UPOV

International Union for the Protection of New Varieties of Plants

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Technical Working Party on Automation and Computer Programs **TWC/38/2 - BMT/19/2**

Thirty-Eighth Session
Alexandria, United States of America, September 21 to 23, 2020

Working Group on Biochemical and Molecular Techniques and DNA-Profiling in Particular

Nineteenth Session
Alexandria, United States of America, September 23 to 25, 2020

Original: English
Date: September 22, 2020

REPORT ON DEVELOPMENTS IN UPOV

Document prepared by the Office of the Union

Disclaimer: this document does not represent UPOV policies or guidance

The annex to this document contains a copy of a presentation on “Reports on Developments within UPOV” made by the Office of the Union at the thirty-eighth session of the Technical Working Party on Automation and Computer Programs (TWC) and at the nineteenth session of the Working Group on Biochemical and Molecular Techniques and DNA-Profiling in Particular (BMT) .

[Annex follows]

Technical Working Party on Automation and Computer Programs
Thirty-Eighth Session

Working Group on Biochemical and Molecular Techniques, and DNA-Profiling in Particular
Nineteenth Session

REPORT ON DEVELOPMENTS IN UPOV

Office of the Union

Hosted by the United States of America, September 21 to 25, 2020

UPOV
International Union for the Protection of New Varieties of Plants

Preview

General

- COVID-19 measures
- Membership & statistics
- Report on regular activities of UPOV
- Communicating the benefits of UPOV
- UPOV PRISMA

- Biochemical and molecular techniques
  - Current guidance
  - Developments since BMT/18 in 2019
  - The Concept of Essentially Derived Varieties
  - The Role of UPOV in Variety Identification

COVID-19 measures

Technical Working Parties

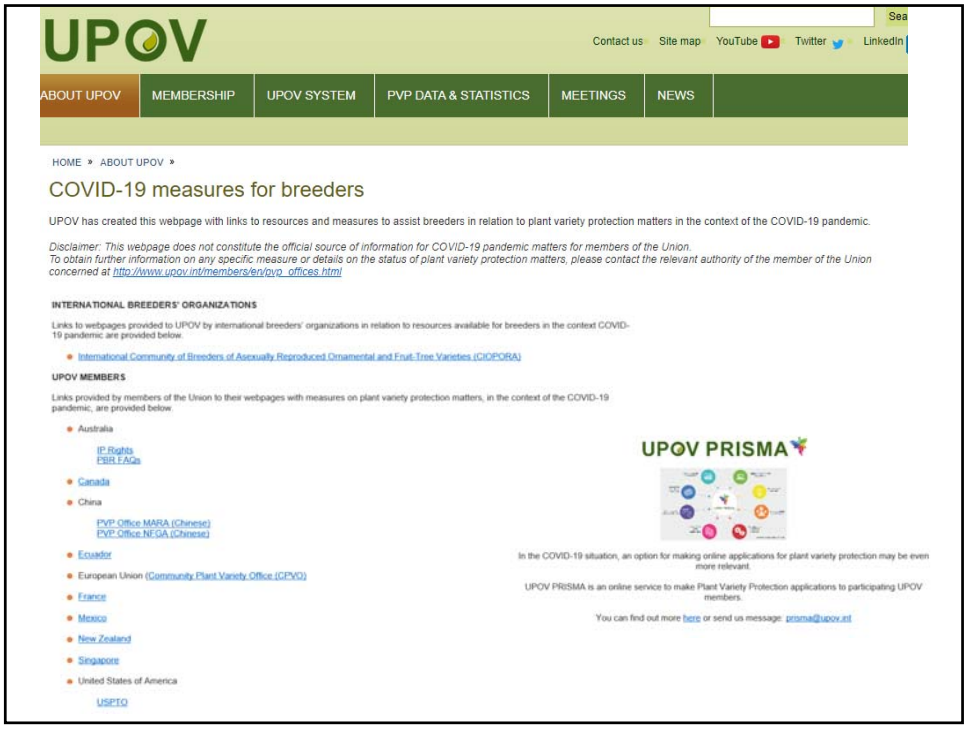
In order to continue the work of UPOV's Technical Working Parties (TWP) in the context of the COVID-19 situation, the following TWP sessions were successfully organized by electronic means:

- Technical Working Party for Vegetables (TWV), hosted by Brazil, from May 11 to 15;
- Technical Working Party for Ornamental Plants and Forest Trees (TWO), hosted by the Netherlands, from June 8 to 12;
- Technical Working Party for Agricultural Crops (TWA), hosted by Canada, from June 22 to 26;
- Technical Working Party for Fruit Crops (TWF), hosted by France, from July 6 to 10, 2020

UPOV

COVID-19 measures

- Measures for Breeders ->dedicated webpage on the UPOV Website



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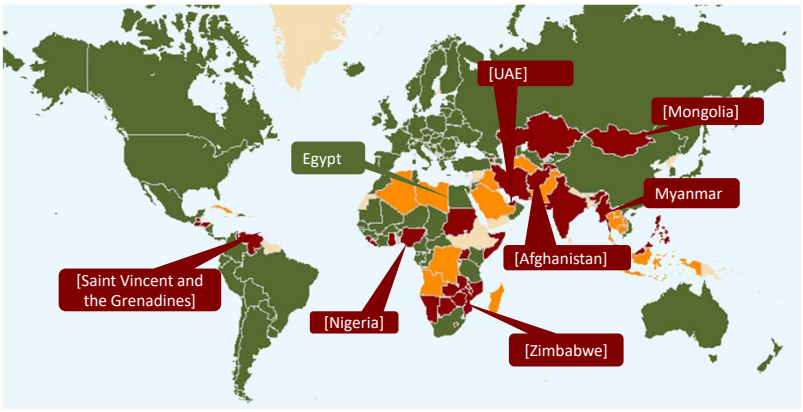
Examination of [draft] Laws (2019-2020) (all positive)



The boundaries shown on this map do not imply the expression of any opinion whatsoever on the part of UPOV concerning the legal status of any country or territory

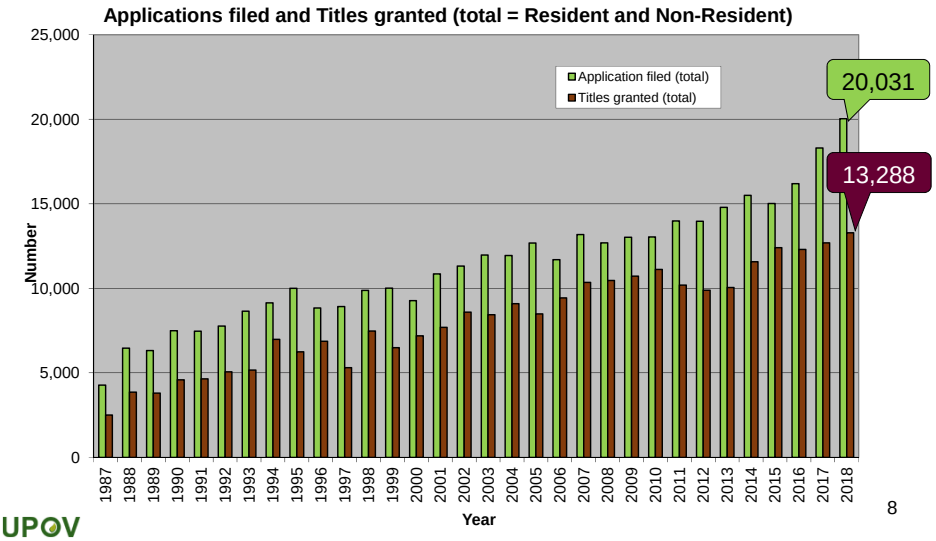
Members of UPOV (76) (covering 95 States)

Initiating States (20) and Organization (1)

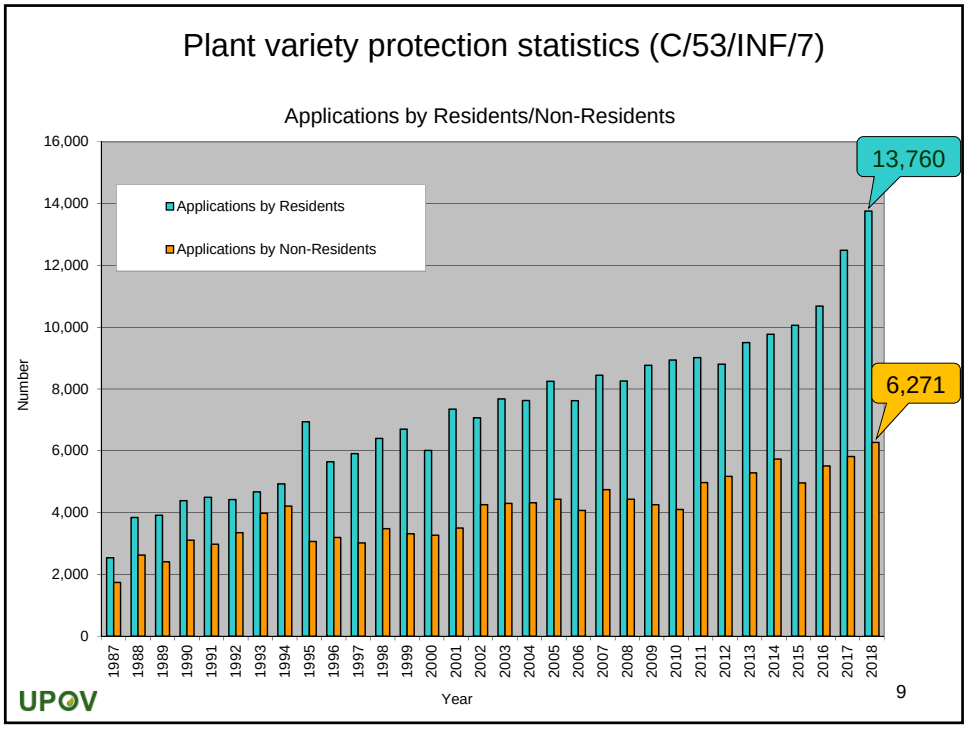
States (23) and Organization (1) in contact with the UPOV Office

