|  |  |
| --- | --- |
|  | E |
| International Union for the Protection of New Varieties of Plants |  |

|  |  |
| --- | --- |
| Working Group on Harvested Material and Unauthorized use of Propagating MaterialFirst MeetingGeneva, March 15, 2022 | WG-HRV/1/6Original: EnglishDate: May 13, 2022 |

REPORT

adopted by the Working Group on Harvested Material and Unauthorized use of Propagating Material

Disclaimer: this document does not represent UPOV policies or guidance

# Opening of the MEETING

 The Working Group on Harvested Material and Unauthorized use of Propagating Material (WG-HRV) held its first meeting via electronic means on March 15, 2022, chaired by Mr. Peter Button, Vice Secretary-General of UPOV.

 The meeting was opened by the Chair, who welcomed the participants.

 The list of participants is reproduced in the Annex to this report.

# Adoption of the agenda

 The WG-HRV adopted the draft agenda as proposed in document WG-HRV/1/1.

INTRODUCTION TO THE REVISION OF THE EXPLANATORY NOTES ON PROPAGATING MATERIAL, ACTS IN RESPECT OF HARVESTED MATERIAL AND PROVISIONAL PROTECTION UNDER THE UPOV CONVENTION

 The WG-HRV considered document WG-HRV/1/2.

 The WG-HRV noted that the proposals received in reply to Circular E-21/228 had been introduced in boxes in documents WG‑HRV/1/3 (proposals concerning UPOV/EXN/PPM/1), WG-HRV/1/4 (proposals concerning UPOV/EXN/HRV/1) and WG-HRV/1/5 (proposals concerning UPOV/EXN/PRP/2).

PROPOSALS CONCERNING THE EXPLANATORY NOTES ON PROPAGATING MATERIAL UNDER THE UPOV CONVENTION

 The WG-HRV considered document WG-HRV/1/3.

 The WG-HRV agreed the following possible new factor should be considered further:

“[…]

(vii) when harvested material has the potential to be used as propagating material, it can be considered as propagating material; or

[…]”

 The WG-HRV agreed that further elaboration on the relationship of propagating material and harvested material, including the role of exhaustion, be prepared for consideration by WG-HRV at its next meeting to assist in its consideration of the above factor. It was agreed that illustrative examples could be included to facilitate the discussions and that the Office of the Union would consult those members of the WG-HRV that made interventions at the meeting on that topic.

PROPOSALS CONCERNING THE EXPLANATORY NOTES ON ACTS IN RESPECT OF HARVESTED MATERIAL UNDER THE 1991 ACT OF THE UPOV CONVENTION

 The WG-HRV considered document WG-HRV/1/4.

 The WG-HRV agreed that the following matters should be considered in relation to a revision of the Explanatory Notes on Acts in Respect of Harvested Material under the 1991 Act of the UPOV Convention:

|  |  |
| --- | --- |
| General  | to replace “his right” by “their right” in relevant parts of the document, unless it is a quote from Article 14(2) of the 1991 Act of the UPOV Convention. |
| Paragraph 1  | To add footnote 1 after “breeder”, based on the following text “For the purpose of this EXN the term ‘Breeder’ includes both the breeder according to Article 1 iv of the UPOV 1991 Act and the title holder, as the case may be.” and in accordance with the wording used in UPOV guidance documents.  |
| Paragraph 3 | to change as follows: “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. When harvested material has the potential to be used as propagating material, it can be considered as propagating material.” |

 The WG-HRV considered the proposals and comments in relation to document WG-HRV/1/4, Annex, section “(c) Unauthorized use of propagating material” and agreed to discuss the following matters at its next meeting:

(a) the cascade principle under the “Scope of the Breeder’s Right”, in Article 14 of the 1991 Act, and its relationship with the provisions on the “Exhaustion of the Breeder’s right”, under Article 16 of the 1991 Act;

(b) the history of those provisions, including the notion of “unauthorized use”, under Article 14(2) and the notion of “consent” under Article 16; and

(c) clarifications on where the use had taken place and where the right can be exercised.

It was agreed that the Office of the Union would collate information that members of the WG-HRV wished to share on the above topics and would provide background information on the above provisions as the basis for the discussion at the second meeting of the WG-HRV.

