



**SEMINAR ON PROPAGATING AND HARVESTED
MATERIAL
IN THE CONTEXT OF THE UPOV CONVENTION**
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**Perspectives on the notions of propagating
material and harvested material**

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Where it all began!

ADMINISTRATIVE AND LEGAL COMMITTEE
Sixty-Third Session
April 7, 2011

Proposals for the development of information materials

*35. The CAJ noted **the request made by** the International Community of Breeders of Asexually Reproduced Ornamental and Fruit Varieties (**CIOPORA**) and agreed to request the Office of the Union to prepare a document, on the basis of contributions received, on “propagation and propagating material” for consideration by the CAJ-AG at its sixth session in October 2011.



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Why did we request it?

Propagating Material or Harvested Material?



We need to know it!



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Why did we request it?

UPOV Mission Statement

“To provide and promote an effective system of plant variety protection, with the aim of encouraging the development of new varieties of plants, for the benefit of society.”

- ✓ No definition of propagating material in UPOV Acts
- ✓ Therefore: Various definitions of propagating material in UPOV member states
- ✓ Therefore: Different “scopes” of protection!



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Why did we request it?

Breeders need an (one) effective protection system for plant varieties, but

UPOV leaves room for several protection systems, where the scope of protection is different from country to country.

The industry needs from UPOV a clear, sufficiently broad definition of propagating material, which should result in a **harmonized, consistent scope of protection in the UPOV members states.**



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The Scope of Protection in UPOV

Article 14 of UPOV 1991

(1) [Acts in respect of the *propagating material*] (a) Subject to Articles 15 and 16, the following acts in respect of the propagating material of the protected variety shall require the authorization of the breeder:

- (i) production or reproduction (multiplication),
- (ii) conditioning for the purpose of propagation,
- (iii) offering for sale,
- (iv) selling or other marketing,
- (v) exporting,
- (vi) importing,
- (vii) stocking for any of the purposes mentioned in (i) to (vi), above.

(b) The breeder may make his authorization subject to conditions and limitations.



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The Scope of Protection in UPOV

Article 14 of UPOV 1991

(2) [Acts in respect of the *harvested material*]

Subject to Articles 15 and 16, the acts referred to in items (i) to (vii) of paragraph (1)(a) in respect of harvested material, including entire plants and parts of plants, obtained through the unauthorized use of propagating material of the protected variety shall require the authorization of the breeder, unless the breeder has had reasonable opportunity to exercise his right in relation to the said propagating material.



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The Scope of Protection in UPOV

Article 14 (1) of UPOV 1991 in EN, ES and FR

1) [Acts in respect of the **propagating material**] (a) ... the following acts in respect of the **propagating material** of the protected variety shall require the authorization of the breeder:

 (i) production or reproduction (multiplication),

1) [Actos respecto del **material de reproducción o de multiplicación**] a) ... se requerirá la autorización del obtentor para los actos siguientes realizados respecto de material de reproducción o de multiplicación de la variedad protegida:

 i) la producción o la reproducción (multiplicación),

1) [Actes à l'égard du **matériel de reproduction ou de multiplication**] a) ... l'autorisation de l'obtenteur est requise pour les actes suivants accomplis à l'égard du matériel de reproduction ou de multiplication de la variété protégée :

 i) la production ou la reproduction,



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What is Propagating Material?

Botanical approach: easy concept, objective, scientific

“Propagating material” is material, which can be used for plant propagation.

Plant propagation is the process of creating new plants from a variety of sources: seeds, cuttings, bulbs and other plant parts (such as whole plants, flowers, tissues, etc.). (WIKIPEDIA)



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What is Propagating Material?

Legislative / juridical approach (need of a definition):

- UPOV does **not** have a **definition** of propagating material
- Various definitions of propagating material in the national PBR laws of the UPOV members
- UPOV made a study of the definition in the PBR laws of 39 of its members (CAJ-AG/11/6/6 ANNEX: “Synopsis of references related to propagation / propagating material in the laws of members of the Union”)



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What is Propagating Material?