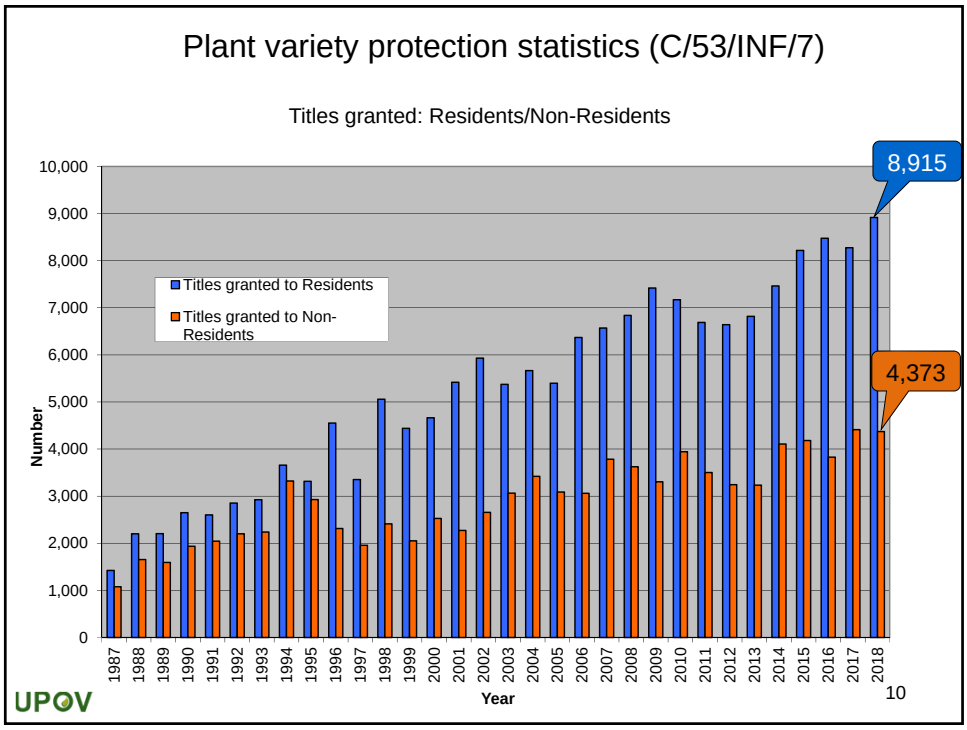
Plant variety protection statistics (C/53/INF/7)

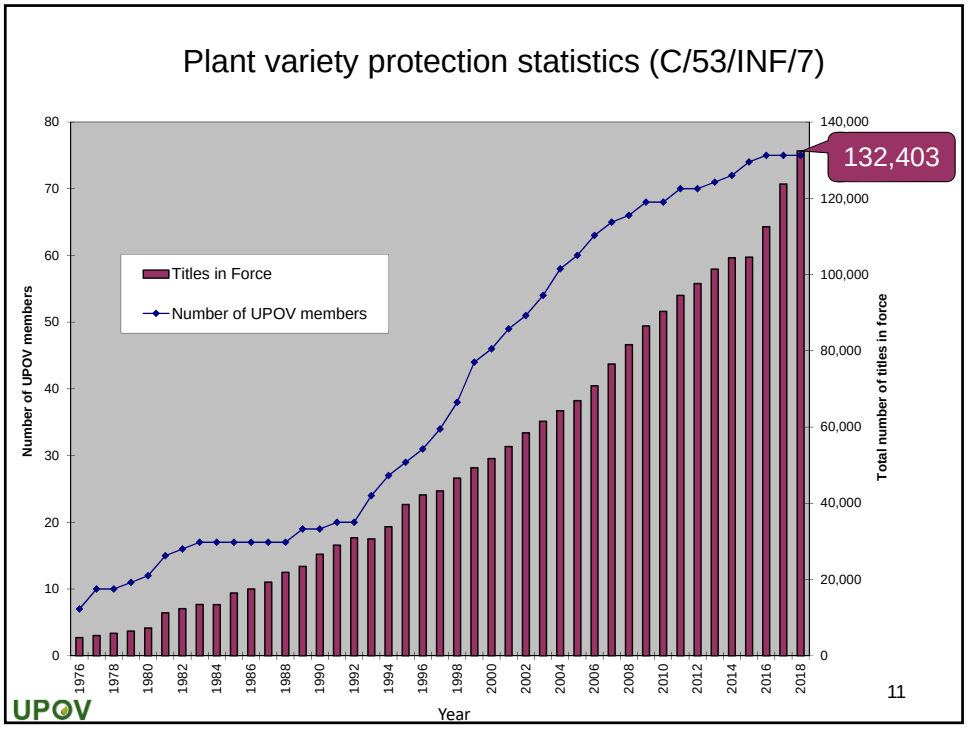
Applications covered by UPOV Test Guidelines = 94%

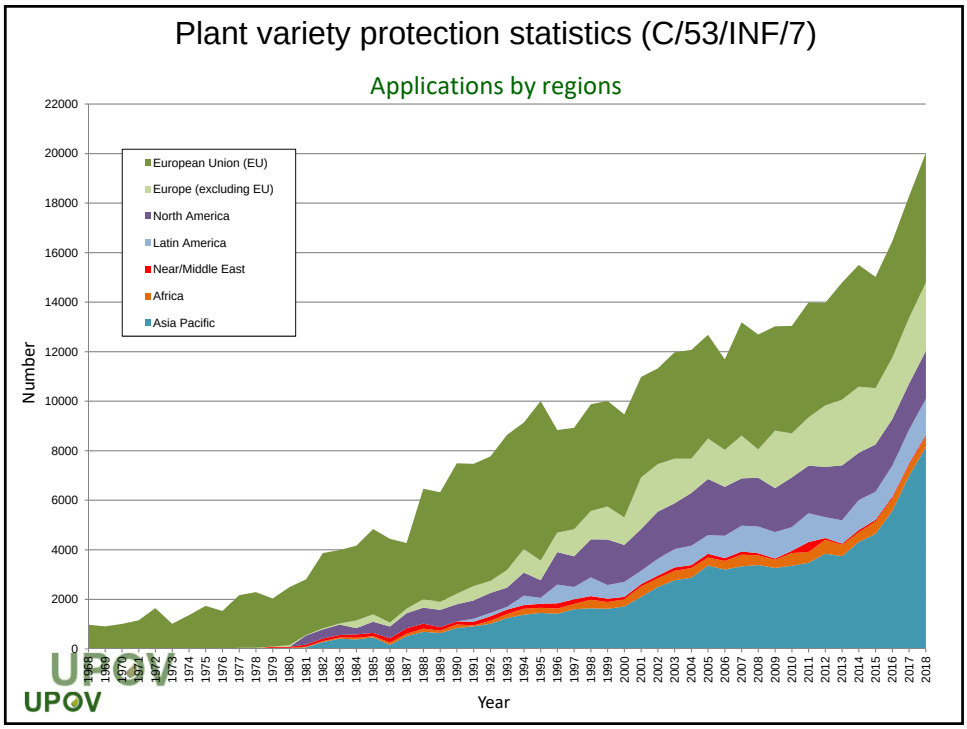


UPOV


Plant variety protection statistics (C/53/INF/7)
Applications by Residents/Non-Residents
Applications by Residents
Applications by Non-Residents
13,760
6,271
Number
Year
UPOV
9


Plant variety protection statistics (C/53/INF/7)
Titles granted: Residents/Non-Residents
Titles granted to Residents
Titles granted to Non-Residents
8,915
4,373
Number
Year
UPOV
10


Plant variety protection statistics (C/53/INF/7)
132,403
Titles in Force
Number of UPOV members
Number of UPOV members
Total number of titles in force
Year
11
UPOV


Plant variety protection statistics (C/53/INF/7)
Applications by regions
European Union (EU)
Europe (excluding EU)
North America
Latin America
Near/Middle East
Africa
Asia Pacific
Number
Year
UPOV

UPOV Statistics on UPOV website

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UPOV welcomes Mr. Manabu Suzuki

Technical/Regional Officer (Asia)

manabu.suzuki@upov.int

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DL-205
Introduction to the UPOV System of Plant Variety Protection under the UPOV Convention

DL-305
Advanced Distance Learning Courses

Registrations can be made in three different categories:

Category 1:
Government officials of members of the Union nominated by the relevant representative to the UPOV Council
No fee

