
| Yes | 22 (71%) | 5 (45%) |
| No | 9 | 6 |
| Total | 31 | 11 |

Comments

(i) It is currently not possible to check if the same variety has a different denomination in different territories, because there is no unique variety identifier. The breeder’s reference is not reliable for this purpose.

*(ii) Each variety should be attributed a unique code and then it might have different variety names / synonyms / trade names in different territories.

QUESTION 4. The UPOV Convention⁴ requires that the authority of a member of the Union shall ensure that the authorities of all the other members of the Union are informed of matters concerning variety denominations, in particular the submission, registration and cancellation of denominations.

Do you use the UPOV-ROM as the method for informing all the other members of the Union on matters concerning variety denominations?

Summary of responses

| | (a) Authorities |
|-------|-----------------|
| Yes | 15 (50%) |
| No | 15 |
| Total | 30 |

³ Article 20(5) of the 1991 Act / Article 13(5) of the 1978 Act

⁴ Article 20(6) of the 1991 Act / Article 13(6) of the 1978 Act

Comments

(i) Many authorities provide all the information contained in their Gazette for the UPOV-ROM, but the Gazette is the official publication.

(ii) Gazettes are necessary to notify members of recent denomination proposals. The UPOV-ROM does not separate this information in a transparent way.

(iii) Gazettes are necessary to provide information on “National List” matters.

(iv) Submission of data is too time-consuming or complicated (e.g. technically or because of language difficulties) to use this method.

(v) Some authorities mentioned that they would like to replace their Gazettes with the UPOV-ROM. Others mentioned that they would not wish to do so.

QUESTION 5. Do you use the UPOV-ROM as the basis for being informed, by members of the Union on matters concerning variety denominations?

Summary of responses

| | (a) Authorities | (b) Other Users |
|-------|-----------------|-----------------|
| Yes | 20 (65%) | 5 (45%) |
| No | 11 | 6 |
| Total | 31 | 11 |

Comments

(i) The UPOV-ROM is seen as a very important source of information, but authorities are aware that the Gazettes, rather than the UPOV-ROM, are the official sources of information.

(ii) Gazettes are a more complete source of information because they also contain information from authorities which do not contribute to the UPOV-ROM.

(iii) Gazettes are necessary to notify members of recent denomination proposals. The UPOV-ROM does not separate this information in a transparent way.

(iv) Gazettes are published on a monthly basis.

(v) The information on the UPOV-ROM is sometimes incorrect.

QUESTION 6. Currently, access to the raw data contained within the UPOV-ROM is only authorized to members of the Union and to other organizations which contribute data to the UPOV-ROM.

Would you be willing to grant access to the raw data you provide to other parties, including breeders?

Summary of responses

| | (a) Authorities |
|-----------------------------------|-----------------|
| Yes | 18 (60%) |
| Yes, if suitable payment by users | 10 (33%) |
| No | 2 |
| Total | 30 |

Suggestions for suitable payment were:

- (i) to cover only production and distribution expenses;
- (ii) a financial contribution for the maintenance in the same way as for an official Gazette.

QUESTION 7. Do you use the UPOV-ROM for any other purposes than those specified above (please specify)?

Summary of responses

| | (a) Authorities | (b) Other Users |
|-------|-----------------|-----------------|
| Yes | 20 (65%) | 10 (91%) |
| No | 11 | 1 |
| Total | 31 | 11 |

Other purposes for:

Authorities

(i) to provide information on which members are testing, or have experience with a particular species. Also, when receiving a first application for a variety of a new species to check whether varieties of that species have already been registered by other authorities;

(ii) to check on the progress of varieties being examined under bilateral agreements;

(iii) to obtain information on the breeder and maintainer and the date of filing and grant for varieties in the other territories. Information on the date of granting is used by some authorities in the examination of novelty;

(iv) to track whether varieties have been entered for protection or official registration in other territories;

(v) to look for (protected) varieties of common knowledge, including those nominated as “similar” by the breeder;

(vi) to check if a variety denomination is a part of a series;

(vii) use of “pdf” files for updating of administrative information;

(viii) in the case of authorities which are an International Cultivar Registration Authority, to provide information for updating the Cultivar Register and Checklist.

Other users

*(i) some breeders use the UPOV-ROM to check on the status of their varieties in other territories and/or to obtain administrative information;

*(ii) to check the status of varieties of other breeders in various territories;

*(iii) to provide information needed for “passport data” in relation to requirements for information systems on plant genetic resources;

*(iv) to check the status of varieties in relation to cases of infringement;

*(v) to check the validity of names submitted for other databases / publications;

*(vi) in relation to searches concerning trademark registrations in class 31 of the international trademark classification system.

PLEASE INDICATE WHICH OF THE FOLLOWING YOU WOULD RECOMMEND TO IMPROVE THE USEFULNESS OF THE UPOV-ROM:

QUESTION (a) Increase the number of members of the Union contributing data to the UPOV-ROM

Summary of responses

| | (a) Authorities | (b) Other Users |
|-------|-----------------|-----------------|
| Yes | 27 (96%) | 11 (100%) |
| No | 1 | 0 |
| Total | 28 | 11 |

Comments

- (i) also ensure that the data is submitted regularly and kept up-to-date;
- (ii) encourage the submission of data for varieties being examined for both plant breeders' rights and official registration, including all varieties currently undergoing examination.

