

**Working Group on Harvested Material and Unauthorized Use of Propagating Material****WG-HRV/6/3****Sixth Meeting  
Geneva, October 22, 2024****Original: English  
Date: December 16, 2024**

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**REPORT**

*adopted by the Working group on harvested material and unauthorized use of propagating material*

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**OPENING OF THE MEETING**

1. The Working Group on Harvested Material (WG-HRV) held its sixth meeting in Geneva, on October 22, 2024, in hybrid format, chaired by Ms. Yolanda Huerta, Vice Secretary-General of UPOV.
2. The Chair opened the meeting, welcoming the participants.
3. The WG-HRV noted that a summary of conclusions would be presented to the CAJ.
4. The list of participants is provided in Annex II to this report.

**ADOPTION OF THE AGENDA**

5. The WG-HRV adopted the draft agenda as proposed in document WG-HRV/6/1.

**PROSPECTS OF COMMISSIONING A STUDY ON THE "SCOPE OF THE BREEDER'S RIGHT" AND THE RELATIONSHIP WITH THE "EXHAUSTION OF THE BREEDER'S RIGHT"**

6. The WG-HRV reviewed document WG-HRV/6/2, Prospects of commissioning a study on the "scope of the breeder's right" and the relationship with the "exhaustion of the breeder's right".
7. The Chair reiterated that, as agreed at the fifth meeting, invitation to a virtual meeting was issued to the members of the WG-HRV that had made comments and/or proposals on the authors or funding considerations. The meeting took place by virtual means on May 22, 2024, and the following members of the WG-HRV participated at the meeting: Argentina, Australia, Brazil, European Union, Japan, Association for Plant Breeding for the Benefit of Society (APBREBES), International Association of Horticultural Producers (AIPH), International Community of Breeders of Asexually Reproduced Horticultural Plants (CIOPORA) and International Seed Federation (ISF).
8. The participants at the above-mentioned meeting agreed to propose the below 5 authors for consideration by the WG-HRV at its sixth meeting, to be held on October 22, 2024.

<b>Experts (alphabetic order)</b>
Mr. Huib Ghijsen
Ms. Vivianne Kunisawa
Mr. Charles Lawson
Mr. Axel Metzger
Mr. Joseph Straus

9. The participants at the above-mentioned meeting agreed to propose the following funding proposal for endorsement by the WG-HRV at its sixth meeting to be held on October 22, 2024:

“55,000 Swiss Francs which would include:

- Honorarium of 10,000 Swiss francs for each of the 5 authors.
- Travel expenses up to 5,000 Swiss francs in total for the 5 authors. The purpose of the travel could be to convene a meeting amongst the authors or to support travel to come to Geneva to present the findings of the study or any other unforeseen travel expenses.

“The overall estimation of the cost to be shared as follows: UPOV regular budget would cover 30,000 Swiss francs and the Funds-in-Trust Agreement between the Government of Japan and UPOV (JP-FIT) would cover 25,000 Swiss francs.’

10. The WG-HRV agreed, in accordance with previous conclusions of the WG-HRV, the following update of the Terms of Reference in the section “Scope”:

“- a first part with an analysis of the intentions of the drafters of the 1991 Act of the UPOV Convention in relation to the “Scope of the Breeder’s Right” in Article 14(1) and (2) of the 1991 Act, including the notions of “unauthorized use” and “reasonable opportunity” and the relationship with the “Exhaustion of the Breeder’s Right” in and Article 16 of the 1991 Act”;

11. The WG-HRV agreed on the above proposed authors and the proposal on funding, as well as the Terms of Reference, including the above update on the scope, as presented in Annex I.

12. The WG-HRV discussed principles to ensure the independence of the study, including a mechanism for conflict-of-interest disclosures and clarifying that funding sources would not influence the content of the study.

13. The WG-HRV agreed that the drafting of the study should follow an independent approach in line with academic standards, that authors would disclose potential conflicts of interest in line with academic standards and that findings would not be binding on UPOV members. The WG-HRV agreed to include in the report of the study that the study’s purpose was to assist the WG-HRV in its deliberations in accordance with its ToRs without creating any obligation on the WG-HRV or UPOV members. The WG-HRV also agreed that the status of the report of the study would be a document of the WG-HRV to be made available on the UPOV website dedicated for the WG-HRV. The WG-HRV noted that a separate publication of the report of the study was not anticipated.

