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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

Geneva

CONSULTATIVE COMMITTEE**Eighty-Sixth Session
Geneva, October 23, 2013**

COMMUNICATION STRATEGY

*Document prepared by the Office of the Union**Disclaimer: this document does not represent UPOV policies or guidance*

1. The Consultative Committee, at its eighty-fifth session, held in Geneva on March 22, 2013, requested the Office of the Union to prepare a draft communication strategy, consistent with available resources, for consideration by the Consultative Committee at its eighty-sixth session (see document CC/85/10 "Report on the Conclusions", paragraphs 33 to 38). This document presents a draft communication strategy, including a proposed workplan for implementation.

BACKGROUND

2. At its eighty-fifth session (see document CC/85/10 "Report on the Conclusions", paragraphs 33 to 37), the Consultative Committee:

(a) approved the proposals for the further development of existing UPOV materials, as set out in document CC/85/7, paragraphs 9 to 11;

(b) endorsed the proposals for the development of new UPOV materials, as set out in paragraphs 13 to 15 of document CC/85/7;

(c) recalled the approval for the establishment of a UPOV channel on YouTube, as set out in paragraphs 20 to 26 of document CC/85/7; and

(d) agreed to consider, at its eighty-sixth session to be held on October 23, 2013, the following additional aspects:

- (i) development of a set of frequently asked questions and answers;
- (ii) communication incident management;
- (iii) development of "good stories";
- (iv) creation of systematic communication elements on the UPOV website;
- (v) use of workshops and meetings;
- (vi) inclusion of materials for teachers, professors and policy makers;
- (vii) prioritization within the communication strategy.

3. On the above basis, the Consultative Committee requested the Office of the Union to prepare a draft communication strategy, consistent with available resources, for consideration by the Consultative Committee at its eighty-sixth session, to be held on October 23, 2013 (see document CC/85/10 "Report on the Conclusions", paragraph 38).

4. The draft communication strategy is presented in the Annex to this document.

5. *The Consultative Committee is invited to:*

(a) consider the draft communication strategy as presented in the Annex to this document; and

(b) approve the:

(i) workplan proposed in the Annex to this document;

(ii) approach for measuring results, as set out in the Annex to this document; and

(iii) use of the answers to the frequently asked questions, as set out in the Appendix to the Annex to this document.

[Annex follows]

DRAFT COMMUNICATION STRATEGY

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I. AIM AND OBJECTIVES

1. The aim of the communication strategy is to improve awareness and understanding of the UPOV system in order to support the development of plant variety protection for the benefit of society.
2. In order to achieve that aim, the objectives of the communication strategy are to:
 - (a) raise awareness of UPOV and the benefits of the UPOV system of plant variety protection;
 - (b) provide improved information for members of the Union on the operation of the UPOV system; and
 - (c) enhance the understanding of the UPOV system by stakeholders.

II. AUDIENCE

3. The following table summarizes the audience focus around which this communication strategy is based:

Objective	Authorities of UPOV members	States / Intergovernmental organizations that contact the Office of the Union	Policy makers	International Intergovernmental Organizations	Breeders/Applicants	Seed producers / plant propagators	Farmers/Growers	Non-Governmental Organizations	Education professionals and students	General Public
(a) to raise awareness of UPOV and the benefits of the UPOV system of plant variety protection	X	X	X	X	X	X	X	X	X	X
(b) to provide improved information for members of the Union on the operation of the UPOV system	X									
(c) enhance the understanding of the UPOV system by stakeholders	X	X	X	X	X	X	X	X	X	X

III. CURRENT SITUATION AND GAP ANALYSIS

4. This section reviews the current situation and seeks to identify gaps as a basis for possible future work, which is considered in Section IV "Workplan".

