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Geneva

WORKING GROUP FOR THE DEVELOPMENT OF A UPOV DENOMINATION SIMILARITY SEARCH TOOL

**Third Session
Geneva, October 2, 2015**

NON-ACCEPTABLE TERMS

prepared by the Office of the Union

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EXECUTIVE SUMMARY

1. The purpose of this document is to consider what could be included in a list of non-acceptable terms if the CAJ agreed to develop such a list as an additional feature for the UPOV denomination search tool.
2. The WG-DST is invited to:
 - (a) consider whether it would be useful to develop a list of botanical names of genus and, in addition, a list of botanical and common names of genus that have a wider meaning through a survey addressed to members of the Union, as set out in paragraph 10;
 - (b) note that inclusion of offensive terms in a possible list of non-acceptable terms could be problematic;
 - (c) consider whether it would be useful to develop a list of comparatives and superlatives on the basis that a denomination consisting of, or containing, such terms should be rejected, as set out in paragraph 14; and
 - (d) consider whether it would be useful to organize a survey addressed to members of the Union in order to obtain information on types of varieties for which a denomination consisting solely of figures is considered to be established practice within a particular denomination class, and the information to be presented to the WG-DST for consideration, as set out in paragraph 18.
3. The structure of this document is as follows:

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4. The following abbreviations are used in this document:

CAJ: Administrative and Legal Committee
 CAJ-AG: Administrative and Legal Committee Advisory Group
 TC: Technical Committee
 WG-DST: Working Group for Variety Denomination Search Tool

BACKGROUND

5. The WG-DST, at its second meeting, held in Geneva, on June 9, 2015, agreed to invite the CAJ to consider whether to develop a list of non-acceptable terms for variety denominations as an additional feature for the UPOV denomination search tool (see document UPOV/WG-DST/2/6 "Report", paragraph 12).

6. Article 20(5) of the 1991 Act states that a "variety must be submitted to all Contracting Parties under the same denomination. The authority of each Contracting Party shall register the denomination so submitted, unless it considers the denomination unsuitable within its territory. In the latter case, it shall require the breeder to submit another denomination" (see corresponding provision in Article 13(5)¹ of the 1978 Act).

7. Document UPOV/INF/12 "Explanatory Notes on Variety Denominations under the UPOV Convention", paragraph 5.2(b) states that "although certain provisions on variety denominations allow for authorities to develop individual guidance concerning best practices, the obligation under paragraph (5) should be given priority, unless there is direct conflict with the provisions of the UPOV Convention. In that respect, it is also recommended to avoid any narrow interpretation of the provisions of the UPOV Convention and related guidance or best practices, which could lead to the unnecessary refusal of variety denominations and, consequently, the unnecessary creation of synonyms for a variety".

8. Document UPOV/INF/12 paragraph 5.3 states that "[w]hilst a degree of flexibility is appropriate, the following non-exhaustive list may assist the authorities in deciding what is unsuitable. A proposed denomination may be refused by an authority of a member if it transpires that, despite best endeavors (see section 5.5), in its territory

(a) it does not conform to the provisions in paragraphs (2) "Characteristics of the denomination" and (4) "Prior rights of third persons"; or

(b) it is contrary to public policy".

NON-ACCEPTABLE TERMS

Botanical names

9. The WG-DST, at its second meeting, agreed that a list of non-acceptable terms could include, for example, botanical names. The WG-DST agreed that the use of the botanical or common name of a genus to which a variety does not belong should be avoided, unless the botanical name or common name had a wider meaning, e.g. "Rose", "Cosmos", "Lilac", "Veronica" and "Bianca" (see document UPOV/WG-DST/2/6 "Report", paragraphs 13 and 25).

10. The WG-DST may wish to consider whether it would be useful to develop a list of botanical names of genera and, in addition, a list of botanical and common names of genera that have a wider meaning through a survey addressed to members of the Union.

11. The development of a list of botanical names of genera and a list of botanical and common names of genera that have a wider meaning could enable the UPOV denomination search tool to indicate where a denomination might be unsuitable on that basis.

¹ Article 13(5) of the 1978 Act "A variety must be submitted in member States of the Union under the same denomination. The authority referred to in Article 30(1)(b) shall register the denomination so submitted, unless it considers that denomination unsuitable in its State. In the latter case, it may require the breeder to submit another denomination."

Offensive terms

12. With regard to the inclusion of offensive terms in a possible list of non-acceptable terms, the WG-DST agreed that it would be problematic to develop such a list. (see document UPOV/WG-DST/2/6 "Report", paragraph 13).

Comparatives and superlatives

13. Document UPOV/INF/12 paragraph 2.3.2 states that "[t]he denomination should not consist of, or contain, comparative or superlative designations. Example: a denomination which includes terms such as 'Best', 'Superior', 'Sweeter'".

14. The WG-DST may wish to consider whether it would be useful to develop a list of comparatives and superlatives on the basis that a denomination consisting of, or containing, such terms should be rejected. Given that the potential list of comparatives and superlatives would be very large, the WG-DST may wish to consider establishing a list of commonly used comparatives and superlatives in English, French, German and Spanish, in the first instance.

15. The development of a list of comparatives and superlatives could enable the UPOV denomination search tool to indicate where a denomination might be unsuitable on that basis.

USE OF FIGURES WHERE THIS IS NOT AN ESTABLISHED PRACTICE

16. Article 20(2) of 1991 Act states that a denomination "[...] may not consist solely of figures except where this is an established practice for designating varieties. It must not be liable to mislead or to cause confusion concerning the characteristics, value or identity of the variety or the identity of the breeder" (see corresponding provision in Article 13(2)² of the 1978 Act).

17. Document UPOV/INF/12 paragraph 2.2.2 states that "[i]n the case of denominations consisting 'solely of figures,' the following non-exhaustive elements may assist the authorities to understand what might be considered to be 'established practice': (a) for varieties used within a limited circle of specialists, the established practice should reflect that specialist circle (e.g. inbred lines); (b) accepted market practices for particular variety types (e.g. hybrids) and particular species (e.g. Medicago, Helianthus)".

18. The WG-DST may wish to consider whether it would be useful to organize a survey addressed to members of the Union in order to obtain information on types of varieties for which a denomination consisting solely of figures is considered to be established practice within a particular denomination class. This information could then be presented to the WG-DST for consideration.

19. The development of a list of denomination classes for which a denomination consisting solely of figures is considered to be established practice could enable the UPOV denomination search tool to indicate where a denomination might be unsuitable on that basis.

20. *The WG-DST is invited to:*

(a) consider whether it would be useful to develop a list of botanical names of genus and, in addition, a list of botanical and common names of genus that have a wider meaning through a survey addressed to members of the Union, as set out in paragraph 10;

(b) note that inclusion of offensive terms in a possible list of non-acceptable terms could be problematic;

² Article 13(2) of the 1978 Act "The denomination must enable the variety to be identified. It may not consist solely of figures except where this is an established practice for designating varieties. It must not be liable to mislead or to cause confusion concerning the characteristics, value or identity of the variety or the identity of the breeder. In particular, it must be different from every denomination which designates, in any member State of the Union, an existing variety of the same botanical species or of a closely related species.

(c) consider whether it would be useful to develop a list of comparatives and superlatives on the basis that a denomination consisting of, or containing, such terms should be rejected as set out in paragraph 14; and

(d) consider whether it would be useful to organize a survey addressed to members of the Union in order to obtain information on types of varieties for which a denomination consisting solely of figures is considered to be established practice within a particular denomination class, and the information to be presented to the WG-DST for consideration as set out in paragraph 18.

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