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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
 Geneva

ENLARGED EDITORIAL COMMITTEE
Geneva, January 6 and 7, 2016

USE OF PROPRIETARY TEXT, PHOTOGRAPHS AND ILLUSTRATIONS IN UPOV DOCUMENTS

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EXECUTIVE SUMMARY

1. The purpose of this document is to present a proposal that would be made to the Technical Committee at its fifty-second session 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-EDC is invited to note the information in this document to be presented to the TC and propose any improvements to the document in that regard.
3. The structure of this document is as follows:

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4. The following abbreviations are used in this document:

CAJ:	Administrative and Legal Committee
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 Enlarged Editorial Committee (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 Technical Committee, 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.

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 The following draft guidance was presented for consideration by the TWPs at their sessions in 2015 in relation to text, photographs or illustrations that could be subject to third party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 "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, 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."

"Any text, photographs, illustrations or other material that is subject to third party rights should indicate 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 an image protected by copyright)."

16. It is also proposed that a disclaimer 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-EDC is invited to note the information in this document to be presented to the TC and propose any improvements to the document in that regard.

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