

VIET NAM

Contribution received in reply to UPOV Circular E-24/047 of April 22, 2024

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To: mail, Upov <upov.mail@upov.int>

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Subject: RE: GENTLE REMINDER: Action by May 20, 2024: call for replies to questions by the WG-SHF (UPOV Circular E-24/047)

Dear Sir/ Madam,

Regarding of Smallholder Farmers in relation to private and non-commercial use (WG-SHF)

The Viet Nam plant variety Protection Office would like to provide these information is following your question

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

A: Yes, it is. It is mentioned in point a clause 1 Article 190 of The Law on Intellectual Property.

In Vietnam, we divide into 3 regions. In the North and In the Central are implemented quite of good.

However, in the South where is area Cuu Long Mekong Delta, there are some households has 100 ha to rice cultivation. If farmers are allowed to continue planting seeds widely, it will affect to the plant breeder's right. Therefore, it might be considered to revise this point to suit the actual production situation.

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

A: There are no definitions for the following term "acts done privately and for non-commercial purposes".

However, it shall be understood that

- Farmers grow rice for their family's needs without selling or exchanging seeds
- Individuals grow for their own use in their own garden for their own demand: Flowers, fruit trees... do not sell at the market for the purpose of commercial
- Use propagating/harvesting material for testing and research for personal purposes

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

Article 190. Limitations on rights of plant variety protection certificate holders 1. The following acts shall not be regarded as infringements of rights to protected plant varieties:

a/ Using plant varieties for personal and non-commercial purposes; b/ Using plant varieties for crossbreeding for scientific research purposes; c/ Using plant varieties to create new plant varieties distinct from the protected plant varieties; d/ Using harvested materials of protected plant varieties by individual production households for self-propagation and cultivation in the next season on their own land areas.

2. Rights to plant varieties shall not be applicable to acts related to materials of protected plant varieties which have been sold or otherwise brought to the domestic or overseas markets by protection certificate holders or their licensees, except for the following acts:

a/ Acts relating to further propagation of such plant varieties; b/ Acts relating to export of reproductive materials of such plant varieties to countries where the genus or species of such plant varieties are not protected, except where such materials are exported for consumption purpose;

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

Initially, we assess there are two challenges in implementing this exception:

- According to Vietnam's IP Law, both propagating materials and harvested products from protected varieties (flowers, fruits, stems, leaves, roots, etc.). So the application of point a) is not be 100% possible in reality: Farmers grow a few grapefruit trees and if they can't eat them all, they can sell them at the market for their small income.

- In 2005, the IP Law was established, in Vietnam there were mainly small farmers and household-scale production. However, in reality, this number is not much now because the market demand is different now.

Thank you very much

Best regards,
Cam Hang (Ms.)

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