15 countries plus the EU (and the USA...)

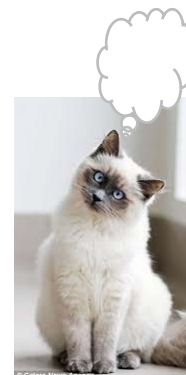
“plants or parts of plants, from which another plant with the same characteristics **can be produced**”

Australia, Canada, Hungary, Mexico, Republic of Moldova, Morocco, New Zealand, Nicaragua, Romania, Singapore, Slovenia, South Africa, Tunisia, Ukraine (+ the European Union having “variety constituents”, + the United States of America having the “parts of plants” concept in its Plant Patent law).

9 countries

“plants or parts of plants **intended or used for the reproduction or multiplication of plants**” Azerbaijan,

Belarus, Belgium, Brazil, Bulgaria, Chile, Panama, Russian Federation, Turkey.



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What is Propagating Material?

9 countries



“plants or parts thereof **intended for the cultivation** (growing, planting or sowing)”.

Argentina, Austria, Germany, Israel, Netherlands, Paraguay, Poland, Republic of Korea, Switzerland

4 countries



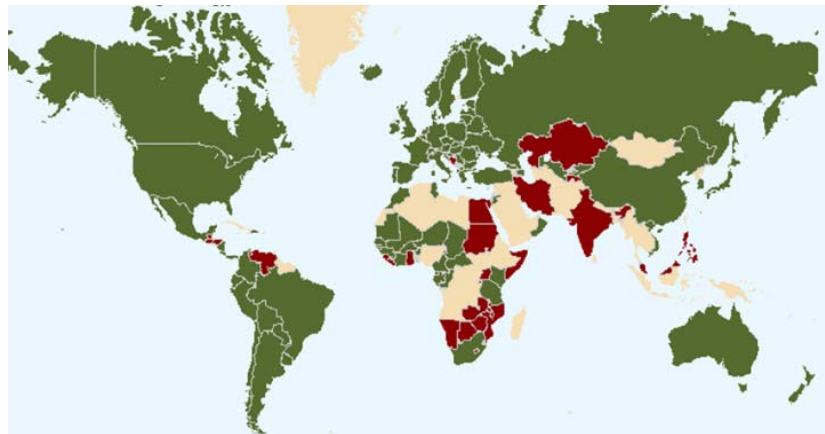
“plants or part of plants **intended / designated for the propagation**” Georgia, Kenya, Lithuania, Slovakia.



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What is Propagating Material?



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What is Propagating Material?



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Wording of the definition of "Propagated Material"	Plant material falling under the definition
<ul style="list-style-type: none"> • ... part or product of a plant from which, ..., another plant with the same essential characteristics can be produced (AUSTRALIA, SINGAPORE) • ... and includes any whole plant or part thereof that may be used for propagation (CANADA) • Entire plants ... or parts of plants suitable for growing the whole plant or for producing it in any other way (HUNGARY) • ... any whole plant or part of a plant from which it is possible to reproduce plants .. (MEXICO, NICARAGUA) • ... such as plants or part of plants, cuttings, tubers, bulbs, rhizomes (MOROCCO, TUNESIA) • ... any portion of a plant of a variety by means of which plants of that variety may be reproduced or propagated (NEW ZEALAND) • ... whole plants or parts thereof, capable of reproducing whole plants (EUROPEAN UNION, MOLDOVA, ROMANIA) • Any kind of propagating material or harvested material which could be used for further multiplication of this variety (SLOVENIA) • Any material of a plant which can be used for the propagation of a plant (SOUTH AFRICA) • Plants and parts thereof considered suitable for the reproduction of 	<p>Many forms of material of vegetatively reproduced varieties, except material, which cannot reproduce a plant (such as fruits, petals)</p>

