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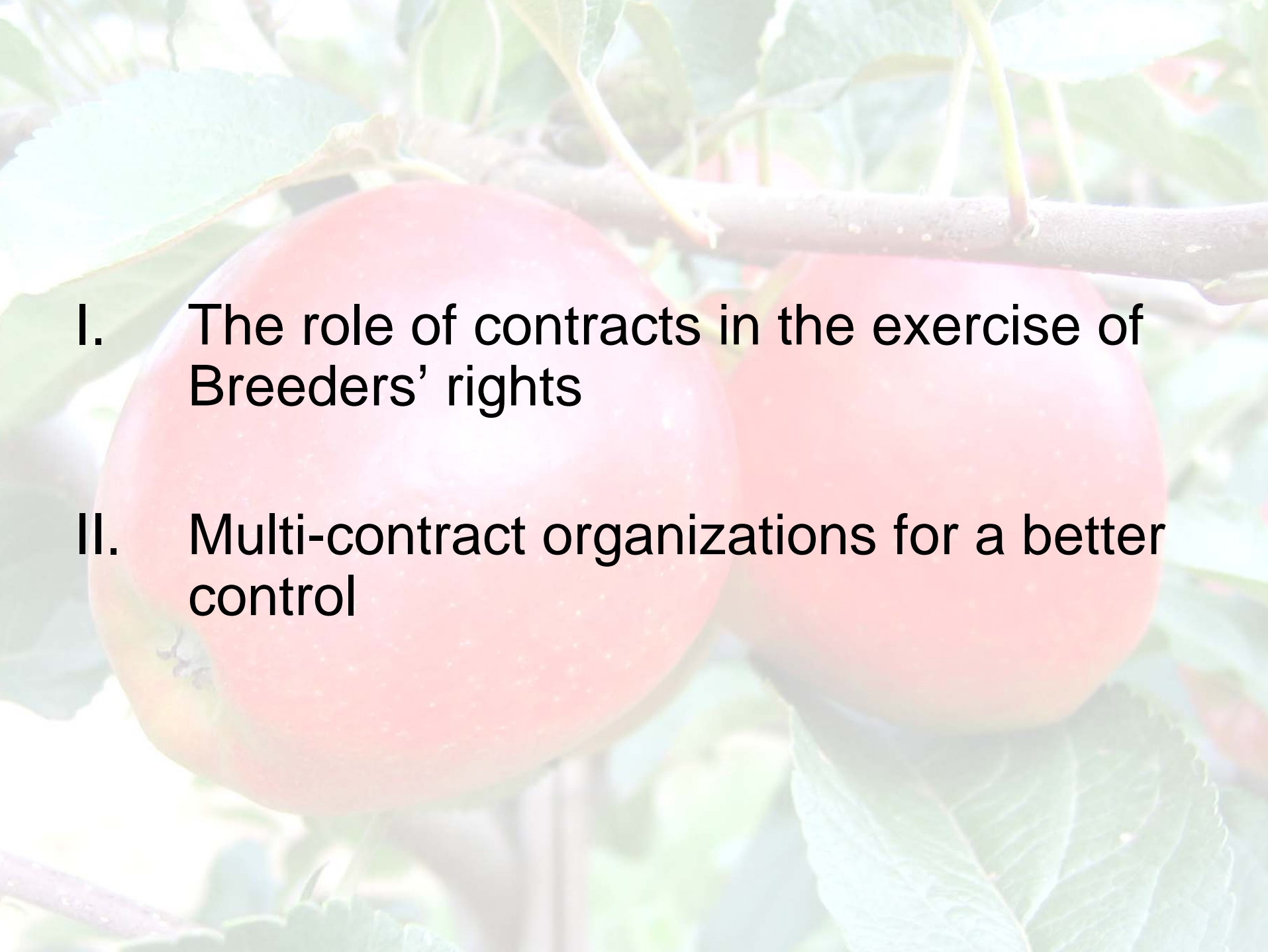
**Symposium on contracts in
relation to Plant Breeders' Rights**

EXPERIENCES OF BREEDERS

**The role of contracts in the exercise of
Breeders' Rights**

Geneva, October 31, 2008

Dominique THEVENON

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- The background of the slide is a photograph of two ripe, red apples hanging from a tree branch. The apples are in sharp focus, showing their smooth, slightly textured skin. The leaves are a vibrant green, and the overall scene is brightly lit, suggesting a sunny day. The text is overlaid on the left side of the image.
- I. The role of contracts in the exercise of Breeders' rights
 - II. Multi-contract organizations for a better control

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I. The role of contracts in the exercise of Breeders' rights

What is a contract?