QUESTION (b) Include information on variety denominations from other sources (please specify)

Summary of responses

| | (a) Authorities | (b) Other Users |
|-------|-----------------|-----------------|
| Yes | 18 (69%) | 4 (50%) |
| No | 8 | 4 |
| Total | 26 | 8 |

Suggestions were made to include information from:

- (i) the International Cultivar Registration Authorities;
- (ii) the Consultative Group on International Agricultural Research (CGIAR) Centers;
- (iii) Official Registers (National Lists / Common Catalogue);
- (iv) the OECD list of varieties;
- (v) commercial registers;
- (vi) trade names for ornamental varieties;
- (vii) (possible) future members of the Union;
- *(viii) non-members with a system of plant variety protection or official registration;
- *(ix) databases which gather names of protected materials in agricultural classes (categories) or are directly related to class 31 / 5 / 29 of the international trademark classification system.

Other comments

Some authorities expressed concern that the inclusion of data from many sources might cause confusion and suggested this might rather be done by providing links to other sources of information. Some authorities noted that the UPOV-ROM would be the platform for their own databases and would not become the single reference database.

QUESTION (c) Increase the frequency of updating of the UPOV-ROMSummary of responses

| | (a) Authorities | (b) Other Users |
|-------|-----------------|-----------------|
| Yes | 11 (39%) | 3 (30%) |
| No | 17 | 7 |
| Total | 28 | 10 |

Proposals were:

- (i) continuous updating by means of a web-based database;
- (ii) monthly.

Comments

Several authorities noted that there would be increased cost and workload if the frequency of updating was increased. This would need to be balanced against the potential benefits for improved data.

QUESTION (d) Introduce a UPOV taxon code (see document TC/37/6 “Review of UPOV Information Databases and Service”)Summary of responses

| | (a) Authorities | (b) Other Users |
|-------|-----------------|-----------------|
| Yes | 23 (85%) | 4 (44%) |
| No | 4 | 5 |
| Total | 27 | 9 |

Comments

- (i) There must be an easy way of adding new codes.
- (ii) The code should allow operation at the genus level, since there can be controversy over which species a plant belongs to.

QUESTION (e) Provide improved search functions (please specify)Summary of responses

| | (a) Authorities | (b) Other Users |
|-------|-----------------|-----------------|
| Yes | 17 (65%) | 3 (30%) |
| No | 9 | 7 |
| Total | 26 | 10 |

Proposals made were for a search function:

- (i) for variety denominations containing hyphens;
- (ii) to search for two-part variety denominations (e.g. September King);
- (iii) to eliminate characters such as “space”, “-“, “/”, “.”;
- (iv) for varieties in a particular variety denomination class;
- (v) by breeder and assignee/owner;
- (vi) for “similar” denominations on the basis of defined criteria;
- (vii) cross-reference all “hits” for a given variety (useful if a variety is registered under more than one name);
- (viii) to easily identify new variety denominations, proposed since the previous edition, in a reliable way;
- (ix) “Wildcard”;
- (x) with stepwise Boolean search capabilities that permit a further search limitation;
- *(xi) for sorting alphabetically, by breeder, date of filing, etc.

Note: The search functions requested in items (viii) to (xi) are already provided.

Other comments

Allow a whole table of selected / sorted data to be saved or printed, rather than just a single record.

QUESTION (f) Allow the use of accented characters by introducing the “Western European Character Set” (ANSI 1252) on the platform for the database

Summary of responses

| | (a) Authorities | (b) Other Users |
|-------|-----------------|-----------------|
| Yes | 13 (57%) | 4 (50%) |
| No | 10 | 4 |
| Total | 23 | 8 |

Comment

It was noted that the UPOV-ROM should also address the use of completely different alphabets.

QUESTION (g) Other suggestions (please specify):

- (i) make the UPOV-ROM available on the UPOV Web site;
- (ii) improve the legend and guidance notes;
- (iii) make UPOV-ROM available in other languages;
- (iv) facilitate submission and use of the database in other languages *and* alphabet systems;
- (v) develop a facility for uploading data into the databases operated by individual authorities;
- (vi) improve ease of submitting data;
- (vii) improve the quality of submitted data, i.e. regular updating; submission of most recent data; high level of accuracy;
- (viii) publicize the UPOV-ROM and its advantages to commercial users (paying subscribers);
- (ix) provision of (regional) training courses on
 - contribution of data to the UPOV-ROM
 - use of the UPOV-ROM
- (x) include the set up software with each CD;
- (xi) provide a description of the variety;
- (xii) provide a photograph of the variety;
- *(xiii) provide the trade designations for the variety denominations (Note: this field already exists but is not always completed);
- (xiv) introduce a code for the variety denomination groups;
- (xv) provide information on first public availability;
- (xvi) indicate at first sight if a variety right or denomination has been cancelled.
- (xvii) highlight the date of application if the variety denomination has not been provided;
- (xviii) indicate if the variety denomination is in the form of a “code” or “fancy name”;
- (xix) cross-reference all “hits” for a given variety (useful if a variety is registered under more than one name).