Materials

5. The following sections list the most relevant materials that UPOV currently has with regard to the objectives set out in Section I "Aim and Objectives":

(a) *Raising awareness of UPOV and the benefits of the UPOV system of plant variety protection*

6. The most relevant materials that UPOV currently has are:

<u>Material</u>	<u>Location</u>
Introduction to UPOV (microsite)	http://www.upov.int/overview/en/
Ashiro Rindo story	http://www.upov.int/multimedia/en/2011/ashiro_rindo.html
Video interviews	(UPOV YouTube channel –see below)

UPOV leaflet (Publication No. 437)	http://www.upov.int/about/en/list_publications.html
UPOV Report on the Impact of Plant Variety Protection (Impact Study)	http://www.upov.int/export/sites/upov/about/en/pdf/353_upov_report.pdf
Declaration/Proceedings from the Second World Seed Conference	http://www.worldseedconference.org/en/worldseedconference/home.html
Trilogy ¹ publication ^a	
UPOV events and presentations	
UPOV Posters	
Articles in general press	
Articles in specialist press	

7. As indicated in the list above, UPOV has a considerable quantity of material that explains the objectives of the UPOV system of plant variety protection. However, the objective to increase awareness of the objectives of the UPOV system of plant variety protection might be aided by the following:

- (i) answers to frequently-asked questions about the UPOV system;
- (ii) additional illustrative examples of the benefits of plant variety protection (e.g. case study videos such as Ashiro Rindo, animated stories); and
- (iii) an update of the Impact Study to incorporate new information including, for example, information from the Trilogy and on the development of regional systems of plant variety protection.

(b) *Providing improved information for members of the Union on the operation of the UPOV system*

8. The most relevant materials that UPOV currently has are:

<u>Material</u>	<u>Location</u>
UPOV Collection	http://www.upov.int/upov_collection/en/
Distance Learning Course	http://www.upov.int/resource/en/dl205_training.html
UPOV Lex	http://www.upov.int/upovlex/en/
Plant Variety Database (PLUTO)	http://www.upov.int/pluto/en/
GENIE database	http://www.upov.int/genie/en/
Presentations at UPOV/other events	

9. The materials and methods of communication for members of the Union on the operation of the UPOV system are covered by the regular work of the UPOV bodies and the Office of the Union according to programs approved by the Council. That work is kept under constant and detailed review, for example in relation to the UPOV Collection. That review also includes consideration of new initiatives, such as the development of the advanced distance learning course DL-305 “Examination of Applications for Plant Breeders’ Rights” (DL-305) and would include responses to developments such as the letter of the International Seed Federation (ISF) of January 21, 2013, on the subject “Application, examination and granting aspects of PBR applications”^b.

¹ Publication combining the proceedings of the “UPOV Seminar on Plant Variety Protection and Technology Transfer: the Benefits of Public-Private Partnership”, the “Symposium on Plant Breeding for the Future” and the “Symposium on the benefits of plant variety protection for farmers and growers”.

(c) *Enhancing the understanding of the UPOV system by stakeholders*

10. The most relevant materials that UPOV currently has are:

<u>Material</u>	<u>Location</u>
Introduction to UPOV (microsite)	http://www.upov.int/overview/en/
Ashiro Rindo story	http://www.upov.int/multimedia/en/2011/ashiro_rindo.html
Video interviews	(UPOV YouTube channel –see below)
UPOV Report on the Impact of Plant Variety Protection	http://www.upov.int/export/sites/upov/about/en/pdf/353_upov_report.pdf
Trilogy publication	
UPOV events and presentations	
Articles in specialist press	
UPOV Collection	http://www.upov.int/members/en/upov_membership.html
Distance Learning Course	http://www.upov.int/resource/en/dl205_training.html
UPOV Lex	http://www.upov.int/upovlex/en/
Plant Variety Database (PLUTO)	http://www.upov.int/pluto/en/
GENIE database	http://www.upov.int/genie/en/

11. The Seminar on Plant Variety Protection and Technology Transfer: the Benefits of Public-Private Partnership (Seminar) and the Symposium on the Benefits of Plant Variety Protection for Farmers and Growers (Symposium) demonstrated that plant variety protection provides benefits for breeders in both the private and public sectors and can enable farmers and growers to become breeders. The Symposium also demonstrated that plant variety protection can play an important role in improving incomes for farmers and growers. One of the means to support the objective of improving the level of understanding of the UPOV system by stakeholders would be to improve awareness of the ways in which plant variety protection can be used for their benefit. In addition, the effectiveness of plant variety protection relies on the respect and understanding of the rights of breeders by all stakeholders.