- A covenant by which several persons **bind themselves** versus one or several others.
 - Based on goodwill of contracting parties
 - Licensor proposes
 - Licensee accepts
 - Gives a legal frame to this goodwill and defines engagements

What does a contract provide for?

1. Assessment of Licensor's rights
2. Rights licensed and conditions of exploitation of those rights
3. Remuneration of the breeder
4. Applicable sanctions
5. Jurisdiction
6. Provisions for the enforcement of rights

1. Assessment of rights

Contract must have solid grounds and be based:

a) On existing and strong rights

- A breeder can license only existing rights that he actually owns
- Object of the contract can be the variety itself (Plant Breeder's Right) or a Trademark

b) On an applicable legislation

- eg. Community Regulation N°2100/94 of July 1994 (art. 13)
 - defines the scope of the Breeders' rights
 - provides for extension of protection to Essentially Derived Varieties

1 - a) Based on existing and valid rights

- **Plant Breeder's Rights**

- Granted PBR
 - Rights between application and grant of the title
- Actual ownership of the title
- Validity consistently maintained

- **Trademark**

- Actually registered (no 'common law' trademark)
- Validity consistently maintained

1 - b) Based on an applicable legislation

- Scope of the Breeders' Rights as defined by article 13 of the EU 1994
 - (a) production or reproduction (multiplication),
 - (b) conditioning for the purpose of propagation,
 - (c) offering for sale,
 - (d) selling or other marketing,
 - (e) exporting,
 - (f) importing,
 - (g) stocking for any of the purposes mentioned in [\(a\)](#) to [\(f\)](#), above.

... extension of protection to Essentially Derived Varieties

- Contract can describe and clarify the legal situation in regard to EDV
- Contract can determine the common understanding on which varieties are considered to be EDV, e.g. based on the CIOPORA position paper on EDV
- Contract can provide for a framework on how to deal with EDV of the licensed variety

A close-up photograph of two ripe, red apples hanging from a branch. The apples are the central focus, with their smooth, slightly textured skin showing a gradient of red and pink. They are surrounded by vibrant green leaves with visible veins. The background is softly blurred, showing more of the tree and a hint of a bright, sunny outdoor setting.

2. Rights licensed and conditions of exploitation of the rights

- a) Which rights are licensed
- b) What frame for the exploitation of rights
- c) What are the obligations of the parties

2. a) Which rights are licensed

The rights licensed will vary according to the nature of the Licensee

- Propagation
- Growing
- Sale
- Import / Export

2. b) What does the authorization cover

What are the conditions of exploitation of those rights

- exclusive or not
- territory covered
- duration

2. c) What are the obligations of the parties

- Obligations of Licensor :
 - Maintain the licensed rights
 - Provide certain services (ex. supply certified propagation material to the licensee....)
 - Defend the licensed rights (against possible questioning as to their existence, against infringements...)
- Obligations of Licensee :
 - Only use material sourced from Licensor or from an authorized source
 - Ensure quality standards
 - Permit access to its premises to Licensor
 - Properly identify the licensed material upon marketing
 - Report on activities and keep proper records available to Licensor
 - Pay royalties
 - Report infringement and provide help in proceedings

3. Remuneration of the Breeder

- A remuneration (royalty) as the compensation of the authorization of exploitation licensed
- Which royalty for which right
- Only way for the Breeder to recover the costs of his breeding work and to pursue his activity of creation

4. Application of sanctions

- A logical counterpart in case of breach of License provisions
- Sanctions more commonly used in License contracts :
 - termination of the license
 - obligation for the Licensee to give up the material in his possession
 - financial damages

5. Jurisdiction

- Applicable law
- Competent court
- Arbitration (not commonly used in the ornamental and fruit sector)