Category 2:
Officials of observer States / intergovernmental organizations nominated by the relevant representative to the UPOV Council
(One non-fee paying student per State / intergovernmental organization;
Additional students: CHF1,000 per student)

Category 3:
Others
Fee: CHF1,000

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UPOV Distance Learning Courses

Code	Course	Session	Study period	Registration period
DL-205	Introduction to the UPOV System of Plant Variety Protection under the UPOV Convention	Session 1	02-Mar to 05-Apr 2020	13-Jan to 16-Feb 2020
		Session 2	12-Oct to 15-Nov 2020	03-Aug to 13-Sep 2020
DL-305A	Administration of Plant Breeders' Rights (Part A of DL-305 course: Examination of applications for plant breeders' rights)	Session 1	02-Mar to 05-Apr 2020	13-Jan to 16-Feb 2020
		Session 2	12-Oct to 15-Nov 2020	03-Aug to 13-Sep 2020
DL-305B	DUS Examination (Part B of DL-305 course: Examination of applications for plant breeders' rights)	Session 1	02-Mar to 05-Apr 2020	13-Jan to 16-Feb 2020
		Session 2	12-Oct to 15-Nov 2020	03-Aug to 13-Sep 2020
DL-305	Examination of applications for plant breeders' rights	Session 1	02-Mar to 05-Apr 2020	13-Jan to 16-Feb 2020
		Session 2	12-Oct to 15-Nov 2020	03-Aug to 13-Sep 2020

The UPOV Courses are hosted on the WIPO eLearning Center.

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+ Special Session of UPOV DL-205 course during COVID-19 situation (May 4 to June 7, 2020) at a discounted rate for students under the Category 3 (breeders, IP managers, IP agents, lawyers, academics)

UPOV PLUTO

PLUTO Plant Variety Database services are changing

From November, the PLUTO database will provide two levels of service:

- **Free service**: users will be able to search the PLUTO database and display results.
- **Premium service**: there will be no restriction on the amount of data that can be downloaded and users will have new features. The annual fee will be CHF 750. Users will have the possibility to try the premium service for free during the month of October 2020.

(Note: UPOV members and data contributors will have free access to all PLUTO database "premium"features.)

information Webinar organized on June 30, 2020

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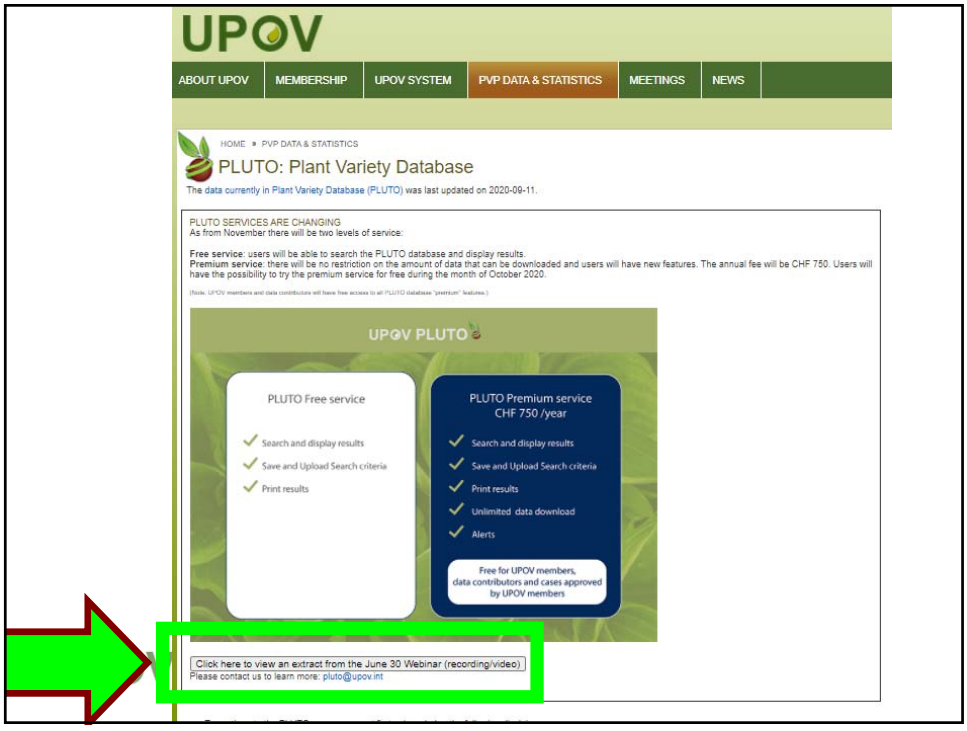

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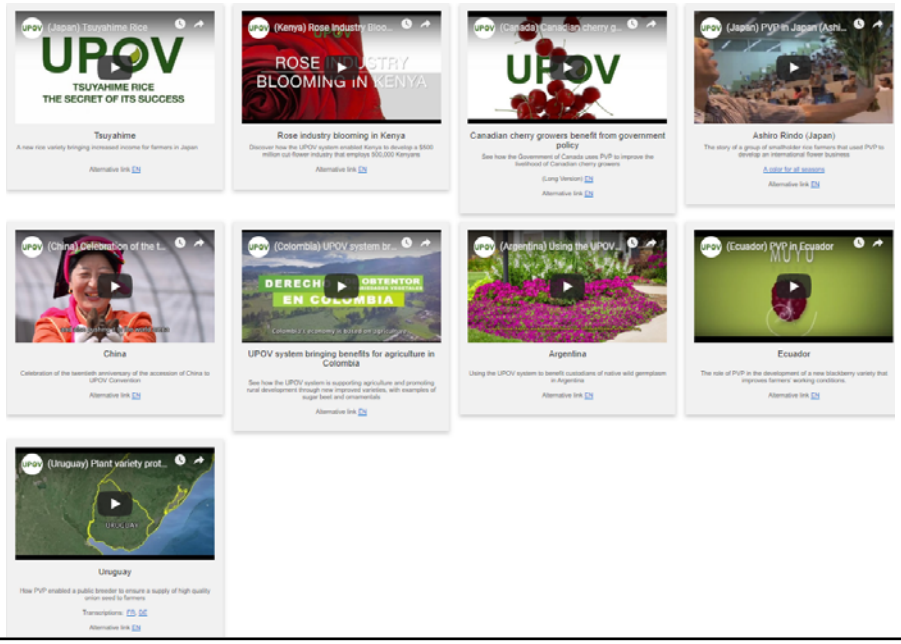
UPOV www.upov.int

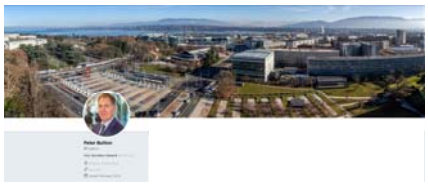
Benefits of UPOV



UPOV Social Media

Follow us to find out more about how the UPOV system benefits farmers, growers and breeders worldwide and news on events, videos, reports and more.

UPOV@UPOVint PeterButton@vsgupov



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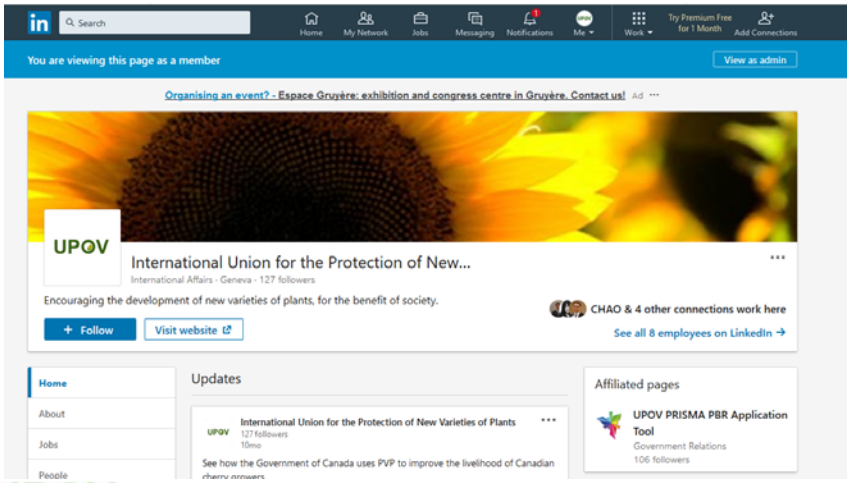
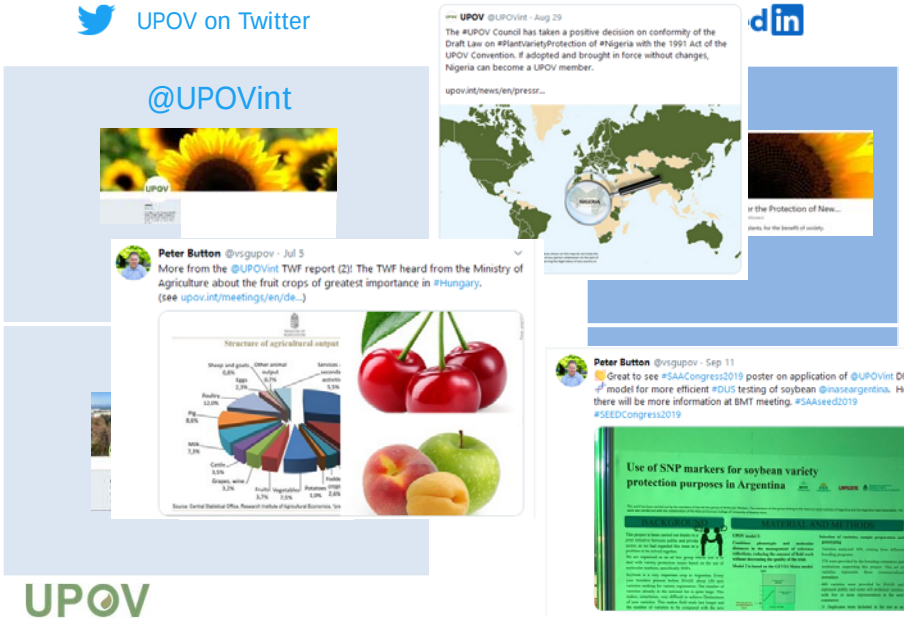
https://www.linkedin.com/company/upov-official/