12. Presenting information from the perspective of different stakeholders could be an important means of improving the level of understanding of the UPOV system by stakeholders. For, example the UPOV Collection contains a wealth of information, but which is unlikely to be suitable for stakeholders without extensive knowledge of UPOV and without knowledge of where to find the relevant material. However, such materials might be the basis for the development of material that is suitable for breeders and farmers in a way that complements information provided by the authorities of members of the Union and observer organizations. If such material was developed, it would be useful to ensure that breeders and farmers visiting the UPOV website would be able to find that information easily, for example by the creation of a link to a “breeders” or “farmers” page.

13. On that basis, it could be helpful to develop features of the UPOV website that are focused from the perspective of different types of stakeholders, such as:

- Breeders: e.g. private breeders, public breeders, farmer-breeders
- Seed producers / plant propagators
- Farmers: e.g. commercial farmers, small-holder farmers, farmer cooperatives
- Processors, wholesalers and retailers

14. In order to provide information that is focused on the needs of particular groups of stakeholders, “UPOV events and presentations” in this context would include workshops and meetings on themes identified by stakeholders. Such events might be organized by UPOV, by the stakeholders or by other parties in which UPOV’s participation would help to fulfill the objectives.

Communication methods

15. UPOV currently uses the following methods of communication:

- UPOV website
- UPOV sessions
- UPOV activities (hosted by governments)
- UPOV training courses (e.g. distance-learning courses, training trainers)
- UPOV seminars and symposia
- UPOV workshops
- Participation in meetings, workshops
- Press

16. The aim of the redesigned UPOV website, launch in November 2011, was to improve the availability of information on UPOV to a range of users. The UPOV website is the most widely accessible communication means for UPOV and should continue to be a core element of the communication strategy, with other methods (e.g. social media – see below) serving to increase awareness of the information on the UPOV website and to enhance the features of the website. For example, the Consultative Committee, at its eighty-fourth session, held in Geneva on October 31, 2012, approved the use of:

- (i) web conferencing by UPOV bodies, as considered appropriate by the UPOV body concerned, to facilitate participation by members of the Union and observers in accordance with the existing procedures;
- (ii) web conferencing by the Office of the Union to facilitate participation by invited participants to its meetings, as considered appropriate by the Office of the Union; and
- (iii) webcasting of sessions of UPOV bodies for viewing by members of the Union and observers in accordance with the existing procedures, as considered appropriate by the UPOV body concerned.

17. At present, UPOV is not yet using social media. However, at its eighty-second session, the Consultative Committee approved the establishment of a UPOV channel on YouTube for hosting of UPOV videos^c. The Consultative Committee, at its eighty-third session, noted that the establishment of a UPOV channel on YouTube for hosting of UPOV videos would be arranged in conjunction with the development of a coherent image for UPOV publication and presentation materials, for consistency with the redesigned UPOV website^d.

18. With regard to other social media:

Facebook: the requirement for the Facebook page to be updated on a regular basis would mean that considerable resources would be required. Facebook might be considered to be suitable for a special event of widespread interest.

Twitter: on the basis of UPOV being a non-active Twitterer, maintenance requirements could be reasonable and Twitter could be a useful tool to increase awareness of topical information available on the UPOV website.

LinkedIn: at present, the features of LinkedIn do not appear to provide major benefits towards UPOV's communication strategy.

Flickr: Flickr may provide a useful service for sharing photographs and videos of UPOV events, either openly to all or to a restricted group of users. In order to use Flickr to share photographs and videos, it would be necessary to seek the permission of all relevant persons.

Wikipedia: Wikipedia has become the largest and most popular general reference work on the Internet. Therefore, ensuring the accuracy of information concerning UPOV on the Wikipedia page will be an important means of communicating information about UPOV. However, it is recognized that there will be certain content on the Wikipedia UPOV page that may be a matter of opinion and for which the Office of the Union would not be in a position to intervene, unless so instructed by the members of the Union.

Incident Management

19. At present, UPOV does not have a specific incident management communication procedure.
20. The following procedure might be considered:

Incident management procedure

In situations where, in the opinion of the Office of the Union, after consultation with the President of the Council (where time allows), an urgent response to an important issue is considered necessary within a time period that would not allow consideration at a session of the Consultative Committee and the Council, and for which UPOV has not previously taken a position, the following approach will be followed;

- (a) In cases where at least 2 weeks are available for a response, the members of the Union will be consulted by e-mail, with at least 5 days (including non-working days) for comment. The status of the response will be proposed in the e-mail (e.g. whether the response would represent the position of UPOV, dependent on agreement with the proposed response);
- (b) In cases where less than 2 weeks are available for a response, the Office of the Union will respond, as such, after consultation with the President of the Council (where time allows), and will inform members of the Union by e-mail of the response at the earliest opportunity and will include the matter on the agenda of the subsequent session of the Consultative Committee. In such cases, as far as possible, the Office of the Union will also inform members of the Union in advance of the need to respond to an issue without consultation, with the aim of enabling members of the Union to contribute relevant views and information.

