

SEMINAR ON

THE ENFORCEMENT OF PLANT BREEDERS' RIGHTS UNDER THE UPOV CONVENTION

“Seed Industry Perspective on PBR Enforcement”

Representing the American Seed Trade Association

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Primary Forms of PBR Infringement

- Retail seed businesses package PBR-protected varietal grain for resale (e.g., brown/white bagging).**
- Seed companies sell another company's PBR protected varieties as their own.**
- Unprotected inbred lines used to produce PBR protected hybrids for sale.**
- PBR-protected inbred lines used to produce protected or unprotected hybrids for sale.**



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Impacts of Insufficient PBR Enforcement

- Commitment to breeding investment reduced.
- Formal seed sector and best products undermined.
- Introduction of improved genetics delayed.
- Livelihood of farmers and rural economies put at risk.
- Country's agricultural productivity endangered.



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Stakeholders to Improve PBR Enforcement

- Government ministries, agencies and institutions
 - Central / national / federal
 - Provincial / state
- Judicial system
- PBR holder
- Seed Industry Organizations



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Opportunities to Improve PBR Enforcement

Government ministries, agencies and institutions

- Communicate the importance & value of PBR.
- Issue PBR only to varieties or inbreds sufficiently distinct from PBR-protected lines.
- Varietal registration agencies may inform PBR holder when similar varieties appear in official trials.
- PVP offices should accept DNA marker profiles for opposition and invalidation proceedings.



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Opportunities to Improve PBR Enforcement

Government ministries, agencies and institutions

- Specify and certify DNA marker sets and protocols for profiling most important crops.
- Provide side-by-side morphological comparisons and DNA marker profiles upon request.
- Impose burden of proof on alleged infringer once PBR holder presents sufficient evidence for infringement.
- Ensure national PBR laws and regulations are consistent with UPOV obligations and conditions.



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Opportunities to Improve PBR Enforcement

Judicial System

- Earlier opportunity for discovery by PBR holder.
- Additional discovery during trial phase.
- DNA profiles accepted routinely as evidence in court.
- Dedicated tribunal with experience and knowledge.



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Opportunities to Improve PBR Enforcement

Judicial System

- Destruction of goods and impose significant damages to deter future infringement.
- Recognize PBR as an IP right comparable to patents and copyrights.



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Opportunities to Improve PBR Enforcement

PBR Holder

- Operate surveillance efforts to detect infringement.
- Internal system to report potential PBR infringement.
- Pursue infringers to set enforcement precedents at the agency and judicial levels.



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Opportunities to Improve PBR Enforcement

Seed Industry Organizations

- Develop appropriate PBR dispute resolution conditions.
- Work with PBR office to establish
 - DNA markers to profile PBR protected germplasm.
 - thresholds for essentially derived varieties (EDV's)
- Form industry PBR education & enforcement groups.



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Opportunities to Improve PBR Enforcement

PBR Enforcement: Education and Tools

- Seed Innovation and Protection Alliance (USA) – 2 years**
 - Field Crops Division – 8 companies + Cotton Inc. & ASTA
 - Flower & Vegetable Division – 9 companies + ASTA

- Canadian Plant Technology Agency (Canada) – 8 years**
25 seed company members

- Anti-Infringement Bureau (Europe) – 5 years**
14 seed company members



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Importance of PBR Enforcement

- Global food security depends on seed security.**
- PBR is a critical foundation for seed security.**
- Many opportunities to strengthen PBR enforcement.**
- Effective enforcement crucial to realize full PBR value.**
- We are all stakeholders with key roles & opportunities.**



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Thank your attention!

Questions?