UPOV on Social Media (focus on Technical matters)

UPOV on Twitter

@UPOVint



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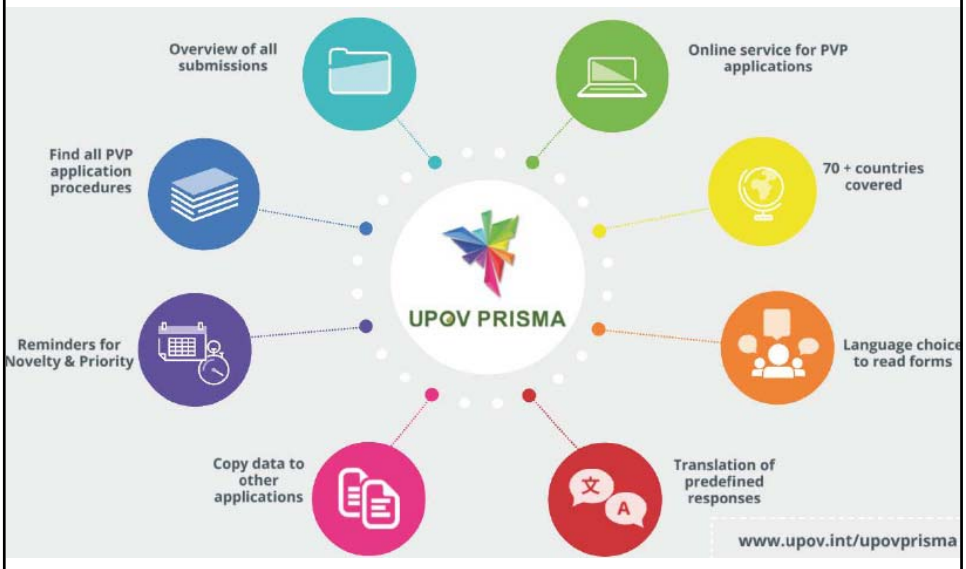

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UPOV PRISMA

Online PBR Application Tool

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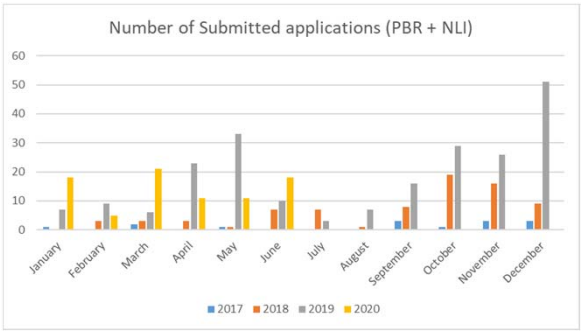
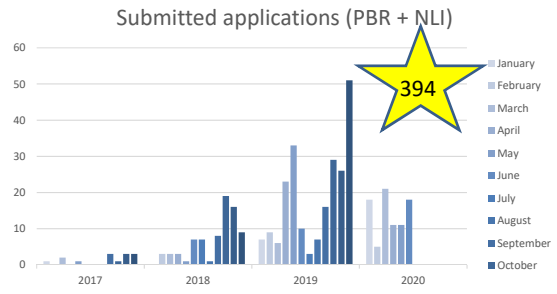
UPOV PRISMA

as of 30.06.2020





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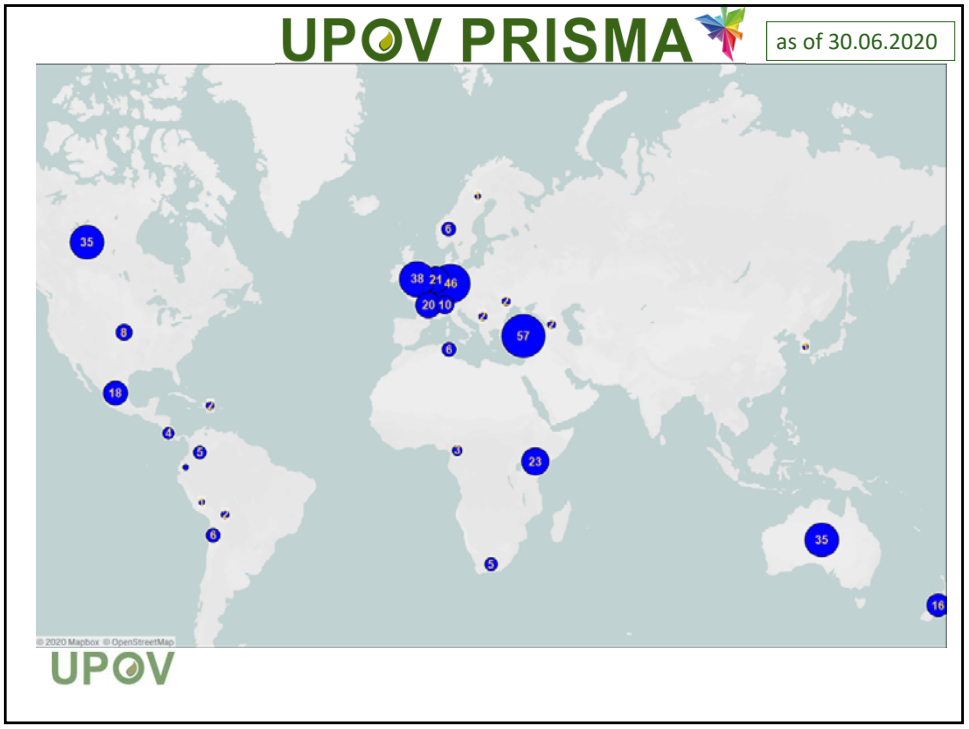
UPOV PRISMA
as of 30.06.2020
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prisma@upov.int
UPOV PRISMA
UPOV PRISMA
PBR Application Tool
Quick and easy online tool for transmission of application data for Plant Breeders' Rights
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LinkedIn
twitter
#upovprisma
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Questions

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STATUS OF UPOV DOCUMENTS CONCERNING MOLECULAR TECHNIQUES

Document reference	Title
UPOV/INF/17/1	**Guidelines for DNA Profiling: Molecular Marker Selection and Database Construction ("BMT Guidelines") (2010)**

Document reference	Title
TGP/15	**Guidance on the Use of Biochemical and Molecular Markers in the Examination of Distinctness, Uniformity and Stability (DUS) (2013)**
UPOV/INF/18/1	**Possible Use of Molecular Markers in the Examination of Distinctness, Uniformity and Stability (2011)**

UPOV/INF/17/1 (INFormation document)

"Guidelines for DNA Profiling: Molecular Marker Selection and Database Construction ("BMT Guidelines")"

The purpose of this document (BMT Guidelines) is to provide guidance for developing harmonized methodologies with the aim of generating high quality molecular data for a range of applications. The BMT Guidelines are also intended to address the construction of databases containing molecular profiles of plant varieties […]

FAQ

FAQ: Does UPOV allow molecular techniques (DNA profiles) in the DUS examination?

- It is important to note that, in some cases, varieties may have a different DNA profile but be phenotypically identical, whilst, in other cases, varieties which have a large phenotypic difference may have the same DNA profile for a particular set of molecular markers (e.g. some mutations).
- In relation to the use of molecular markers that are not related to phenotypic differences, the concern is that it might be possible to use a limitless number of markers to find differences between varieties at the genetic level that are not reflected in phenotypic characteristics.

On the above basis, UPOV has agreed the following uses in relation to DUS examination:

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FAQ: Does UPOV allow molecular techniques (DNA profiles) in the DUS examination? (cont.)

(a) Molecular markers can be used as a method of examining DUS characteristics that satisfy the criteria for characteristics set out in the General Introduction if there is a reliable link between the marker and the characteristic.

(b) A combination of phenotypic differences and molecular distances can be used to improve the selection of varieties to be compared in the growing trial if the molecular distances are sufficiently related to phenotypic differences and the method does not create an increased risk of not selecting a variety in the variety collection which should be compared to candidate varieties in the DUS growing trial.

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TGP/15/1 (Technical Guidelines Protocol)

"Guidance on the Use of Biochemical and Molecular Markers in the Examination of Distinctness, Uniformity and Stability (DUS)"

The purpose of this document is to provide guidance on the use of biochemical and molecular markers in the examination of Distinctness, Uniformity and Stability (DUS) on the basis of the models in document UPOV/INF/18 that have received a positive assessment and for which accepted examples have been provided.

