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Geneva

TECHNICAL COMMITTEE

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USE OF PROPRIETARY TEXT, PHOTOGRAPHS AND ILLUSTRATIONS IN TEST GUIDELINES

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EXECUTIVE SUMMARY

1. The purpose of this document is to present a proposal concerning guidance for drafters of UPOV documents, including Test Guidelines, in relation to text, photographs, illustrations or other material that could be subject to third party rights, for inclusion in a future revision of document TGP/7 "Development of Test Guidelines".
2. The TC is invited to consider the draft guidance in relation to text, photographs, illustrations or other material that could be subject to third party rights for future inclusion in document TGP/7, as presented in paragraphs 15 and 16 of this document.
3. The structure of this document is as follows:

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4. The following abbreviations are used in this document:

TC:	Technical Committee
TC-EDC:	Enlarged Editorial Committee
TWA:	Technical Working Party for Agricultural Crops
TWC:	Technical Working Party on Automation and Computer Programs
TWF:	Technical Working Party for Fruit Crops
TWO:	Technical Working Party for Ornamental Plants and Forest Trees
TWV:	Technical Working Party for Vegetables
TWPs:	Technical Working Parties

BACKGROUND

5. The TC-EDC, at its meeting in January 2015, considered the use of photographs and illustrations in Test Guidelines and recommended the development of guidance for drafters in relation to text, photographs or illustrations that could be subject to third party rights.
6. The TC, at its fifty-first session, held in Geneva, from March 23 to 25, 2015, agreed that guidance for drafters of Test Guidelines should be developed in relation to text, photographs or illustrations that could be subject to third party rights (see document TC/51/39 "Report", paragraph 166).

7. The following draft guidance was presented for consideration by the TWPs at their sessions in 2015 in relation to text, photographs or illustrations that could be subject to third party rights, for inclusion in document TGP/7 "Development of Test Guidelines":

"In the case of text, photographs, illustrations or other material that is subject to third party rights, it is the responsibility of the author of the document, including Test Guidelines, to obtain the necessary permission of the third party. Material must not be included in documents where such permission is required but has not been obtained."

COMMENTS BY THE TECHNICAL WORKING PARTIES IN 2015

8. The TWV, TWC, TWA, TWF and TWO considered documents TWV/49/13, TWC/33/13, TWA/44/13, TWF/46/13 and TWO/48/13, respectively (see documents TWV/49/32 "Report", paragraphs 35 to 37; TWC/33/30 "Report", paragraphs 51 to 53; TWA/44/23 "Report", paragraphs 19 to 22; TWF/46/29 Rev. "Revised Report", paragraphs 29 to 32; and TWO/48/26 "Report", paragraphs 26 and 27).

9. The TWV, TWC, TWA, TWF and TWO agreed with the proposed guidance for inclusion in a future revision of document TGP/7 in relation to text, photographs or illustrations that could be subject to third party rights, as follows:

"In the case of text, photographs, illustrations or other material that are subject to third party rights, it is the responsibility of the author of the document, including Test Guidelines, to obtain the necessary permission of the third party. Material must not be included in documents where such permission is required but has not been obtained."

10. The TWV and TWF recommended adding a disclaimer in relation to text, photographs or illustrations in the web-based TG template.

11. The TWF agreed that acknowledgment of the third party granting permission for any material used in UPOV documents should be made according to the terms of permission.

12. The TWC agreed that drafters of UPOV documents should also be requested to ensure that they had obtained the necessary authorization, as appropriate, for the use of text, photographs, illustrations or other materials in those documents.

13. The TWA agreed that references should be provided in Chapter 9 "Literature" of the Test Guidelines for all text, photographs and illustrations that were subject to third party rights and for which permission had been obtained.

14. The TWA agreed that the third party granting permission should be informed about the extent of use of UPOV documents by its members.

PROPOSAL

15. On the basis of the comments by the TWPs and the TC-EDC at its meeting on January 6 and 7, 2016, it is proposed to include guidance in document TGP/7 "Development of Test Guidelines" in relation to text, photographs, illustrations or other material that could be subject to third party rights, as presented below. Changes to the draft guidance considered by the TWPs at their sessions in 2015 are indicated by highlighting and underline:

"In the case of text, photographs, illustrations or other material that is subject to third party rights, it is the responsibility of the author of the document, including Test Guidelines, to obtain the necessary permission of the third party. Material must not be included in documents where such permission is required but has not been obtained."

"Where any text, photographs, illustrations or other material that are subject to third party rights are used in Test Guidelines it should be indicated that the third party has waived their rights for the purposes of DUS testing and development of variety descriptions (e.g. indicating 'Courtesy of [name of copyright owner]' alongside the image protected by copyright)."

16. It is also proposed that an acknowledgement be included in the web-based TG template in relation to text, photographs, illustrations or other material that could be subject to third party rights.

17. *The TC is invited to consider:*

(a) the draft guidance in relation to text, photographs, illustrations or other material that could be subject to third party rights for future inclusion in document TGP/7, as presented in paragraph 15 of this document; and

(b) to include an acknowledgement in the web-based TG template in relation to text, photographs, illustrations or other material that could be subject to third party rights.

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