IV. PROPOSED WORKPLAN

21. The following workplan proposal reflects the gap analysis in Section III "Current Situation and Gap Analysis".
22. The proposed workplan concerns activities that are additional to the activities that are already covered in the regular work programs and activities specified in the Program and Budget for the 2012-2013 Biennium, e.g. the development of information materials. It has been developed in accordance with the Program and Budget for the 2012-2013 Biennium, which states that the "main focus and priority for the 2012-2013 biennium is support for members of the Union in the operation of their plant variety protection systems" (see document C/45/4 Rev.2 "Program and Budget for the 2012-2013 Biennium"). In recognition of the limited resources available, the proposed workplan has also been prioritized according to the level of resource needed for delivery and the topicality of the issues.

Communication materials

Stakeholder-focused features on UPOV website

23. In order to facilitate use of the UPOV system and to improve the level of understanding of the UPOV system, stakeholder-focused features, based on existing information, will be introduced on the UPOV website as follows:

- Breeders (priority)
- Seed producers / plant propagators (priority)
- Farmers (priority)
- Processors, wholesalers and retailers

General Information

24. The following materials will be developed in order to improve the understanding of the UPOV system by a broad range of stakeholders:

- (a) Answers to frequently-asked questions about the UPOV system;

The Appendix to this document contains some proposed responses to frequently-asked questions that could already be used by the Office of the Union. In addition, members of the Union are invited to provide the Office of the Union with other questions and answers that they would like to be included.

- (b) A brief, illustrative explanation of the benefits of the UPOV system aimed at an audience with no previous knowledge of plant breeding or plant variety protection and/or illustrative examples of the benefits of plant variety protection (e.g. case studies such as the Ashiro Rindo video, animated stories);

The development of this explanation would be a part of UPOV's involvement in EXPO 2015^e

- (c) An update of the Impact Study

A plan for updating the Impact Study would be presented in 2014.

Communication methods

25. The following methods of communication will continue to be used:

- UPOV website
- UPOV sessions
- UPOV activities (hosted by governments)
- UPOV training courses (e.g. distance-learning courses, training trainers)
- UPOV seminars and symposia
- UPOV workshops
- Participation in meetings, workshops,
- Press

26. However, particular consideration will be given to the increased use of electronic workshops to increase the outreach of the Office of the Union and other speakers. Examples of new types of e-workshops would include workshops for discussion groups on selected themes.

27. All such workshops would be reported to the Consultative Committee and the Council and, as appropriate, authorization by the Council of the events would be sought in advance.

28. Social media will be used as follows:

YouTube: a UPOV channel on YouTube for hosting of UPOV videos will be arranged in conjunction with the development of a coherent image for UPOV publication and presentation materials;

Twitter: the use of Twitter to increase awareness of topical information available on the UPOV website will be investigated and pursued, if feasible within existing resources. In that regard, it is normally expected that "tweets" are sent on a frequent basis, which would be an unrealistic burden for the Office of the Union. However, the World Intellectual Property Organization (WIPO) has agreed that UPOV could use the WIPO account to "tweet" information as required;

Facebook: no plans for use at present;

LinkedIn: no plans for use at present;

Flickr: no plans for use at present;

Wikipedia: the accuracy of information concerning UPOV on the Wikipedia page will be monitored and corrections proposed as resources allow. A report of editorial changes proposed by the Office of the Union will be reported to the Consultative Committee.

V. MEASURING RESULTS

29. In recognition of the limited resources that will be used in the communication strategy workplan, it is proposed that only minimal resources are used in monitoring the results. As far as technically possible and within available resources, results would be measured as follows:

- Visits to UPOV website
- Visits to stakeholder-focused features on UPOV website
- Participation in workshops

[Appendix follows]

^a See document CC/84/13 "Report on the Conclusions", paragraph 32.

^b See document CC/86/11.

