

**Answers to WG-SHF(UPOV Circular E-24/047)**

**MAFF, JAPAN**

*1. Is your country/intergovernmental organization implementing the exception “acts done privately and for non-commercial purposes”? If so, how is it implemented?*

In Japan, the holder of the breeder's right has an exclusive right to exploit the registered variety in the course of business. In other word, the scope of the breeder's right is said to extend to the act of exploitation, except for personal use or home consumption. The act which falls under the scope of the Breeders right, does not require commercial purpose, nor does it require the existence of repeated use, if not for personal or home consumption purposes. Therefore, even a single use, constitutes an infringement of the breeder's right.

The authorization of the holder of the breeder's right is required for all acts of use by farmers, such as production, transfer, and propagation of the protected varieties, regardless of the farmer's scale or the locality of the farmer.

*2. Concerning this exception, are there definitions for the following term: “acts done privately and for non-commercial purposes”?*

In Japan, the exception for “privately and for non-commercial purposes” is understood to cover personal use or home consumption, such as amateur gardening which that does not involve transfer of seeds and propagating material between individuals. Whether or not the acts fall into the “privately and for non-commercial purposes” is determined by the act of use, and not the type or scale of the farmers.

Similarly, regardless of the size or type of the farm management, the outflow risk of the propagated material from farmland to overseas is the same. Which is why, after the amendment of 2020, authorization is required for the propagating of protected varieties by farmers.

To sum up, the authorization of the holder of the breeder's right is required for any acts which involve sales, transfers, exchanges, etc. of seed/seedlings to others regardless of farm size or whether the user is or is not a farmer.

*3. Please specify legislation/regulation and jurisprudence concerning this exception.*

Article 20(1) of the Plant Variety Protection and Seed Act (Act No. 83 of May 29, 1998) (Amended up to Act No.74 of December 9, 2020) implements this exception. The exception is implemented as the result of the statutory boundaries of the scope of breeders right, as an exclusive right to exploit the variety which is registered and

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varieties which are not clearly distinguishable in the course of business. We do not have any jurisprudence on this matter yet.

*4. Are there any challenges and/or opportunities in implementing this exception in your jurisdiction? Please explain.*

N/A.