 The WG-HRV considered the proposals and comments in relation to document WG-HRV/1/4, Annex, section “(d) Reasonable opportunity to exercise his right” and agreed to consider that matter further at the second meeting of the WG-HRV. It was agreed that illustrative examples of how the provision of information could work in practice would facilitate the discussions.

PROPOSALS CONCERNING THE EXPLANATORY NOTES ON PROVISIONAL PROTECTION UNDER THE UPOV CONVENTION

 The WG-HRV received a presentation on document WG-HRV/1/5 but did not have time to discuss the document.

DATE AND PROGRAM OF THE SECOND MEETING

 The WG-HRV agreed to invite additional comments on documents WG‑HRV/1/3, WG-HRV/1/4 and WG‑HRV/1/5 within six weeks after its first meeting.

 The WG-HRV agreed to request the Office of the Union to prepare information and proposals for the revision of the following explanatory notes, for consideration by the WG-HRV at its second meeting, on the basis of the discussions at the first meeting and any additional comments received (see paragraph 15, above):

* “Explanatory Notes on Propagating Material under the UPOV Convention” (document UPOV/EXN/PPM/1);
* “Explanatory Notes on Acts in Respect of Harvested Material under the 1991 Act of the UPOV Convention” (document UPOV/EXN/HRV/1); and
* “Explanatory Notes on Provisional Protection under the UPOV Convention” (document  UPOV/EXN/PRP/2).

 The WG-HRV agreed that the second meeting of the WG-HRV be held via electronic means, on September 6, 2022.

 The following program was agreed for the second meeting of the WG-HRV:

* 1. Opening of the meeting
	2. Adoption of the agenda
	3. Information concerning propagating material, acts in respect of harvested material and provisional protection under the UPOV Convention
	4. Proposals concerning the Explanatory Notes on Propagating Material under the UPOV Convention
	5. Proposals concerning the Explanatory Notes on Acts in Respect of Harvested Material under the 1991 Act of the UPOV Convention
	6. Proposals concerning the Explanatory Notes on Provisional Protection under the UPOV Convention
	7. Date and program of the third meeting

*19. This report was adopted by correspondence.*

[Annex follows]

(dans l’ordre alphabétique des noms français des membres /
in the alphabetical order of the French names of the members /
por orden alfabético de los nombres en francés de los miembros)

I. MEMBRES / MEMBERS / MIEMBROS

ARGENTINE / ARGENTINA / ARGENTINA

María Laura VILLAMAYOR (Sra.), Coordinadora de Relaciones Institucionales e Interjurisdiccionales, Instituto Nacional de Semillas (INASE), Secretaría de Agricultura, Ganadería, Pesca y Alimentación, Buenos Aires (e-mail: mlvillamayor@inase.gob.ar)

AUSTRALIE / AUSTRALIA / AUSTRALIA

Nik HULSE (Mr.), Director, Plant Breeder's Rights Office, IP Australia, Woden
(e-mail: nik.hulse@ipaustralia.gov.au)

Isabel Louise WARD (Ms.), Assistant Director, IP Australia, Woden
(e-mail: Isabel.Ward@ipaustralia.gov.au)

BRÉSIL / BRAZIL / BRASIL

Stefania PALMA ARAUJO (Sra.), Federal Agricultural Inspector, Plant Variety Protection Office, National Plant Variety Protection Service, Serviço Nacional de Proteção de Cultivares (SNPC), Brasilia
(e-mail: stefania.araujo@agro.gov.br)

CHILI / CHILE / CHILE

Manuel Antonio TORO UGALDE (Sr.), Jefe Sección, Registro de Variedades Protegidas, Departamento de Semillas y Plantas, Servicio Agrícola y Ganadero (SAG), Santiago de Chile
(e-mail: manuel.toro@sag.gob.cl)

Alejandro Ignacio SAAVEDRA PÉREZ (Sr.), Profesional Registro de Variedades, Servicio Agrícola y Ganadero (SAG), Santiago de Chile
(e-mail: alejandro.saavedra@sag.gob.cl)

CHINE / CHINA / CHINA

CHEN Guang (Mr.), Division Director, Division of Plant Variety Protection, Office for Protection of New Varieties of Plant, National Forestry and Grassland Administration of China (NFGA), Beijing
(e-mail: chenguang@cnpvp.net)

LIU Yuxia (Ms.), Principal Staff Member, Division of Plant Variety Protection, Office for Protection of New Varieties of Plant, National Forestry and Grassland Administration of China (NFGA), Beijing
(e-mail: liuyuxia@cnpvp.net)