Model 1: Characteristic-specific molecular markers

Example: gene specific marker for herbicide tolerance introduced by genetic modification

On the basis that:

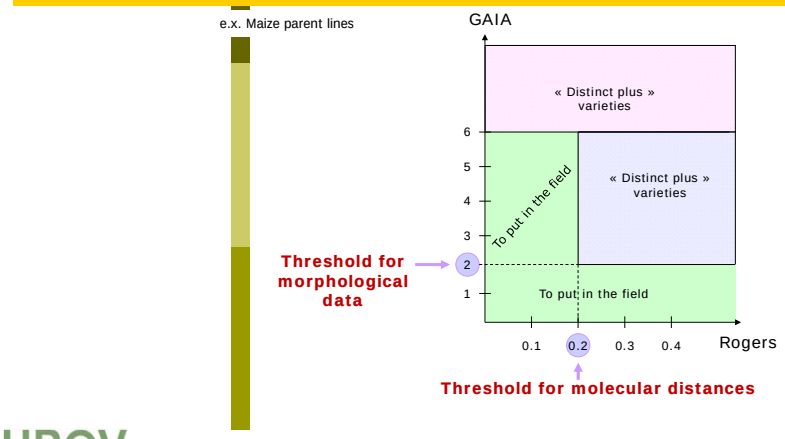
[…]

- there is verification of the reliability of the link between the marker and the characteristic;

- different markers for the same characteristic are different methods for examining the same characteristic;

[…]

Model 2: Combining phenotypic and molecular distances in the management of variety collections



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Review of BMT Guidelines

- UPOV/INF/17 "Guidelines for DNA-Profiling: Molecular Marker Selection and Database Construction ('BMT Guidelines')"

- Revisions were proposed on basis of joint comments provided by EU, France and the Netherlands

  - a number of deletions, additions and editorial changes

⇒ To be considered under the agenda item 6: Review of document UPOV/INF/17

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Revision of document TGP/15

"Guidance on the Use of Biochemical and Molecular Markers in the Examination of Distinctness, Uniformity and Stability (DUS)

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Inclusion of a new example to model "Combining phenotypic and molecular distances in the management of variety collections"

Example 2: "Genetic selection of similar varieties for the first growing cycle"

The **Council**, at its fifty-third session, **adopted a revision of document TGP/15** incorporating a new model "Genetic selection of similar varieties for the first growing cycle: example French Bean" on the basis of the proposal by the Netherlands […]

The TC, at its fifty-fifth session, agreed that model "Genetic selection of similar varieties for the first growing cycle" should be presented in document TGP/15 as a **second example** of model "Combining phenotypic and molecular distances in the management of variety collections". […]

Subject to agreement by the CAJ at its seventy-sixth session, a draft of document TGP/15/2 will be **presented for adoption by the Council, at its fifty-third ordinary session**

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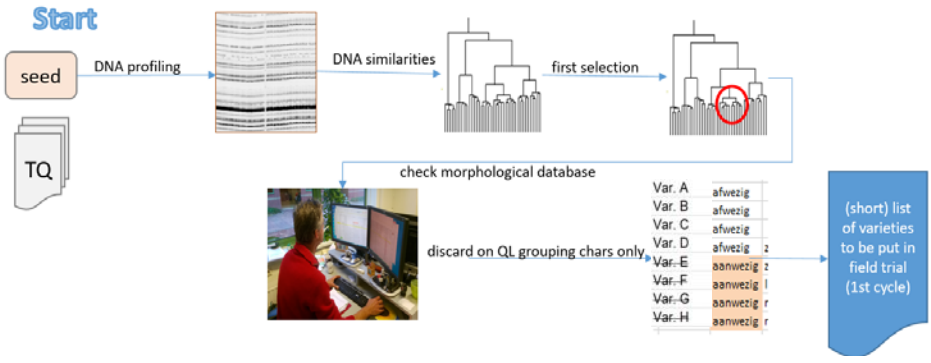
Model 2: Combining phenotypic and molecular distances in the management of variety collections

Example 2: Genetic selection of similar varieties for the first growing cycle



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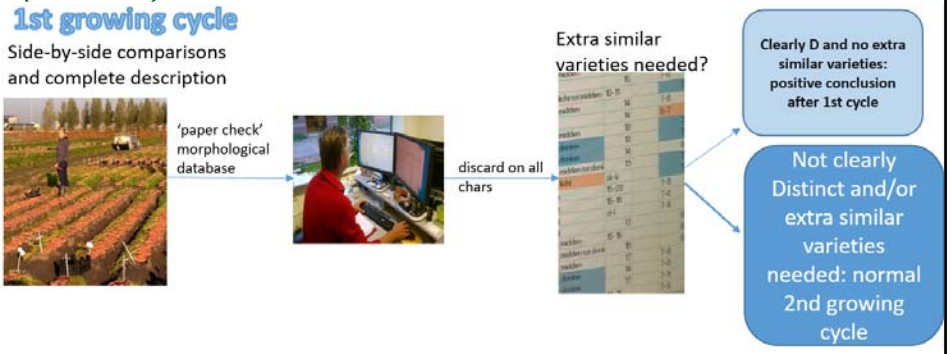
Model 2: Combining phenotypic and molecular distances in the management of variety collections

Example 2: Genetic selection of similar varieties for the first growing cycle (continued)



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Inclusion of a new example to model "Characteristic-specific molecular markers"

Example 2: "Characteristic-specific molecular marker with incomplete information on state of expression"

The TC, at its fifty-fifth session, agreed a new example to be added to document TGP/15 to illustrate a situation where the characteristic-specific marker did not provide complete information on the state of expression of a characteristic […]

Subject to agreement by the CAJ at its seventy-sixth session, a draft of document TGP/15/3 will be **presented for adoption by the Council, at its fifty-fourth ordinary session**

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Model 1: Characteristic-specific molecular markers

New Example 2: Characteristic-specific molecular marker with incomplete information on state of expression

"Table 1: Schematic overview of resistance to Tomato mosaic virus and resistance alleles:

Genetic background	*tm2/tm2* and *tm1/tm1*	*Tm2/Tm2* or *Tm2²/Tm2²* or *Tm2²/Tm2* or *Tm2/tm2* or *Tm2²/tm2* and *Tm1/Tm1* or *Tm1/tm1* or *tm1/tm1*	*tm2/tm2* and *Tm1/Tm1* or *Tm1/tm1*
Marker *Tm2/2²*	susceptible allele	resistant allele	susceptible allele
Resistance to ToMV - Strain 0	absent	present	present

"5. If a variety is claimed to be resistant to ToMV Strain 0, the DNA marker test may be performed. In cases where the resistance is based on the presence of the allele *Tm2* or *Tm2²*, the DNA marker test could replace the traditional bioassay.

"6. If the DNA marker test does not confirm the resistance claim or if the variety is claimed to be susceptible, a bioassay must be performed."

Session to facilitate cooperation

At the BMT/18, **Discussion groups** had been formed for: maize and soybeans; other agricultural crops; fruit crops and forest trees; ornamental plants; and vegetables, for BMT participants to exchange information on their work and **explore areas for cooperation**.

⇒ To be considered
under the agenda item 12 "Session to facilitate cooperation"

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Questions

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ESSENTIALLY DERIVED VARIETIES

- **Purpose and concept**
- **Protection of EDVs**
- **Protection of Initial Variety**
- **Implementation**
- **UPOV guidance**

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ESSENTIALLY DERIVED VARIETIES

PURPOSE:

to ensure sustainable progress in plant breeding development by:

- providing effective protection for the breeder and
- encouraging cooperation between breeders and developers of new technologies such as genetic modification

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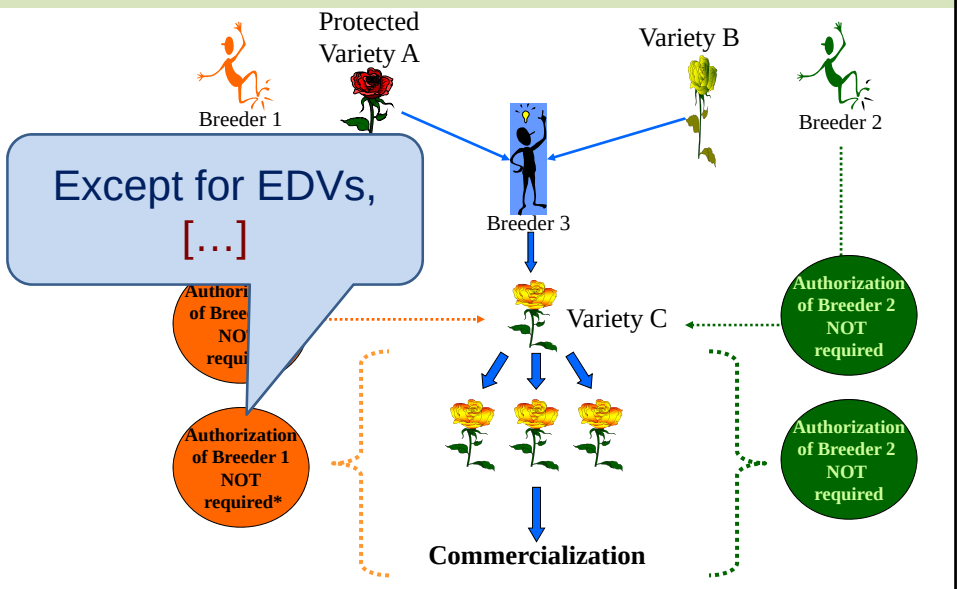
Breeder's exemption



* Except for:
(i) varieties which are essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety,
(ii) varieties which are not clearly distinguishable in accordance with Article 7 from the protected variety and
(iii) varieties whose production requires the repeated use of the protected variety.