^c See document CC/82/14 "Report on the Conclusions", paragraph 38.

^d See document CC/83/7 "Report on the Conclusions", paragraph 24(e).

^e See document CC/85/9 "Developments of Relevance to UPOV in Other International Fora".

APPENDIX

ANSWERS TO FREQUENTLY ASKED QUESTIONS

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- **What is UPOV?**

(source: <http://www.upov.int/overview/en/upov.html>)

The International Union for the Protection of New Varieties of Plants (UPOV) is an intergovernmental organization based in Geneva, Switzerland. UPOV was established in 1961 by the International Convention for the Protection of New Varieties of Plants (the "UPOV Convention").

The mission of UPOV is 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 UPOV Convention provides the basis for members to encourage plant breeding by granting breeders of new plant varieties an intellectual property right: the breeder's right.

- **What does UPOV do?**

(document C/46/4 "Financial Situation of the International Union for the Protection of New Varieties of Plants as at December 31, 2011", Annex A.11, "Purpose of the International Union for the Protection of New Varieties of Plants")

UPOV's mission is 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 main objectives of UPOV are, in accordance with the UPOV Convention, to:

- provide and develop the legal, administrative and technical basis for international cooperation in plant variety protection;
- assist States and organizations in the development of legislation and the implementation of an effective plant variety protection system; and
- enhance public awareness and understanding of the UPOV system of plant variety protection.

- **Who can attend UPOV meetings?**

In addition to UPOV members, observer States, intergovernmental organizations and international non-governmental organizations may attend the sessions of the Council and, if applicable, of the Administrative and Legal Committee (CAJ), Technical Committee (TC) and Technical Working Parties (TWPs). The "Rules governing the granting of observer status to States, intergovernmental organizations and international non-governmental organizations in UPOV bodies" (document UPOV/INF/19/1) can be consulted at http://www.upov.int/information_documents/en/.

- **What is a plant variety?**

(<http://www.upov.int/overview/en/variety.html>)

The term "species" is a familiar unit of botanical classification within the plant kingdom. However, it is clear that within a species there can be a wide range of different types of plant. Farmers and growers need plants with particular characteristics and that are adapted to their environment and their cultivation practices. A plant variety represents a more precisely defined group of plants, selected from within a species, with a common set of characteristics. To see an illustrative example of a plant variety, please go to <http://www.upov.int/overview/en/variety.html>.

A detailed explanation of the definition of "variety" is provided document UPOV/EXN/VAR "Explanatory Notes on the Definition of Variety under the 1991 Act of the UPOV Convention" (see http://www.upov.int/edocs/expndocs/en/upov_exn_var_1.pdf)

- **Why do farmers and growers need new plant varieties?**

(<http://www.upov.int/overview/en/improvement.html>)

New varieties of plants with features such as improved yield, high quality and resistance to plant pests and diseases are a key element in increasing productivity and product quality in agriculture, horticulture and forestry, whilst minimizing the pressure on the natural environment. The tremendous progress in agricultural productivity in various parts of the world is largely based on improved varieties.

- **Why is plant variety protection necessary?**
(DL-205)

Successful breeding requires great skill and knowledge. In addition, large scale breeding calls for significant investment in land, specialized equipment (for example, greenhouses, growth chambers and laboratories), and skilled, scientific manpower. It takes a long time to develop a successful plant variety (10 to 15 years in the case of many plant species). Not all new plant varieties are successful and, even where the varieties show significant improvements, changes in market requirements may eliminate the possibility of a return on investment, thus adding risk to the venture. This makes it necessary to balance the benefits with the return of the original high investment. Generally, however, societal benefits from the increased output and improved quality made available by plant breeding, have provided good reasons to encourage investment and risk-taking in this field.

At the same time, a new variety, once released, can often be easily reproduced by others. The original breeder is thus deprived of the long-term opportunity to benefit from his investment. Sustained and long-term breeding efforts are only worthwhile if there is a chance to be rewarded for the investment made. It is, therefore, critical, to provide an effective system of plant variety protection, which encourages the development of new varieties of plants thereby benefiting the breeder and society at large.