Yuan LIU (Mr.), PVP Office, National Forestry and Grassland Administration of China (NFGA), Beijing
(e-mail: liuyuanhn@hotmail.com)

Chuanhong ZHANG (Ms.), Associate Research Professor, Research Institute of Forestry, Chinese Academy of Forestry, Beijing
(e-mail: zhangch@caf.ac.cn)

HOU Yilei (Ms.), Lecturer, Beijing Forestry University, Beijing
(e-mail: houyilei427@163.com)

ESPAGNE / SPAIN / ESPAÑA

Nuria URQUÍA FERNÁNDEZ (Sra.), Jefe de Área de registro de variedades, Subdirección General de Medios de Producción Agrícola y Oficina Española de Variedades Vegetales (OEVV), Ministerio de Agricultura, Pesca y Alimentación (MAPA), Madrid
(e-mail: nurquia@mapa.es)

ÉTATS-UNIS D'AMÉRIQUE / UNITED STATES OF AMERICA / ESTADOS UNIDOS DE AMÉRICA

Kitisri SUKHAPINDA (Ms.), Patent Attorney, Office of Policy and International Affairs (OPIA), U.S. Department of Commerce, Alexandria
(e-mail: kitisri.sukhapinda@uspto.gov)

Ms. Elaine WU, Principal Counsel and Director for China IP, Office of Policy and International Affairs (OPIA), U.S. Patent and Trademark Office (USPTO), Alexandria
(e-mail: elaine.wu@uspto.gov)

Nyeemah GRAZIER (Ms.), Patent Attorney, Office of Policy and International Affairs (OPIA), U.S. Department of Commerce, Alexandria
(e-mail: nyeemah.grazier@uspto.gov)

Christian HANNON (Mr.), Patent Attorney, Office of Policy and International Affairs (OPIA), U.S. Department of Commerce, Alexandria
(e-mail: christian.hannon@uspto.gov)

Jeffery HAYNES (Mr.), Commissioner, Plant Variety Protection Office, U.S. Department of Agriculture, Washington D.C.
(e-mail: Jeffery.Haynes@usda.gov)

Mara SANDERS (Ms.), Plant Variety Examiner, Plant Variety Protection Office, U.S. Department of Agriculture, Washington D.C.
(email: mara.sanders@usda.gov)

FÉDÉRATION DE RUSSIE / RUSSIAN FEDERATION / FEDERACIÓN DE RUSIA

Anton GAITER (Mr.), Deputy Head, Department for Methodology and International Cooperation, State Commission of the Russian Federation for Selection Achievements Test and Protection, Moscow
(e-mail: a.gaiter@gossortrf.ru)

FRANCE / France / FRANCIA

Yvane MERESSE (Mme), Responsable INOV, Groupe d’Étude et de Contrôle des Variétés et des Semences (GEVES), Beaucouzé cedex
(e-mail: yvane.meresse@geves.fr)

JAPON / JAPAN / JAPÓN

Teruhisa MIYAMOTO (Mr.), Deputy Director, Plant Variety Protection Office, Intellectual Property Division, Export and International Affairs Bureau, Ministry of Agriculture, Forestry and Fisheries (MAFF), Tokyo
(e-mail: teruhisa\_miyamoto170@maff.go.jp)

Minori HAGIWARA (Ms.), Deputy Director, Intellectual Property Division, Export and International Affairs Bureau, Ministry of Agriculture, Forestry and Fisheries (MAFF), Tokyo
(e-mail: minori\_hagiwara110@maff.go.jp)

FUJITSUKA Daisuke (Mr.), Technical Official, Intellectual Property Division, Export and International Affairs Bureau, Ministry of Agriculture, Forestry and Fisheries (MAFF), Tokyo
(e-mail: daisuke\_fujitsuka080@maff.go.jp)

Ryusaku KASHIWAGI (Mr.), Chief Examiner, Plant Variety Protection Office, Intellectual Property Division, Export and International Affairs Bureau, Ministry of Agriculture, Forestry and Fisheries (MAFF), Tokyo
(e-mail: ryusaku\_kashiwagi840@maff.go.jp)