ESSENTIALLY DERIVED VARIETIES

Article 14(5):

(a) The provisions of paragraphs (1) to (4)* shall also apply in relation to

(i) **varieties which are essentially derived** from the protected variety, where the protected variety is not itself an essentially derived variety,

* = COMMERCIALIZATION

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ESSENTIALLY DERIVED VARIETIES

...a variety shall be deemed to be **ESSENTIALLY DERIVED** **from** another variety ("the **INITIAL VARIETY**") **when**

(i) it is **predominantly derived from the INITIAL VARIETY**, or from a variety that is itself predominantly derived from the initial variety, **while retaining the expression of the essential characteristics** that result from the genotype or combination of genotypes of the **INITIAL VARIETY**,

(ii) it is **clearly distinguishable** from the **INITIAL VARIETY** and

(iii) **except for the differences which result from the act of derivation**, it **conforms to the INITIAL VARIETY in the expression of the essential characteristics** that result from the genotype or combination of genotypes of the initial variety.

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ESSENTIALLY DERIVED VARIETIES

May be obtained for example by:

- **selection** of a natural or induced **mutant**
- **selection** of a **somaclonal variant**
- **selection** of a **variant individual** from plants of the initial variety
- **back-crossing**
- transformation by **genetic engineering**

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ESSENTIALLY DERIVED VARIETIES

- Purpose and concept
- **Protection of EDVs**
- Protection of Initial Variety
- Implementation
- UPOV guidance

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ESSENTIALLY DERIVED VARIETIES

Can EDVs be protected?

same conditions (novelty, DUS)

Can EDVs be commercialized?

authorization of the
PBR holder of the **INITIAL VARIETY**
and
PBR holder of **EDV** required

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ESSENTIALLY DERIVED VARIETIES

- Purpose and concept
- Protection of EDVs
- **Protection of Initial Variety**
- Implementation
- UPOV guidance

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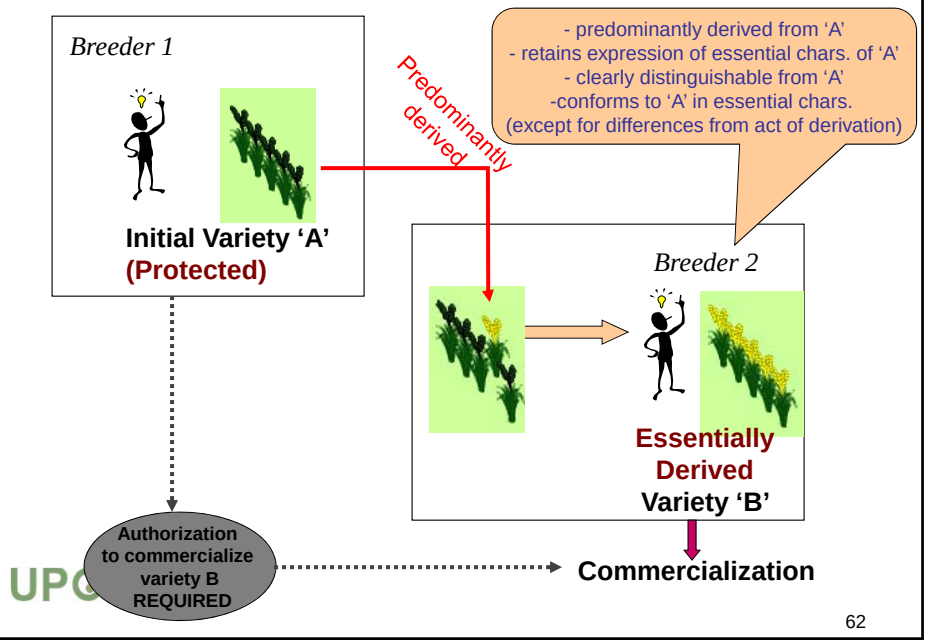
ESSENTIALLY DERIVED VARIETIES



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ESSENTIALLY DERIVED VARIETIES

...a variety shall be deemed to be essentially derived from another variety ("the **initial variety**") .....

INITIAL variety
is not restricted to
PROTECTED variety

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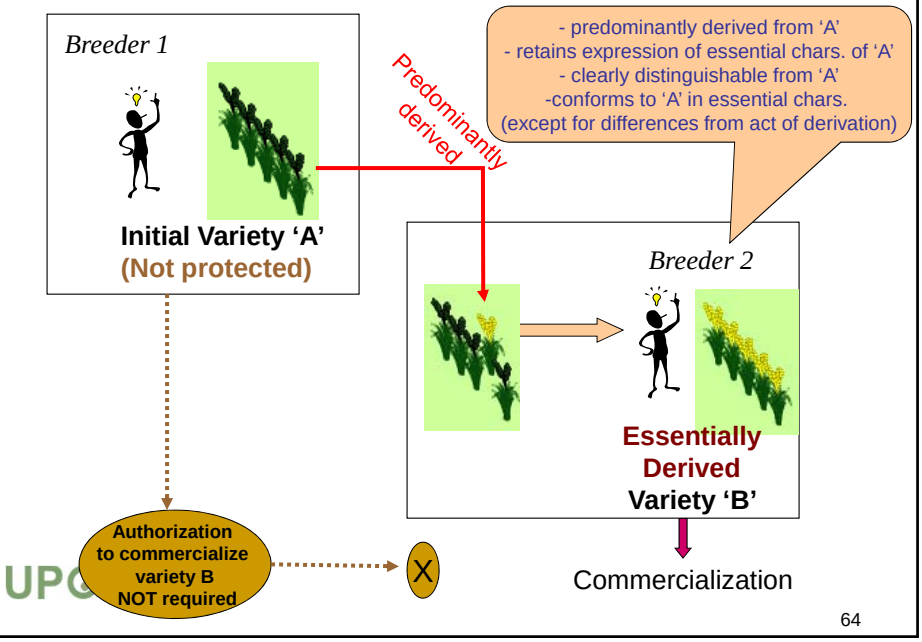
ESSENTIALLY DERIVED VARIETIES



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ESSENTIALLY DERIVED VARIETIES

Article 14(5):

(a) The provisions of paragraphs (1) to (4) shall also apply in relation to

(i) varieties which are essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety

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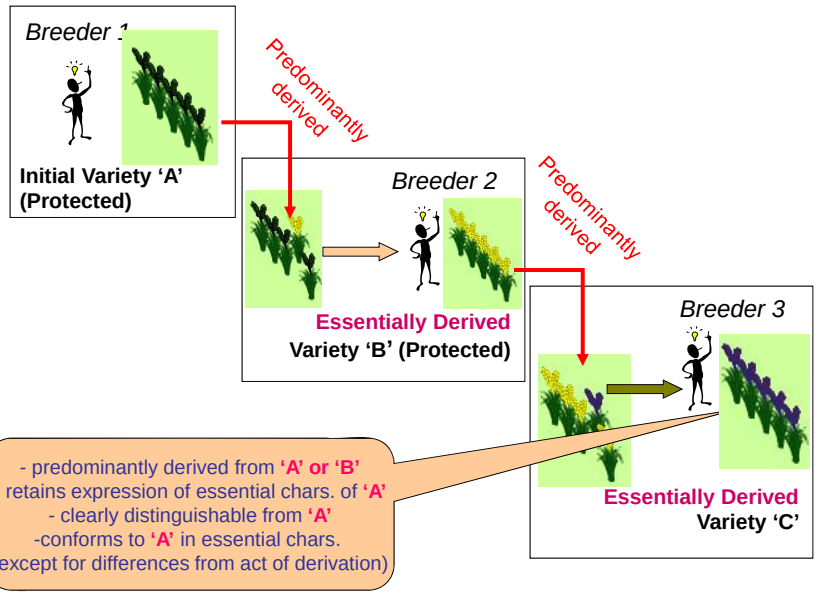
ESSENTIALLY DERIVED VARIETIES



