

# Seminar on the breeder's right in relation to harvested material

## Overview of UPOV's guidance on the breeder's right in relation to harvested material

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# Overview of UPOV's guidance

## 1. Considerations on harvested material by UPOV's Administrative and Legal Committee (CAJ)

## 2. Scope of the plant breeder's right (PBR)

- acts covered
- material covered

## 3. Explanatory Notes

- on propagating material
- on harvested material
- on provisional protection

# 1. CONSIDERATIONS ON HARVESTED MATERIAL BY UPOV'S ADMINISTRATIVE AND LEGAL COMMITTEE (CAJ)

2019 request of proposals from UPOV members concerning the term “unauthorized use of propagating material”, in relation to trees to explore the development of guidance



2020 proposals received from:  
European Union  
Japan  
Russian Federation  
document CAJ/77/5

Based on **CAJ** proposals, the **UPOV Council** approved the organization of a **seminar** in the first half of **2021**, to **exchange information** on matters concerning **harvested material and unauthorized use of propagating material**

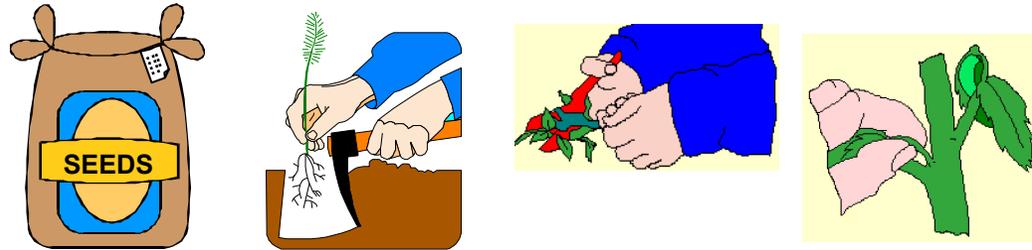
## 2. PBR: authorization of breeder required for acts in respect of the propagating material of protected variety

- Production or reproduction (multiplication)
- Conditioning for the purpose of propagation
- Offering for sale
- Selling or marketing
- Exporting
- Importing
- Stocking for any of the above purposes

BREEDERS decide their policy on authorization, including conditions and limitations

## PBR: MATERIAL COVERED

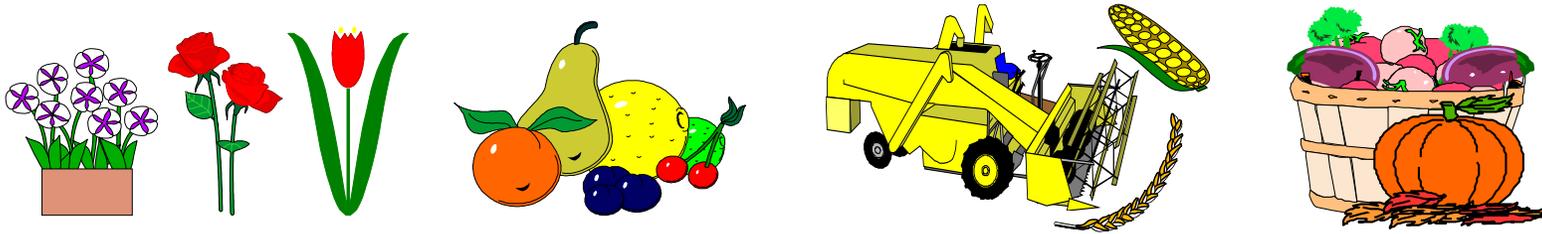
- All propagating material



- Harvested material under certain conditions
- Certain products (optional)

## PBR: MATERIAL COVERED

- All propagating material
- **Harvested material**



obtained through **unauthorized use** of propagating material, **unless** the breeder has had **reasonable opportunity** to exercise his right

- **Certain products (optional)**

## 2. EXPLANATORY NOTES ON PROPAGATING MATERIAL UNDER THE UPOV CONVENTION (document UPOV/EXN/PPM/1)

### non-exhaustive examples of factors

- plant or part of plants used for the variety reproduction
- the material has been or may be used to propagate the variety
- the material is capable of producing entire plants of the variety
- there has been a custom/practice of using the material for propagating purposes or, as a result of new developments, there is a new custom/practice of using the material for that purpose

