

Technical Working Party for Ornamental Plants and Forest Trees

Fifty-Seventh Session

Roelofarendsveen, Kingdom of the Netherlands, March 31 to April 3, 2025

TWP/9/6**Original:** English**Date:** March 17, 2024**Technical Working Party on Testing Methods and Techniques**

Third Session

Beijing, China, April 28 to May 1, 2025

Technical Working Party for Vegetables

Fifty-Ninth Session

Virtual meeting, May 5 to 8, 2025

Technical Working Party for Agricultural Crops

Fifty-Fourth Session

Arusha, United Republic of Tanzania, May 19 to 22, 2025

Technical Working Party for Fruit Crops

Fifty-Sixth Session

Bursa, Türkiye, June 23 to 26, 2025

CONFIDENTIALITY OF MOLECULAR INFORMATION

Document prepared by experts from the African Seed Trade Association (AFSTA), the Asia and Pacific Seed Association (APSA), the International Community of Breeders of Asexually Reproduced Horticultural Plants (CIOPORA), CropLife International, Euroseeds, the International Seed Federation (ISF) and the Seed Association of the Americas (SAA)

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The annex to this document contains a copy of a presentation “Confidentiality of Molecular Information”, to be made by experts from the African Seed Trade Association (AFSTA), the Asia and Pacific Seed Association (APSA), the International Community of Breeders of Asexually Reproduced Horticultural Plants (CIOPORA), CropLife International, Euroseeds, the International Seed Federation (ISF) and the Seed Association of the Americas (SAA), at Technical Working Parties (TWPs) in 2025.

[Annex follows]

Confidentiality of Molecular Information

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Molecular Information of plant varieties

- Concern to breeders
- 2 Surveys done (2020 & 2022)
- Many presentations at UPOV BMT & TWP's



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Previous presentations

2020: https://www.upov.int/edocs/mdocs/upov/en/bmt_19/bmt_19_8.pdf

2021: https://www.upov.int/edocs/mdocs/upov/en/bmt_20/bmt_20_5.pdf

2022: https://www.upov.int/edocs/mdocs/upov/en/twm_1/twm_1_22.pdf

2023: https://www.upov.int/edocs/mdocs/upov/en/twv_57/twv_57_25.pdf

2024: https://www.upov.int/edocs/mdocs/upov/en/twm_2/twm_2_7.pdf



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Confidentiality of Molecular Information

Cause: Growing pressure from certain countries to make molecular data publicly available, or in general not to protect such data with similar confidentiality safeguards as afforded to the physical plant material.

Effect: The breeding community has provided various solutions for the past 5 years.



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Background: BMT – 17 (2018)

- Introduce an item at 18th BMT for participants to provide information on how they managed cooperation between partners and service providers, **including confidentiality**, access to data and material, authorization for work to be performed and availability of results and information to partners.
- BMT noted the common interest to address issues concerning cooperation between partners and service providers, **including confidentiality**, access to data and material, authorization for work to be performed and availability of results and information to partners and agreed to add this as an agenda item for its eighteenth session in order for experts, including breeders, to present information on their experiences.



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BMT – 18 (2019) / subgroup discussions

- DNA-fingerprint data to be treated as **confidential**;
- Variety identification data using a small number of SNP markers could be made publicly available
- Consent by the breeder **should be required** before sharing of DNA-based information;
- Breeders should be informed about the publication of variety identification by SNPs;
- Parental line information **should be treated as confidential**
- Invite breeders, observer organizations and other participants to make presentations on ownership matters during the breeders' day at the nineteenth session of the BMT.



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Breeders Association work

- Task Force formed with experts from all over the world (see below)
- 100s of hours of discussions
- 2 surveys among our members
- 5 different presentations in UPOV-TWPs
- Various solutions provided
- No uptake by UPOV members



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TWM – 2 (2024)

- Propose a draft model agreement template, to be presented at TWM-3.
- Task Force developed various versions of a template
- After thorough discussions on ramifications: No agreement & doubts on usefulness and legal certainty.
- Decision: not to proceed with template



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Concerns on template

- Additional admin burden on PVP offices and on applicants
- Legal uncertainty: what if PVP office does not sign and send back?
- No legal basis in UPOV



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Existing Guidance – INF/15

Paragraph 38:

“As stated in Article 12, for the purposes of examination, the authority may require the breeder to furnish all the necessary information, documents or material.

In that regard, **authorities should give consideration to appropriate measures concerning confidentiality**, for example in relation to pedigree information”.



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Existing Guidance – TGP/5

“Section 1/3, Article 4

1. The Authorities shall take all necessary steps to safeguard the rights of the applicant.
2. Except with the specific authorization of the Receiving Authority and the applicant, **the Executing Authority shall refrain from passing on to a third person any material, including DNA, or molecular information**, of the varieties for which testing has been requested.”

=> *Molecular Information may be subject to proprietary rights, so, there is an inherent risk of legal measures by applicants in case sharing is done without authorization*



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Recommendations

- Applicants: proprietary information should remain confidential (when needed) with written prior approval from applicant under a nondisclosure agreement in sharing to other parties
- Recommendation to PVP offices: Inform applicants about national/regional policy on Molecular Information & sharing



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Conclusions

Robust policies on confidentiality of molecular information:
starting point to consider sharing molecular information
among PVP offices adhering to these policies

Final Aim: Global alignment of Molecular Information
policies

- legal security for breeders
- more efficient use of molecular information for PVP purposes



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Where are we now?

- Ball back in UPOV's court
- Breeders ready to cooperate.
- Sharing of Molecular Information can lead to win-win situations

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Thank you for your attention



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