

Perspectives on the notions of propagating material and harvested material by the International Seed Federation

SEMINAR ON PROPAGATING AND HARVESTED MATERIAL
IN THE CONTEXT OF THE UPOV CONVENTION
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What is the International Seed Federation?



- “Voice of the global seed industry”
- **Non**-governmental, **non**-profit making organization
- Recognizes its members’ contributions to **food security** and **sustainable agriculture**.

Vision and Mission



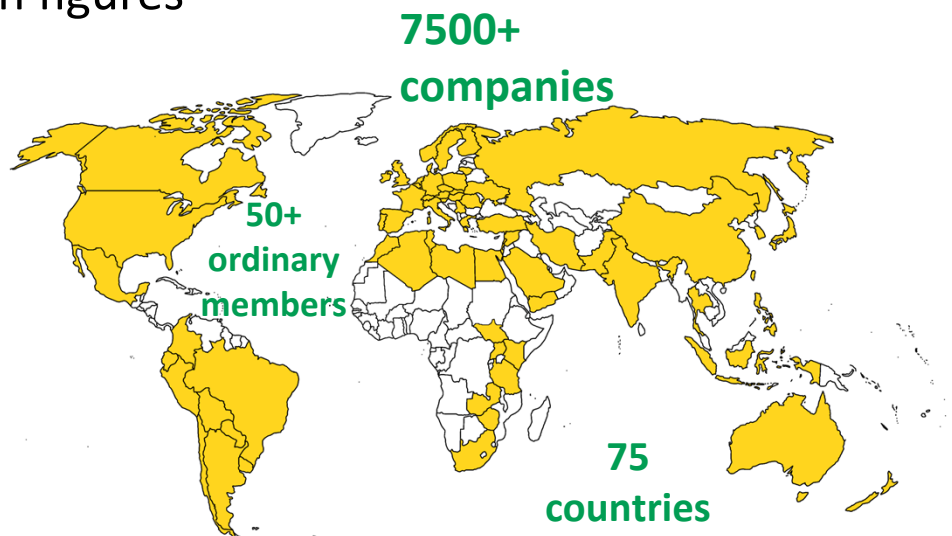
Vision

“A world where the best quality seed is accessible to all, supporting sustainable agriculture and food security.”

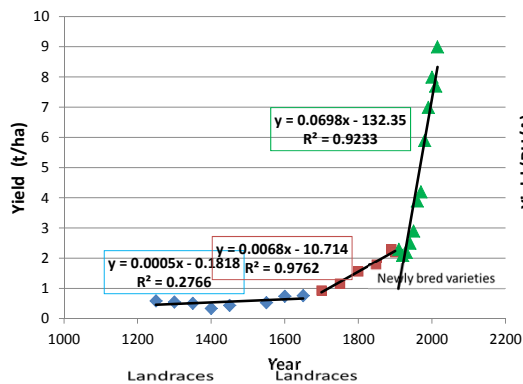
Mission

“To create the best environment for the global movement of seed, and promote plant breeding and innovation in seed”

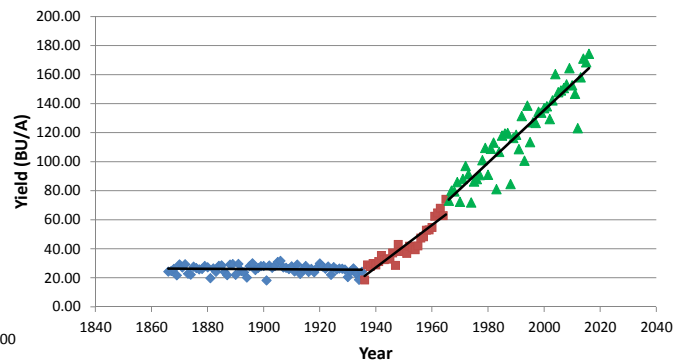
ISF in figures



Yield increases due to plant breeding



U.K. Wheat Yields 1250-2015



US Maize Yields 1866-2016 (USDA)