- **How does plant variety protection work?**
(<http://www.upov.int/overview/en/protection.html> and UPOV Flyer)

The UPOV Convention provides the basis for members to encourage plant breeding by granting breeders of new plant varieties an intellectual property right: the breeder's right. The UPOV Convention specifies the acts that require the breeder's authorization in respect of the propagating material of a protected variety and, under certain conditions, in respect of the harvested material. The breeder's right means that the authorization of the breeder is required to propagate the variety for commercial purposes.

In order to obtain protection, the breeder needs to file individual applications with the authorities of UPOV members entrusted with the task of granting breeders' rights (see http://www.upov.int/members/en/pvp_offices.html).

- **What are the requirements for protecting a new plant variety?**
(UPOV Flyer)

Under the UPOV Convention, the breeder's right is only granted where the variety is (i) new, (ii) distinct, (iii) uniform, (iv) stable and has a suitable denomination.

- **Why does UPOV require varieties to be uniform and stable; doesn't that lead to a loss of diversity?**
(DL-205)

...Why does UPOV require varieties to be uniform and stable?

The notion of uniformity ensures that the variety can be defined as far as is necessary for the purpose of protection. This is indicated by the notion of sufficient uniformity, i.e., the criterion for uniformity does not seek absolute uniformity. The UPOV Convention links the uniformity requirement for a variety to the particular features of its propagation. This means that the level of uniformity required for truly self-pollinated varieties, mainly self-pollinated varieties, inbred lines of hybrid varieties, vegetatively propagated varieties, cross-pollinated varieties, mainly cross-pollinated varieties, synthetic varieties and hybrid varieties will, in general, be different. Furthermore, it relates only to the characteristics which are relevant for the protection of the variety.

As with the uniformity requirement, the criterion for stability has been developed to establish the identity of the variety as the subject matter of protection. Thus, the criterion for stability relates only to the relevant characteristics of a variety.

...doesn't that lead to a loss of diversity?

The UPOV system encourages the development of new varieties of plants, therefore adding to diversity.

- **Can breeders use a protected variety in their breeding programs**
(see http://www.upov.int/export/sites/upov/about/en/pdf/breeders_exemption.pdf)

Under the “breeder’s exemption” in the UPOV Convention, the authorization of the breeder for the use of protected varieties for breeding purposes is not required.

The relevant provisions of the 1978 Act and of the 1991 Act of the UPOV Convention are reproduced and explained as follows:

1978 ACT

Article 5: Rights Protected; Scope of Protection

“(3) Authorisation by the breeder shall not be required either for the utilisation of the variety as an initial source of variation for the purpose of creating other varieties or for the marketing of such varieties. Such authorisation shall be required, however, when the repeated use of the variety is necessary for the commercial production of another variety.”

1991 ACT

Article 15: Exceptions to the Breeder’s Right

“(1) [Compulsory exceptions] The breeder’s right shall not extend to [...] “(iii) acts done for the purpose of breeding other varieties, and, except where the provisions of Article 14(5) apply, acts referred to in Article 14(1) to (4) in respect of such other varieties.”

Thus, with regard to the use of a protected variety for breeding “other” varieties, the authorization of the breeder of the protected variety is not required in either the 1978 Act (“Authorisation by the breeder shall not be required ... for the utilisation of the variety as an initial source of variation for the purpose of creating other varieties...”) or the 1991 Act (“The breeder’s right shall not extend to ... acts done for the purpose of breeding other varieties”).

In addition, acts done with the “other” varieties (e.g. marketing), do not require the authorization of the breeder of the protected variety except for the circumstances specified in the 1978 Act and the 1991 Act. Article 5(3) of the 1978 Act (see above) specifies that the “authorisation shall be required ... when the repeated use of the variety is necessary for the commercial production of another variety”. The 1991 Act specifies that the authorization of the breeder is required, where the provisions of Article 14(5) (essentially derived and certain other varieties) apply, in respect of the acts for material covered under Article 14(1) to (4).

- **Who can protect a plant variety?**
(<http://www.upov.int/overview/en/breeder.html>)

Only the breeder of a new plant variety can protect that new plant variety. It is not permitted for someone other than the breeder to obtain protection of a variety.

There are no restrictions on who can be considered to be a breeder under the UPOV system: a breeder might be an individual, a farmer, a researcher, a public institute, a private company etc.

- **Where do I apply for protection of a variety?**
(UPOV Flyer)

In order to obtain protection, the breeder needs to file individual applications with the authorities of UPOV members entrusted with the task of granting breeders' rights (see http://www.upov.int/members/en/pvp_offices.html).