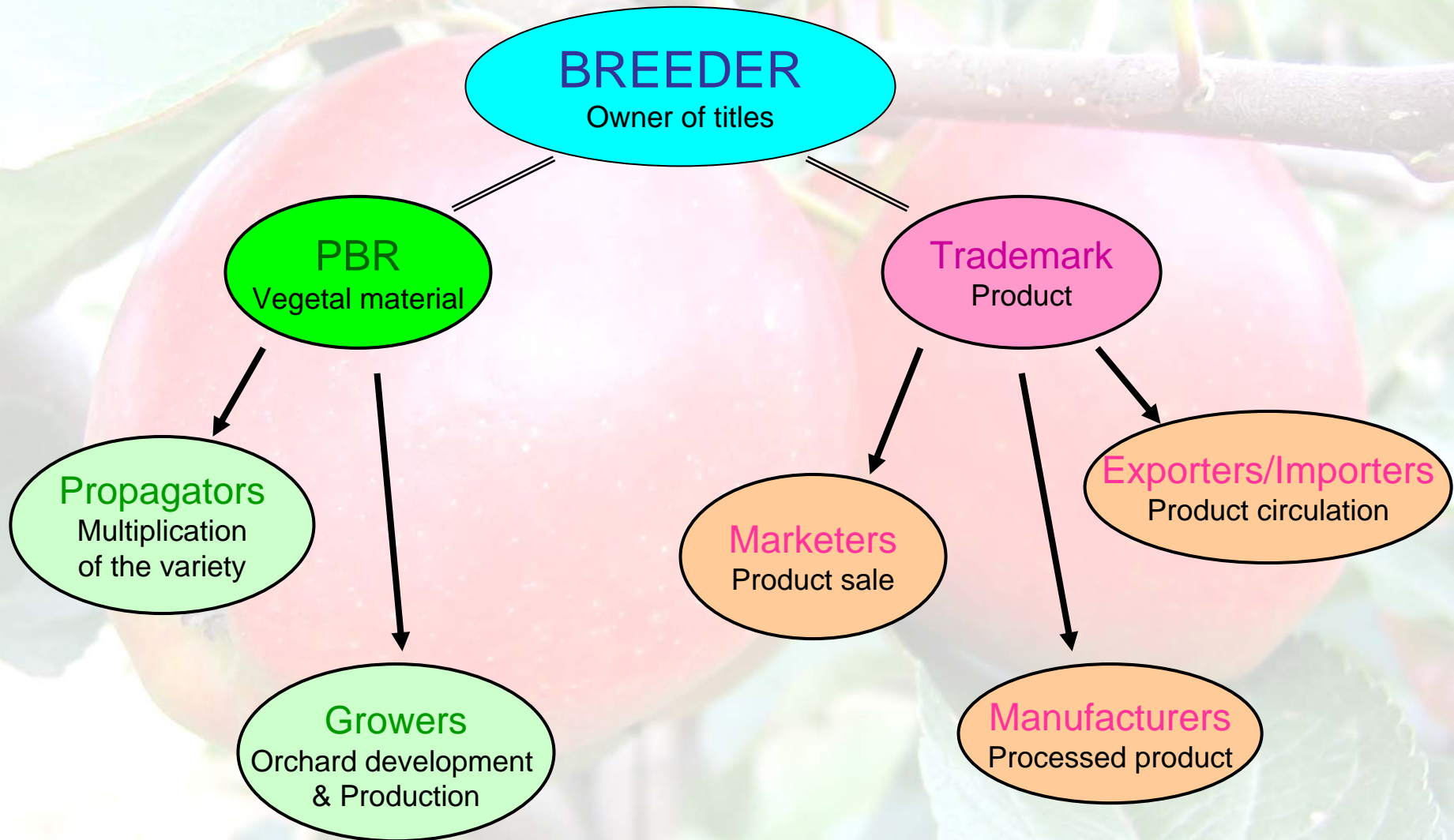
6. A tool for the enforcement of rights

- Licensee to report infringement and provide help in proceedings
- The contract is the recognition of who is in a « legal » situation in relation to the breeder's rights : everyone who is not in the contractual network is outside and likely to be an infringer

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II. Multi-contract organizations for a better control

A combination of rights for a better control



A photograph of two ripe red apples hanging from a tree branch. The apples are in the foreground, slightly out of focus, with green leaves and branches in the background. The text is overlaid on the image.

A combination of rights for a better control

- Diffusion / circulation of vegetal material
- Plantations and production monitoring
- Product availability and management
- Product marketing
- Product circulation

Conclusion

- **Contracts =**
 - Set a legal frame for the exercise of existing rights
 - Offer the possibility to monitor and organize the commercial development of a variety
 - Allow breeders to ask for a remuneration for their activity and pursue their creation work
 - Help breeders to enforce their rights
 - **BUT MUST BE BASED ON STRONG RIGHTS !**

A close-up photograph of two ripe, red apples hanging from a tree branch. The apples are the central focus, with their smooth, slightly textured skin showing a gradient of red and pink. They are surrounded by lush green leaves with visible veins. The background is softly blurred, showing more of the tree and foliage. The overall lighting is bright and natural, suggesting an outdoor setting.

**THANK YOU
FOR YOUR ATTENTION**