14. In relation to the proposed timeline, the WG-HRV agreed that the progress on the work of the authors should be reported by end of February for consideration during the seventh meeting of the WG-HRV, in March 2025, and that a final report would be expected by September 1, 2025.

15. The WG-HRV agreed that potential questions asked by the authors on practical matters of low complexity would be addressed by the Office of the Union. WG-HRV also agreed that complex questions or request by the authors for substantive guidance would be referred to the WG-HRV, at its meeting(s), or through a written procedure, as appropriate.

## CONCLUSIONS

16. The main conclusion of the meeting is summarized below:

- (a) the WG-HRV agreed that the Office of the Union commissions a study to assist in the WG-HRV deliberations on the “Scope of the Breeder’s Right” in Article 14(1) and (2) of the 1991 Act, including the notions of “unauthorized use” and “reasonable opportunity” and the relationship with the “Exhaustion of the Breeder’s Right” in Article 16 of the 1991 Act;
- (b) the WG-HRV approved the Terms of Reference of the study, as presented in document [WG- HRV/6/2, Annex](#), with the following update in the section “Scope”:

“- a first part with an analysis of the intentions of the drafters of the 1991 Act of the UPOV Convention in relation to the “Scope of the Breeder’s Right” in Article 14(1) and (2) of the 1991 Act, including the notions of

“unauthorized use” and “reasonable opportunity” and the relationship with the “Exhaustion of the Breeder’s Right” in and Article 16 of the 1991 Act”;

- (c) the WG-HRV agreed that the study be carried out in accordance with the approved Terms of Reference, reproduced in Annex I of this document.

DATE OF THE SEVENTH MEETING

17. The seventh meeting of the WG-HRV will take place on Thursday, March 20, 2025 (virtual means), at a time to be announced.

[Annex I follows]

ANNEX I

TERMS OF REFERENCE OF THE STUDY ON THE "SCOPE OF THE BREEDER'S RIGHT" AND THE RELATIONSHIP WITH THE "EXHAUSTION OF THE BREEDER'S RIGHT"

SCOPE:

The study to include:

- a first part with an analysis of the intentions of the drafters of the 1991 Act of the UPOV Convention in relation to the "Scope of the Breeder's Right" in Article 14(1) and (2) of the 1991 Act, including the notions of "unauthorized use" and "reasonable opportunity" and the relationship with the "Exhaustion of the Breeder's Right" in Article 16 of the 1991 Act; and
- a second part with summaries of relevant court cases from UPOV members bound by the 1991 Act.

COMPOSITION:

The study should be carried out by the five authors mentioned below. The authors should agree on one of them to be coordinating their work.

The working language of the authors should be English and the study should be drafted in English.

<b>Experts (alphabetic order)</b>
Mr. Huib Ghijsen
Ms. Vivianne Kunisawa
Mr. Charles Lawson
Mr. Axel Metzger
Mr. Joseph Straus

MODUS OPERANDI:

Independence:

The authors are independent in drafting the study, in the sense that the authors should not receive individual instructions from anyone and that the authors should be impartial and objective.

The five authors should draft one study and should follow a collaborative working method following academic standards. Following such standards, the authors should manage potential different perspectives or analysis and, if applicable, how such matters should be reflected in the study.

Having received the study, it is up to the WG-HRV to consider a possible follow-up and to request further guidance from the CAJ, as appropriate.

UPOV members are not bound by the content and/or conclusions drawn in the study.

Timeline:

The authors will be asked to deliver the draft study by latest February 28, 2025, for consideration at the seventh meeting of the WG-HRV, expected to take place in Geneva on March 20, 2025. The final version of the study to be delivered by latest September 1<sup>st</sup>, 2025.

The time could be prolonged upon request by the authors.

Financial support:

55,000 Swiss Francs which would include:

- Honorarium of 10,000 Swiss francs for each of the 5 authors.
- Travel expenses up to 5,000 Swiss francs in total for the 5 authors. The purpose of the travel could be to convene a meeting amongst the authors or to support travel to come to Geneva to present the findings of the study or any other unforeseen travel expenses.

The overall estimation of the cost to be shared as follows: UPOV regular budget would cover 30,000 Swiss francs and the Funds-in-Trust Agreement between the Government of Japan and UPOV (JP-FIT) would cover 25,000 Swiss francs.

[Annex II follows]

ANNEXE II / ANNEXII / ANEXO II

(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)

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