Seminar on the
Enforcement of Plant Breeders’ Rights
under the UPOV Convention

OVERVIEW OF ENFORCEMENT OF BREEDERS’
RIGHTS UNDER THE UPOV CONVENTION

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WHY IS THE ENFORCEMENT
OF BREEDERS’ RIGHTS
IMPORTANT?
**Improved Varieties**

*Hot pepper*

*Development of disease resistant variety*

- **Dok-Ya-Cheong-Cheong**
  - Resistant to phytophthora blight/virus

Phytophthora blight (Fungal disease):
- above: **Resistant variety**
- below: **Susceptible variety**

Chang Hyun Kim, Second World Seed Conference

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**UPOV**

**UPOV MISSION STATEMENT**

“To provide and promote an effective system of plant variety protection, with the aim of encouraging the development of new varieties of plants, for the benefit of society”
The boundaries shown on this map do not imply the expression of any opinion whatsoever on the part of UPOV concerning the legal status of any country or territory.

UPOV status in 2016

Members of UPOV (74)
Initiating States (15) and Organization (1)
States (24) and Organization (1) in contact with the UPOV Office

UPOV Membership
Territories covered
1991 Act: 56 members – Other Acts: 18 members

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Enforcement of Breeders’ Rights

Article 30(1)(i)
Implementation of the Convention

(1) [Measures of implementation]

Each Contracting Party shall adopt all measures necessary for the implementation of this Convention; in particular, it shall:

(i) provide for appropriate legal remedies for the effective enforcement of breeders’ rights; [...]

Plant variety protection statistics
Why was it necessary to work on PBR enforcement at the UPOV level?

- 2005 – UPOV Meeting on Enforcement Geneva ISF, CIOPORA
- Issues raised by breeders’ organizations: without effective enforcement → PBR titles no value
- 2006 – Enforcement Seminar in Japan and BMT Republic of Korea
- 2009 – adoption UPOV guidance on PBR enforcement
OVERVIEW OF UPOV ACTIVITIES ON ENFORCEMENT

• UPOV Council examination on laws of future members

• BMT: use of biochemical and molecular techniques for EDV & variety identification

• Exchange of experiences and information: Seminars, UPOV website, breeders’ initiatives

Enforcement of Breeders’ Rights

Explanatory notes UPOV/EXN/ENF/1

UPOV Convention requires members of the Union to provide for appropriate legal remedies for the effective enforcement of breeders’ rights.

It is a matter for breeders to enforce their rights.

Non exhaustive list of enforcement measures
OVERVIEW OF UPOV GUIDANCE

UPOV/EXN/ENF/1 List of enforcement measures:

(a) Civil measures
(b) Customs measures
(c) Administrative measures
(d) Criminal measures
(e) Measures resulting from alternative dispute settlement mechanisms
(f) Specialized courts

Enforcement of Breeders’ Rights

Explanatory notes UPOV/EXN/ENF/1

(a) Civil measures

(i) provisional measures (e.g. collect samples of infringing material from greenhouses)
(ii) measures to allow a civil action
(iii) measures to provide damages
Enforcement of Breeders’ Rights

Explanatory notes UPOV/EXN/ENF/1

(a) Cont. Civil measures

[...]

(iv) destruction or disposal of infringing material

(v) payment by the infringer of the expenses (e.g. attorney’s fees);

(vi) information on persons producing and distributing infringing material

(b) Customs measures

Importation

(i) suspension of the release into free circulation, forfeiture, seizure or destruction of infringing material

Exportation

(ii) suspension of the release of the infringing material destined for exportation
Enforcement of Breeders’ Rights

Explanatory notes UPOV/EXN/ENF/1

(c) Administrative measures

(i) provisional measures

(ii) measures to prohibit the committing, or continuation of the committing, of an infringement

(iii) destruction or disposal of infringing material

(iv) information on persons producing and distributing infringing material

(c) Cont. Administrative measures

(v) forfeiture, seizure of infringing material

(vi) testing and certification authorities to provide information to the breeder regarding propagating material of his varieties

(vii) sanctions or fines for non-compliance with provisions on, or misuse of, variety denominations
Enforcement of the Breeders’ Rights

Explanatory notes UPOV/EXN/ENF/1

(d) Criminal measures

cases of [wilful] violation of the breeder’s right [on a commercial scale]

(e) Measures resulting from alternative dispute settlement mechanisms

arbitration, mediation, etc…
Enforcement of Breeders’ Rights

Explanatory notes UPOV/EXN/ENF/1

(f) Specialized courts

for matters concerning breeders’ rights

SUMMARY

UPOV/EXN/ENF/1 List of enforcement measures:

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(b) Customs measures
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Enforcement of Breeders’ Rights

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WHAT ARE THE LESSONS LEARNT AND BEST PRACTICES FOR EFFECTIVE ENFORCEMENT?