# EXPLANATORY NOTES ON PROPAGATING MATERIAL UNDER THE UPOV CONVENTION (document UPOV/EXN/PPM/1)

## cont. non-exhaustive examples of factors

- the intention on the part of those concerned (producer, seller, supplier, buyer, recipient, user)
- if, based on the nature and condition of the material and/or the form of its use, it can be determined that the material is “propagating material” or
- the variety material where conditions and mode of its production meet the purpose of reproduction of new plants of the variety but not of final consumption

EXPLANATORY NOTES ON  
ACTS IN RESPECT OF **HARVESTED MATERIAL**  
UNDER THE 1991 ACT OF THE UPOV CONVENTION  
(document UPOV/EXN/HRV/1)

- [Paragraph 3] The explanation that harvested material includes entire plants and parts of plants, which is material that can potentially be used for propagating purposes, means that at least **some forms of harvested material have the potential to be used as propagating material**

**EXPLANATORY NOTES ON  
ACTS IN RESPECT OF HARVESTED MATERIAL  
UNDER THE 1991 ACT OF THE UPOV CONVENTION  
(document UPOV/EXN/HRV/1)**

- [Paragraph 4] **“Unauthorized use”** refers to the **acts** in respect of the propagating material that require the authorization of the holder of the breeder’s right in the territory concerned (**Article 14(1) of the 1991 Act**), but where such authorization was not obtained. Thus, unauthorized acts can only occur **in the territory** of the member of the Union where a **breeder’s right has been granted and is in force**.

EXPLANATORY NOTES ON  
ACTS IN RESPECT OF **HARVESTED MATERIAL**  
UNDER THE 1991 ACT OF THE UPOV CONVENTION  
(document UPOV/EXN/HRV/1)

**Reasonable opportunity to exercise his right**

- [Paragraph 13] The term “**his right**”, in Article 14(2) of the 1991 Act, relates to the breeder’s right in the territory concerned (see paragraph 4 above): a breeder can only exercise his right in that territory. Thus, “exercise his right” in relation to the propagating material means to **exercise his right in relation to the propagating material in the territory concerned.**

EXPLANATORY NOTES ON **PROVISIONAL PROTECTION** UNDER THE UPOV CONVENTION  
(document UPOV/EXN/PRP/2)

Article **[13]**

**Provisional Protection**

**[(1)]** **[Period]** Provisional protection is provided to safeguard the interests of the breeder during the period between **[the filing]** / **[the publication]** of the application for the grant of a breeder's right and the grant of that right.

**[(2)]** **[Scope]** – Example A, Example B

EXPLANATORY NOTES ON **PROVISIONAL PROTECTION** UNDER THE UPOV CONVENTION  
(document UPOV/EXN/PRP/2)

Article **[13]**  
Provisional Protection

**[(1)]** [Period] [...]

*Example A*

**[(2)]** The holder of a breeder's right [shall at least be entitled to equitable remuneration] from any person who, during the period provided in paragraph **[(1)]**, has carried out acts which, once the right is granted, require the breeder's authorization as provided in Article **[14]**.

EXPLANATORY NOTES ON **PROVISIONAL PROTECTION** UNDER THE UPOV CONVENTION  
(document UPOV/EXN/PRP/2)

Article **[13]**

**Provisional Protection**

**[(1)]** [Period] [...]

*Example B* **[(2)]** The applicant is considered to be the holder of a **breeder's right** in relation to any person who, during the period provided in paragraph **[(1)]**, has carried out acts which, once the right is granted, require the breeder's authorization as provided in Article **[14]**. The applicant shall have the same rights to enter into **license agreements** and to **initiate legal proceedings** as if on the **[filing]** / **[publication]** date the breeder's right had been granted to the applicant in respect of the variety concerned. The rights conferred under this paragraph shall be deemed never to have been conferred if the right is not granted.



## **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”**