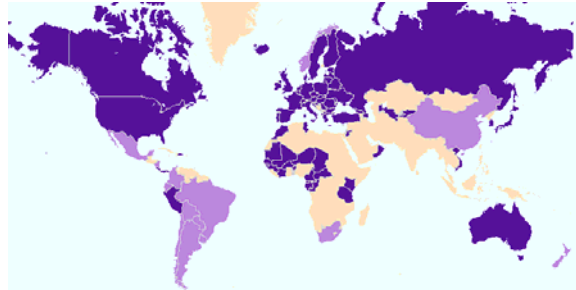
Importance of Plant Breeding

- Yield
- Profitability
- Resistance to pests and diseases
- Tolerance to abiotic stress
- Harvestability
- Crop quality
- Input efficiency
- Nutritional quality
- Storage quality
- New markets...etc.
- Reduced food cost
- More efficient land use

Seed is global



Potential pathway of a tomato variety



1991 Act: 56 members
Other acts: 18 members

© UPOV

- Seed sector cannot only look where UPOV 91 is in place **but** looks also where best quality seed is requested.

The development of new varieties needs an effective system

- Goals of UPOV: to provide and promote an effective system of plant variety protection, to encourage the development of new varieties of plants, for the benefit of society
- Breeders needs effective and predictable protection
 - clear and consistent rules
 - clear and consistent definition
- Otherwise
 - Commitment to breeding investment reduced
 - Formal seed sector and best products undermined
 - Introduction of improved genetics delayed
 - Livelihood of farmers and rural economies put at risk

Propagating and harvested material: Where to draw the line?



Propagating material



Harvested material

What is the issue with Propagating material?

- Definition of the term is critical to clarify the scope of material on which a breeder can directly and unconditionally exercise his rights.
- No definition in the UPOV Convention but many countries have already adopted a definition, creating an huge diversity of different situation.
- Broad definition => more chance for breeders to exercise their rights => fair return on investment => incentive to innovate

Harvested material

- No definition in UPOV Convention
- Only through Art 14 (2): “harvested material, including entire plants and parts of plants”
- Extension of breeders’ rights to harvested material under 2 conditions:
 - 1) Unauthorized use of the propagating material
 - 2) The breeder did not have a reasonable opportunity to exercise his right on the propagating material
- Conditions and interpretation (UPOV/EXN/HRV/1) too narrow to match the reality of the seed sector.
- Many countries different situation, building unclarity.

Unauthorized use of the propagating material

- Should not be limited to the situation where the authorization was not granted by the breeder holder of a PBR
- ISF is of the opinion that definition of “unauthorized use” should be broader:
 - No explicit positive authorization from the holder of the rights (especially when there is no PBR legislation in a country)
 - Breach of contract
 - End product sold on the market and used as propagating material in a country where the variety is not protected

Unauthorized use of the propagating material

- “Can only occur in the territory of the member of the Union where a breeder’s right has been granted and is in force” (UPOV/EXN/HRV/1)
 - ⇒ UPOV interpretation: Unauthorized acts regarding propagating material should be taking place in UPOV member countries
- Too restrictive and not matching the reality of the seed business: continued flows of propagating/harvested material
- Seed sector need to be able to control their varieties at least at one stage of the production and trade chain through a globalized market.

A reasonable opportunity to exercise his rights

- “to exercise his right in relation to the propagating material in the territory concerned” (UPOV/EXN/HRV/1)
 - The territory where the right is executed is usually not the territory where the production took place => a reasonable opportunity to act on the propagation material is only required in the importing country
 - ISF Position 2007: this relates only to an existing right as granted and does not extend to the obligation to protect the variety in other countries where the variety can be protected and might be produced
 - Not reasonable to require PBR protection in all countries in the world
 - Confirmed by jurisprudence from the German Supreme Court of 14 February 2006, No. X ZR 93/04

Conclusion

- Gaps in the protection of harvested material make misuse by infringers easy, to the disadvantage of honest growers, who fulfil their obligations
- The breeder should have at least one opportunity to exercise his right: if not on the propagating material then on the harvested material, without much restrictions.



Seed is Life