Aya MIURA (Ms.), Principal Examiner, Plant Variety Protection Office, Intellectual Property Division, Food Industry Affairs Bureau, Ministry of Agriculture, Forestry and Fisheries, Tokyo
(e-mail: aya\_miura660@maff.go.jp)

Michihiro ASAKAWA (Mr.), Examiner, Plant Variety Protection Office, Intellectual Property Division, Food Industry Affairs Bureau, Ministry of Agriculture, Forestry and Fisheries, Tokyo
(e-mail: michihiro\_asakawa290@maff.go.jp)

OHNO Yoshiyuki (Mr.), Examiner, Intellectual Property Division , Export and International Affairs Bureau, Ministry of Agriculture, Forestry and Fisheries (MAFF), Tokyo
(e-mail: yoshiyuki\_ono300@maff.go.jp)

NORVÈGE / NORWAY / NORUEGA

Pia BORG (Ms.), Senior Advisor, Norwegian Food Safety Authority, Brumunddal
(e-mail: pia.borg@mattilsynet.no)

NOUVELLE-ZÉLANDE / NEW ZEALAND / NUEVA ZELANDIA

Christopher James BARNABY (Mr.), PVR Manager / Assistant Commissioner, Plant Variety Rights Office,
Intellectual Property Office of New Zealand, Ministry of Business, Innovation and Employment, Christchurch
(e-mail: Chris.Barnaby@pvr.govt.nz)

PAYS-BAS / NETHERLANDS / PAÍSES BAJOS

Kees Jan GROENEWOUD (Mr.), Secretary, Dutch Board for Plant Varieties (Raad voor Plantenrassen), Roelofarendsveen
(e-mail: c.j.a.groenewoud@raadvoorplantenrassen.nl)

RÉPUBLIQUE DE CORÉE / REPUBLIC of korea / REPÚBLICA de corea

ChanWoong PARK (Mr.), Deputy Director/Examiner, International Cooperation Division, Korea Seed and Variety Service (KSVS), Gimcheon City
(e-mail: chwopark@korea.kr)

HyoCheol KWON (Mr.), Assistant officer, Korea Seed & Variety Service (KSVS), Gyeongsangvuk-do
(e-mail: khcj500@korea.kr)

Kwanghong LEE (Mr.), DUS Examiner, Korea Seed and Variety Service (KSVS), Gyeongsangbuk-do
(e-mail: grin@korea.kr)

RÉPUBLIQUE TCHÈQUE / CZECH REPUBLIC / REPÚBLICA CHECA

Pavla BÍMOVÁ (Ms.), DUS Expert and Metheodology Specialist, National Plant Variety Office, Central Institute for Supervising and Testing in Agriculture (UKZUZ), Brno
(e-mail: pavla.bimova@ukzuz.cz)

Lydie CECHOVÁ (Ms.), Crop Expert, Central Institute for Supervising and Testing in Agriculture (UKZUZ)
(e-mail: lydie.cechova@ukzuz.cz)

Lenka CLOWEZOVÁ (Ms.), Agricultural Commodities Departement, Ministry of Agriculture, Praha
(e-mail: lenka.clowezova@mze.cz)

Andrea POVOLNÁ (Ms.), Head of DUS Department, National Plant Variety Office, Central Institute for Supervising and Testing in Agriculture (UKZUZ), Brno
(e-mail: andrea.povolna@ukzuz.cz)

ROYAUME-UNI / UNITED KINGDOM / reino unido

Fiona HOPKINS (Ms.), Department for Environment, Food and Rural Affairs (DEFRA), Cambridge
(e-mail: fiona.hopkins@defra.gov.uk)

Sigurd RAMANS-HARBOROUGH (Mr.), Department for Environment, Food and Rural Affairs (DEFRA), Cambridge
(e-mail: Sigurd.Ramans-Harborough@defra.gov.uk)

UNION EUROPÉENNE / EUROPEAN UNION / UNIÓN EUROPEA

Päivi MANNERKORPI (Ms.), Team Leader - Plant Reproductive Material, Unit G1 Plant Health, Directorate General for Health and Food Safety (DG SANTE), European Commission, Brussels
(e-mail: paivi.mannerkorpi@ec.europa.eu)

Dirk THEOBALD (Mr.), Senior Adviser, Community Plant Variety Office (CPVO), Angers
(e-mail: theobald@cpvo.europa.eu)

