



Mrs. Yolanda Huerta  
Vice-Secretary General of UPOV  
34 Chemin des Colombettes  
CH-1211 Geneva 20  
Switzerland

Date: 6 March 2026

RE: AIPH contribution in response to UPOV Circular Circular UPOV Circular E-26/006,  
dated January 22, 2026

Dear Mrs. Huerta, Dear Yolanda,

AIPH would like to contribute to UPOV Circular E-26/006, offering support and cooperation to the Working Group on Harvested material, the ninth meeting of which is scheduled on March 19, 2026.

Taking into consideration the "Study on the 'Scope of the Breeder's Right' and the relationship with the 'Exhaustion of the Breeder's Right'" (document WG-HRV/9/2), AIPH would like to give the following written comments.

1. The members of the expert group deserve to be complimented for their in-depth study and clear and easy-to-follow insights and conclusions that were drawn. This is in regard 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, based on an analysis of the Records of the 1991 Act Diplomatic Conference and its preparatory work.



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2. The findings in the study support the AIPH opinion that the parties involved in the conception of the EXPLANATORY NOTES ON ACTS IN RESPECT OF HARVESTED MATERIAL UNDER THE 1991 ACT OF THE UPOV CONVENTION as adopted by the Council at its forty-seventh ordinary session on October 24, 2013, have unfortunately given an incorrect interpretation of the meaning of the wording “unauthorized use” in article 14 (2) of the UPOV Convention 1991. AIPH has presented the arguments for its opinion in written and oral contributions in the first three meetings of UPOV’s WG-HRV.
3. The setting out in the study by the expert group of the full rationale of art 14 (2) as a ‘conditio sine qua non’ for the conception of a next EXPLANATORY NOTES ON ACTS IN RESPECT OF HARVESTED MATERIAL UNDER THE 1991 ACT OF THE UPOV CONVENTION, offers good and complete considerations which could be the subject of further discussions amongst UPOV members.
4. AIPH sincerely wishes that UPOV members would apply the principle of protection of harvested material (UPOV article 14 (2) in UPOV Convention 1991), in accordance with the intention of the drafters of the convention as clearly laid out by the report of the expert group, since this UPOV article is essential for the interests of growers in the horticultural industry. For the sake of a good working production- and trade chain, the breeders should, if possible, collect their royalties on the propagating material at the earliest possible stage in the production chain. The findings of the report confirm that breeders are only allowed to exercise their rights on the harvested material if the breeder has had no reasonable opportunity to do so on the propagating material and if the material was used unauthorized. This is the so called cascade-principle.
5. An alternative application of the cascade principle is damaging to a good functioning PBR system and with that a good working production- and distribution chain in the horticultural industry. An interpretation and application not in accordance with the above mentioned intention, undermines the very purpose for which the cascade provision was introduced in 1991 and could potentially fuel the idea that a full protection of all material would be the better alternative in comparison to the cascade as enshrined in art. 14 (2).
6. However, in AIPH’s opinion the full extension of the scope of the breeders right to all material, including propagating and harvested material, could cause a too strong position of the breeders in the production- and distribution chain and disturb it. It goes without saying that not only the growers, but also traders and consumers would suffer therefrom and it might well come in conflict with the competition law regulation. Disturbing the production- and distribution chain



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affects the free market, hinders innovation and could cause higher prices and less choice for consumers. This emphasises the need to find consensus by the UPOV members in the interpretation of the cascade principle as a backbone of the 1991 Convention.

Against this background AIPH would like to make the following suggestions to the WG-HRV:

1. With reference to AIPH's comments under the points 2 and 3 above, AIPH suggests to start as soon as possible with a revision of the current EXPLANATORY NOTES ON ACTS IN RESPECT OF HARVESTED MATERIAL UNDER THE 1991 ACT OF THE UPOV CONVENTION, taking into account the conclusions in the final report concerning the full rationale of art 14 (2).
2. The Terms of Reference (TOR) limited the expert group to analyse 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. In retrospect, AIPH regrets that the experts were not allowed to check their findings on the current practice in the application and understanding of art 14 (2). For this reason AIPH suggests to the WG-HRV to take good notice of the explanations given by the expert group of the principles of 'reasonable opportunity' and 'unauthorized use', their inseparable nexus and their interaction with the principle of exhaustion, and to review with this knowledge the outcomes of recent case law. AIPH considers that the expert group which did not analyse the current case law based on their findings, as a missed opportunity, because some of the rulings may damage the legal system and the industry. In particular, AIPH would mention in this frame the Nadorcott case in the EU, in which the European Court of Justice has taken into consideration the EXPLANATORY NOTES ON ACTS IN RESPECT OF HARVESTED MATERIAL UNDER THE 1991 ACT OF THE UPOV CONVENTION as adopted by the Council at its forty-seventh ordinary session on October 24, 2013.
3. Because the expert group is independent and not politically or commercially bound, AIPH suggests that the group is best suited to test the results of its analysis against existing jurisprudence and draw conclusions. This further study would benefit not only a well-functioning horticultural industry, but also the UPOV system itself. The conduct of this additional study should not hamper or delay the endeavor to revise the EXPLANATORY NOTES ON ACTS IN RESPECT OF



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HARVESTED MATERIAL UNDER THE 1991 ACT OF THE UPOV CONVENTION as suggested in point 1 above.

May I please also inform you that, based on this information, AIPH would like to give further contribution in the discussions itself on March 19, next.

Thanking you in advance and AIPH is very willing to provide further response if needed.

Sincerely yours,

Tim Briercliffe  
Secretary-General