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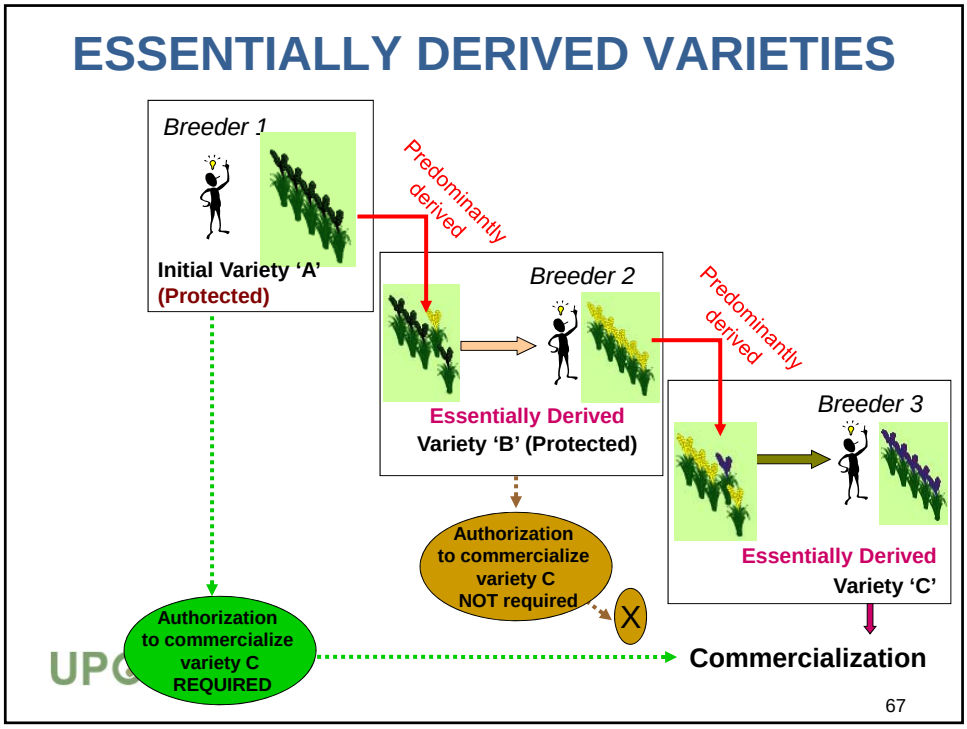
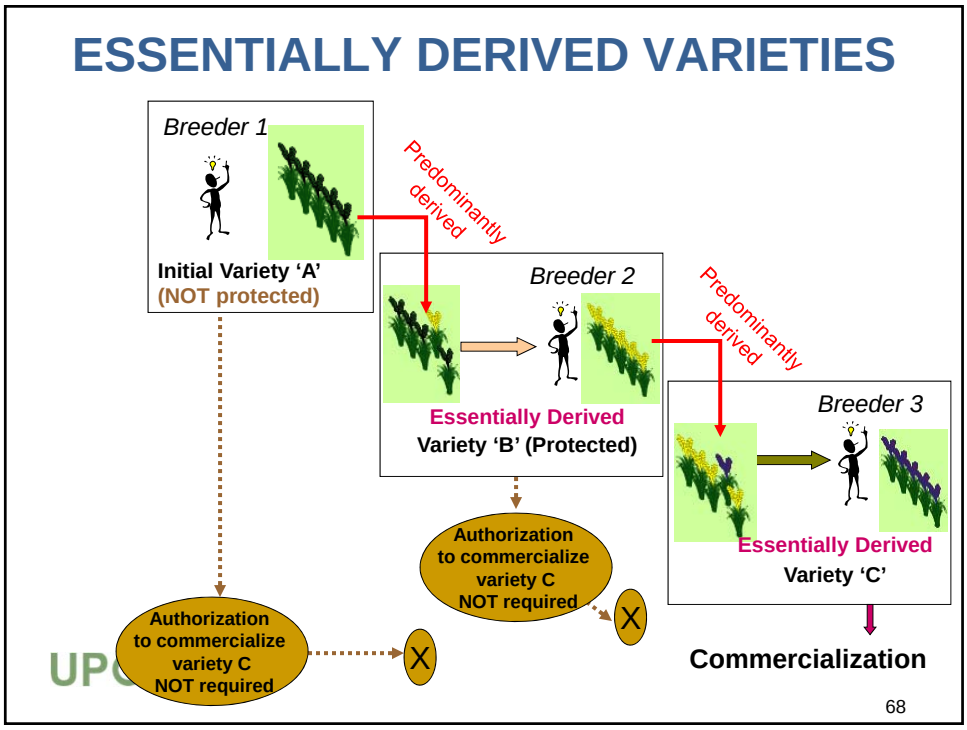
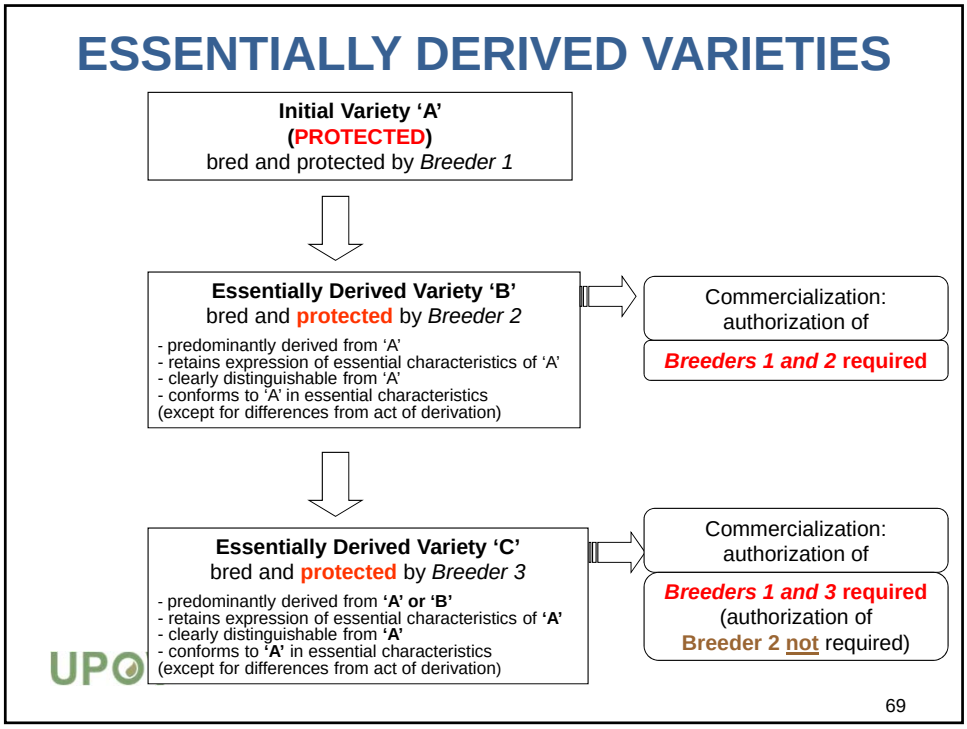

ESSENTIALLY DERIVED VARIETIES
Breeder 1
Initial Variety 'A'
(Protected)
Predominantly derived
Breeder 2
Essentially Derived
Variety 'B' (Protected)
Predominantly derived
Breeder 3
Essentially Derived
Variety 'C'
Authorization to commercialize variety C NOT required
X
Authorization to commercialize variety C REQUIRED
Commercialization
67


ESSENTIALLY DERIVED VARIETIES
Breeder 1
Initial Variety 'A'
(NOT protected)
Predominantly derived
Breeder 2
Essentially Derived
Variety 'B' (Protected)
Predominantly derived
Breeder 3
Essentially Derived
Variety 'C'
Authorization to commercialize variety C NOT required
X
Authorization to commercialize variety C NOT required
X
Commercialization
68


ESSENTIALLY DERIVED VARIETIES
Initial Variety 'A'
(PROTECTED)
bred and protected by Breeder 1
Essentially Derived Variety 'B'
bred and protected by Breeder 2
- predominantly derived from 'A'
- retains expression of essential characteristics of 'A'
- clearly distinguishable from 'A'
- conforms to 'A' in essential characteristics
(except for differences from act of derivation)
Commercialization:
authorization of
Breeders 1 and 2 required
Essentially Derived Variety 'C'
bred and protected by Breeder 3
- predominantly derived from 'A' or 'B'
- retains expression of essential characteristics of 'A'
- clearly distinguishable from 'A'
- conforms to 'A' in essential characteristics
(except for differences from act of derivation)
Commercialization:
authorization of
Breeders 1 and 3 required
(authorization of
Breeder 2 not required)
UPOV
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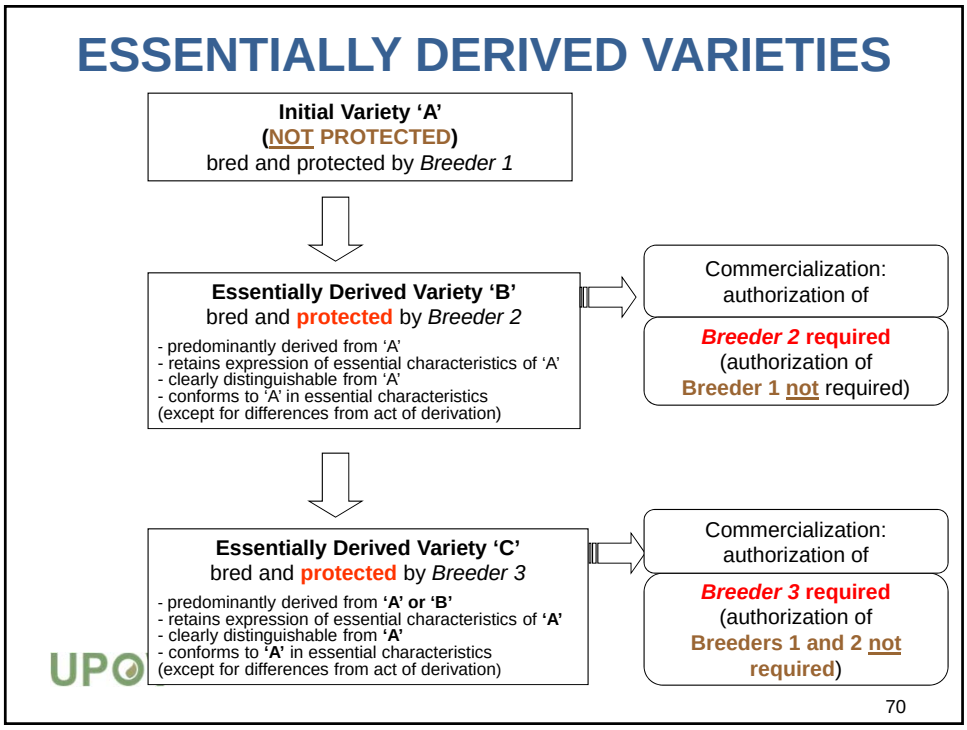
ESSENTIALLY DERIVED VARIETIES
Initial Variety 'A'
(NOT PROTECTED)
bred and protected by Breeder 1
Essentially Derived Variety 'B'
bred and protected by Breeder 2
- predominantly derived from 'A'
- retains expression of essential characteristics of 'A'
- clearly distinguishable from 'A'
- conforms to 'A' in essential characteristics
(except for differences from act of derivation)
Commercialization:
authorization of
Breeder 2 required
(authorization of
Breeder 1 not required)
Essentially Derived Variety 'C'
bred and protected by Breeder 3
- predominantly derived from 'A' or 'B'
- retains expression of essential characteristics of 'A'
- clearly distinguishable from 'A'
- conforms to 'A' in essential characteristics
(except for differences from act of derivation)
Commercialization:
authorization of
Breeder 3 required
(authorization of
Breeders 1 and 2 not
required)
UPOV
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ESSENTIALLY DERIVED VARIETIES