Ángela MARTÍNEZ LÓPEZ (Ms.), Manager, Legal Office, Community Plant Variety Office (CPVO), Angers
(e-mail: martinez-lopez@cpvo.europa.eu)

II. ORGANISATIONS / ORGANIZATIONS / ORGANIZACIONES

ASSOCIATION FOR PLANT BREEDING FOR THE BENEFIT OF SOCIETY (APBREBES)

François MEIENBERG (Mr.), Coordinator, Association for Plant Breeding for the Benefit of Society (APBREBES), Zürich, Switzerland
(e-mail: contact@apbrebes.org)

ASSOCIATION INTERNATIONALE DES PRODUCTEURS HORTICOLES (AIPH) /
INTERNATIONAL ASSOCIATION OF HORTICULTURAL PRODUCERS (AIPH) /
Asociación Internacional de Productores Hortícolas (AIPH)

Mia HOPPERUS BUMA (Ms.), Secretary, Committee for Novelty Protection, International Association of Horticultural Producers (AIPH), Oxfordshire, United Kingdom
(e-mail: info@miabuma.nl)

COMMUNAUTÉ INTERNATIONALE DES OBTENTEURS DE PLANTES HORTICOLES À REPRODUCTION ASEXUÉE (CIOPORA) / INTERNATIONAL COMMUNITY OF BREEDERS OF ASEXUALLY REPRODUCED HORTICULTURAL PLANTS (CIOPORA) / Comunidad Internacional de Fitomejoradores de Plantas Hortícolas de Reproducción Asexuada (CIOPORA)

Edgar KRIEGER (Mr.), Secretary General, International Community of Breeders of Asexually Reproduced Horticultural Plants (CIOPORA), Hamburg, Germany
(e-mail: edgar.krieger@ciopora.org)

Thomas LEIDEREITER (Mr.), Rechtsanwalt, Green Rights, Rechtsanwaltskanzlei Leidereiter, Hamburg, Germany
(e-mail: mail@green-rights.com)

CROPLIFE INTERNATIONAL

Marcel BRUINS (Mr.), Consultant, CropLife International, Bruxelles, Belgium
(e-mail: marcel@bruinsseedconsultancy.com)

INTERNATIONAL SEED FEDERATION (ISF)

Michael KELLER (Mr.), Secretary General, Nyon, Switzerland

(e-mail: m.keller@worldseed.org)

Jean DONNENWIRTH (Mr.), Delegate and Global PVP Lead Corteva, CORTEVA agriscience, Aussonne, France
(e-mail: jean.donnenwirth@corteva.com)

Kanokwan CHODCHOEY (Ms.), Executive Director, Asia and Pacific Seed Association (APSA), Bangkok, Thailand
(e-mail: may@apsaseed.org)

Justin J. RAKOTOARISAONA (Mr.), Secretary General, African Seed Trade Association (AFSTA), Nairobi, Kenya
(e-mail: justin@afsta.org)

Antonio VILLARROEL (Mr.), Secretary General, Asociación Nacional de Obtentores Vegetales (ANOVE), Madrid, Spain
(e-mail: administracion@anove.es)

EUROSEEDS

Szonja CSÖRGÖ (Ms.), Director, Intellectual Property & Legal Affairs, Euroseeds, Bruxelles, Belgium
(e-mail: szonjacsorgo@euroseeds.eu)

Antonio VILLARROEL (Mr.), Secretary General, Asociación Nacional de Obtentores Vegetales (ANOVE), Madrid, Spain
(e-mail: administracion@anove.es)

SEED ASSOCIATION OF THE AMERICAS (SAA)

Diego A. RISSO DESIRELLO (Sr.), Director Ejecutivo, Seed Association of the Americas (SAA), Montevideo, Uruguay
(e-mail: drisso@saaseed.org)

III. BUREAU / OFFICER / OFICINA

Peter BUTTON (Mr.), Chair

IV. BUREAU DE L’UPOV / OFFICE OF UPOV / OFICINA DE LA UPOV

Peter BUTTON (Mr.), Vice Secretary-General

Yolanda HUERTA (Ms.), Legal Counsel and Director of Training and Assistance

Leontino TAVEIRA (Mr.), Head of Technical Affairs and Regional Development (Latin America, Caribbean)

Manabu SUZUKI (Mr.), Technical/Regional Officer (Asia)

[Fin de l’annexe et du document/
End of Annex and of document/
Fin del Anexo y del documento]