Wording of the definition of “Propagated Material”	Plant material falling under the definition
<ul style="list-style-type: none"> Any plant organ intended for sowing or propagation (ARGENTINA, PARAGUAY, SWITZERLAND) Plants or part of a plant meant for the production or, otherwise, growing of plants (AUSTRIA, GERMANY) Plants or part of a plant intended for cultivation or propagation (ISRAEL) Plants and parts thereof intended for cultivation by planting or sowing or by any other means (NETHERLANDS, POLAND) vegetative material used for the propagation or cultivation of plants (REPUBLIC OF KOREA) 	<ul style="list-style-type: none"> Growing, cultivation, planting and sowing are understood as “planting” In that case cuttings, young plants, trees, rose-plants
Wording of the definition of “Propagated Material”	Plant material falling under the definition
<ul style="list-style-type: none"> Plants or part of a plant intended/designated for the propagation (GEORGIA, KENYA, LITHUANIA, SLOVAKIA) 	Depends on the definition of propagation



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Wording of the definition of “Propagated Material”	Plant material falling under the definition
<ul style="list-style-type: none"> Plants or parts of plants intended for the purposes of multiplication (BELARUS) Plants or parts of plants intended for the reproduction of plants (BELGIUM, CHILE) 	Elite stock material (material from which cuttings are taken for the growing of young plants, material from which bud-wood is taken for the grafting)
Wording of the definition of “Propagated Material”	Plant material falling under the definition
<ul style="list-style-type: none"> Plants or their parts used for propagating plants (TURKEY) every and any part of the plant or plant structure that is used in the reproduction and multiplication thereof (BRAZIL) Plants or parts of plants used for the reproduction of the variety (RUSSIAN FEDERATION, PANAMA, BULGARIA, AZERBAIJAN) 	Elite stock material



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What is Propagating Material?

Position of CIOPORA*:

Propagating material should include *any material of a plant from which, whether alone or in combination with other parts or products of that or another plant, another plant with the same characteristics can be produced.*

*as approved by its Annual General Meeting on 02 April 2014 in The Hague, NL



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What is Harvested Material?

Three possible approaches

Botanical / common sense: everything that has been harvested is harvested material

Legislative / juridical approach 1: legal definition of harvested material

Legislative / juridical approach 2: only plant material which is not propagating material is harvested material



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What is Harvested Material?

No definition of harvested material in UPOV and national PBR laws

Two approaches remain

- **Botanical / common sense:** everything that has been harvested is harvested material
- **Legislative / juridical approach 2:** plant material which does not fall under the definition of propagating material is harvested material



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What is Harvested Material?

Position of CIOPORA*:

Propagating material that (in a technical sense) has been harvested shall be considered exclusively as propagating material. **Only material of a variety which is not capable**, by any means, **of producing another plant with the same characteristics should be considered to be harvested material** in the legal sense.

Harvested material should be protected directly and per se.

*as approved by its Annual General Meeting on 02 April 2014 in The Hague, NL



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The Scope of Protection in UPOV

Propagating Material or Harvested Material?



We still don't know!



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Conclusions .1

Propagating material and harvested material are object of a different level of protection.

Therefore, plant material must clearly be classified **either** as propagating material or as harvested material.

Only clear, objective definitions provide clarity and certainty for “our” rights.



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Conclusions .2

CIOPORA is of the opinion that, now after 25 years from the latest version of the UPOV Convention, it is very concerning that still (a.o.) the “scope of protection” is significantly different in the various UPOV member states, thus creating **confusion and weakness** in the granted rights for international breeders.

CIOPORA is concerned because the “mission statement of UPOV” cannot be achieved just by including every year new member states to the Union, where the approved new PBR laws are too weak and too unclear.

CIOPORA believes that only by abiding with its basic statement “to provide and promote **an effective system** of plant variety protection” through an harmonization of the “scope of protection” UPOV will be able to achieve its mission, for the benefit of the society.



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Thank you

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