- Purpose and concept
- Protection of EDVs
- Protection of Initial Variety
- **Implementation**
  - With regard to establishing whether a variety is an essentially derived variety, a common view expressed by members of the UPOV is that the existence of a relationship of essential derivation between protected varieties is a matter for the holders of plant breeders' rights in the varieties concerned.
- UPOV guidance

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ESSENTIALLY DERIVED VARIETIES

- Purpose and concept
- Protection of EDVs
- Protection of Initial Variety
- Implementation
- **UPOV guidance**

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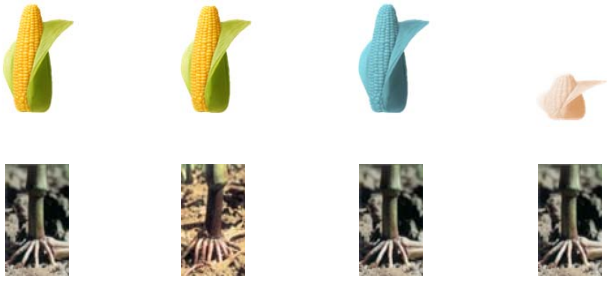
UPOV/EXN/EDV/2

ESSENTIALLY DERIVED VARIETY?



(Photo: istockphoto/valentinarr)

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Seminar on the impact of policy on essentially derived varieties (EDVs) on breeding strategy

Held in Geneva, on the morning of October 30, 2019

Watch the full video! Available at:

https://www.upov.int/meetings/en/details.jsp?meeting_id=50787

SESSION I: TO AN EDV CONCEPT FOR THE PRESENT AND THE FUTURE

- Plant breeding and the EDV concept: challenges of the past, opportunities for the future?
- UPOV guidance on EDV

SESSION II: IMPACT OF EDV CONCEPT ON PLANT BREEDING

- Outlook for agricultural crops
- Outlook for ornamental plants
- Outlook for vegetables
- Outlook for fruit
- Panel discussion and questions

Closing remarks

UPOV

Administrative and Legal Committee — **CAJ/77/4**

Seventy-Seventh Session
Geneva, October 28, 2020 — **Original:** English
Date: August 18, 2020

to be considered by correspondence

ESSENTIALLY DERIVED VARIETIES

The CAJ is invited to:

(a) establish the WG-EDV and approve the terms of reference for the WG-EDV, […];

(b) approve the composition of the WG-EDV, […];

(c) approve the tentative date for the first meeting of the WG-EDV, […]; and

(d) request the WG-EDV to propose a timeline for its work at its first meeting, for consideration by the CAJ at its session in 2021.

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Questions

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Preview

General

- COVID-19 measures
- Membership & statistics
- Report on regular activities of UPOV
- Communicating the benefits of UPOV
- UPOV PRISMA

- Biochemical and molecular techniques
  - Current guidance
  - Developments since BMT/18 in 2019
  - The Concept of Essentially Derived Varieties
  - The Role of UPOV in Variety Identification

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VARIETY IDENTIFICATION

"The BMT is a group open to DUS experts, biochemical and molecular specialists and plant breeders, whose role is to:

– […]

"(viii) Provide a **forum for discussion on the use of biochemical and molecular techniques in the consideration of** essential derivation and **variety identification**."

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VARIETY IDENTIFICATION

- UPOV does not directly address variety identification - it is concerned with distinctness (related but not the same);
- The variety description can play a role in variety identification

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Variety description developed at the time of the grant of the breeder's right (original variety description)

Purposes:

(a) to describe the characteristics of the variety; and

(b) to identify and list similar varieties and differences from these varieties;

combined with the information on the basis for (a) and (b), namely:

UPOV

Variety description developed at the time of the grant of the breeder's right (Continued)

(original variety description)

Purposes:

(a) to describe the characteristics of the variety; and

(b) to identify and list similar varieties and differences from these varieties;

combined with the information on the basis for (a) and (b), namely:

- Date and document number of UPOV Test Guidelines;
- Date and/or document number of Reporting Authority's test guidelines;
- Reporting Authority;
- Testing station(s) and place(s);
- Period of testing;
- Date and place of issue of document;
- Group: (Table: Characteristics; States of Expression; Note; Remarks);
- Additional Information:
  - (a) Additional Data
  - (b) Photograph (if appropriate)
  - (c) RHS Colour Chart version used (if appropriate)
  - (d) Remarks

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Variety description developed at the time of the grant of the breeder's right (Continued)

(original variety description)

Status in relation to the verification of the conformity of plant material to a protected variety for enforcement of the breeder's right:

"While the UPOV Convention requires members of the Union to provide for appropriate legal remedies for the effective enforcement of breeders' rights, it is a **matter for breeders** to enforce their rights." (UPOV/EXN/ENF/1)

the **description** of the variety characteristics **and** the basis for **distinctness from** the **most similar** variety are **linked** to the circumstances of the DUS examination, namely:

- Date and document number of UPOV Test Guidelines;
- Date and/or document number of Reporting Authority's test guidelines;
- Reporting Authority;
- Testing station(s) and place(s);
- Period of testing;
- Date and place of issue of document;
- Group: (Table: Characteristics; States of Expression; Note; Remarks);
- Additional Information:
  - (a) Additional Data
  - (b) Photograph (if appropriate)
  - (c) RHS Colour Chart version used (if appropriate)
  - (d) Remarks

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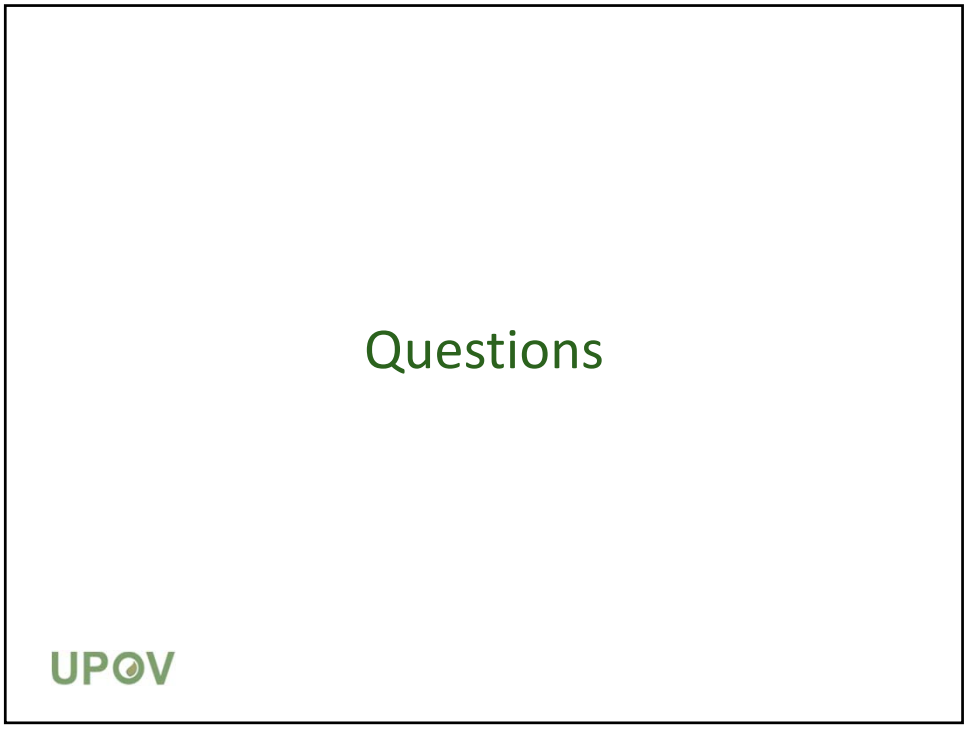

[End of Annex and of document]