

**Working Group on a Possible International System  
of Cooperation**

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**RIGHT OF PRIORITY**

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**THE APPLICATION**

**FILING**

- place of first application
- timing of applications
- independence of protection

**RIGHT OF PRIORITY**

- 12 months

**EXAMINATION**

- Compliance with the conditions for protection



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- The UPOV Convention provides for a **right of priority of 12 months**
- based upon an earlier application for the protection of the same variety with another UPOV member
- whereby a **subsequent application is treated as if it were filed on the filing date of the first application.**

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UPOV member A	First application Filing date: May 15, 2004	
UPOV member B	Subsequent application Filing date: February 13, 2005 (priority claimed)	Priority recognized (application date in B within the period for claiming priority and priority was claimed in the application filed in B) Application in UPOV member B is treated as if it was filed at the filing date in UPOV member A, i.e. May 15, 2004
UPOV member C	Subsequent application Filing date: May 10, 2005 (priority not claimed)	No priority (application date in C within the period for claiming priority, but priority was not claimed in the application filed in C) (see paragraph (2)) Filing date in UPOV member C is May 10, 2005
UPOV member D	Subsequent application Filing date: June 10, 2005 (priority claimed)	No priority (application date in D beyond the period for claiming priority) Filing date in UPOV member D is June 10, 2005

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## Right of priority and Novelty

*Subsequent application: Novelty*

*First Application: Member A*

*Submission of a subsequent application: Member B*

*The variety shall be deemed to be new if, at the [date of filing of the first application for protection of the variety in member of UPOV A], propagating or harvested material of the variety has not been sold or otherwise disposed of to others, by or with the consent of the breeder, for purposes of exploitation of the variety*

*(i) in the territory of [member of UPOV B] earlier than one year before the [date of filing in member of UPOV A (first application)] and*

*(ii) in a territory other than that of [member of UPOV B] earlier than four years or, in the case of trees or of vines, earlier than six years before the [date of filing in member of UPOV A (first application)].*

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## Right of priority and Distinctness

*Subsequent application: Distinctness*

*First Application: Member A*

*Submission of a subsequent application: Member B*

*The variety shall be deemed to be distinct if it is clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of the filing of the application [for protection of the variety in member of UPOV A]. In particular, the filing of an application for the granting of a breeder's right or for the entering of another variety in an official register of varieties, in any country, shall be deemed to render that other variety a matter of common knowledge from the date of the application, provided that the application leads to the granting of a breeder's right or to the entering of the said other variety in the official register of varieties, as the case may be.*

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## Claiming the right of priority

- to benefit from the right of priority, the breeder shall, in the subsequent application, **claim the priority of the first application**.
- the authority may require to furnish, within a **period of not less than three months**, a copy of the documents which constitute the first application and samples or other evidence that the variety is the same.

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## Right of Priority

### UPOV Model Form for the Application for Plant Breeders' Rights

7. Priority is claimed in respect of the application filed in (State / Intergovernmental Organization) (first application) \_\_\_\_\_ on (date) \_\_\_\_\_ under the denomination \_\_\_\_\_

An official copy of the first application, including the date of filing, is requested as a certification<sup>4</sup> of priority

<sup>4</sup> Within the prescribed time limit (minimum 3 months)

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## Documents and material for examination

UPOV member A	First application Filing date: May 15, 2004	
UPOV member B	Subsequent application Filing date: February 13, 2005 (priority claimed)	For the purpose of the examination under Article 12, the breeder is allowed a period of two years after the expiration of the period of priority to furnish, to the authority any necessary information, document or material: May 15, 2007

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