- **Can I obtain protection for more than one country from a single application?**

In order to obtain protection the breeder needs to file an application with the authority of each UPOV member where protection is sought. The European Union operates a (supranational) community plant variety rights system which covers the territory of its 28 member States. Contact details of the authorities responsible for the granting of breeders' rights are provided at http://www.upov.int/members/en/pvp_offices.html

- **What are the benefits of plant variety protection and UPOV membership?**
(Impact Study and UPOV Flyer)

The UPOV Report on the Impact of Plant Variety Protection (http://www.upov.int/about/en/pdf/353_upov_report.pdf) demonstrated that in order to enjoy the full benefits which plant variety protection is able to generate, both implementation of the UPOV Convention and membership of UPOV are important. The introduction of the UPOV system of plant variety protection and UPOV membership were found to be associated with:

- (a) increased breeding activities,
- (b) greater availability of improved varieties,
- (c) increased number of new varieties,
- (d) diversification of types of breeders (e.g. private breeders, researchers),
- (e) increased number of foreign new varieties,
- (f) encouraging the development of a new industry competitiveness on foreign markets, and
- (g) improved access to foreign plant varieties and enhanced domestic breeding programs.

In order to become a UPOV member the advice of the UPOV Council in respect of the conformity of the law of a future member with the provisions of the UPOV Convention is required. This procedure leads, in itself, to a high degree of harmony in those laws, thus facilitating cooperation between members in the implementation of the system.

- **What is the effect of plant variety protection on varieties that are not protected (e.g. traditional varieties, landraces etc.)?**

The UPOV Convention only offers protection to new varieties of plants. UPOV does not regulate varieties that are not covered by plant variety protection. Therefore, plant variety protection does not restrict the ability of farmers to grow and sell propagating material of non-protected varieties.

- **What is the relationship between the UPOV Convention and international treaties concerning genetic resources, e.g. the Convention on Biological Diversity (CBD) and the International Treaty on Plant Genetic Resources for Food and Agriculture**
(Reply of UPOV to the Notification of June 26, 2003, from the Executive Secretary of the Convention on Biological Diversity (CBD):
http://www.upov.int/export/sites/upov/news/en/2003/pdf/cbd_response_oct232003.pdf)

Since the legislation on access to genetic material and the legislation dealing with the grant of breeders' rights pursue different objectives, have different scopes of application and require a different administrative structure to monitor their implementation, UPOV considers that it is appropriate to include them in different legislation, although such legislation should be compatible and mutually supportive.

- **What is the relationship between patents and plant breeders' rights**

Patents and plant breeders' rights are separate intellectual property rights with different conditions of protection, scope and exceptions.

- **What is the relationship between plant breeders' rights and measures regulating commerce, e.g. seed certification, official registers of varieties admitted to trade (e.g. National List, Official Catalogue) etc.?**
(Impact Study)

It is not the role of the UPOV system to regulate the marketplace. The UPOV Convention requires that the breeder's right shall be independent of any measure taken by a Contracting Party to regulate within its territory the production, certification and marketing of material of varieties or the importing or exporting of such material. In any case, such measures shall not affect the application of the provisions of this Convention. This clarification should not be taken to mean that UPOV believes that there should be a particular type or level of market regulation, but rather as a recognition that such regulation should be dealt with by an appropriate, dedicated and independent mechanism.

- **“Biopiracy”**: can I protect an existing plant or variety that I discover?
(<http://www.upov.int/overview/en/breeder.html>)

Only the breeder of a new plant variety can protect that new plant variety.

- **Does the UPOV Convention allow a variety to be refused protection because it is genetically modified?**
(DL-205)

No. Under the UPOV Convention, no further requirements can be requested for protection than those stated in Article 5. Furthermore, Article 18 of the 1991 Act of the UPOV Convention states that “[the] breeder’s right shall be independent of any measure taken by a Contracting Party to regulate within its territory the production, certification and marketing of material of varieties or the importing or exporting of such materials [...]”. In that respect, it is also important to note that the grant of protection does not grant the right to produce or market a plant variety.

(document UPOV/EXN/BRD Draft 7)

The UPOV Convention makes no restriction with regard to the methods or techniques by which a new variety is “bred”.

- **Can I use plant variety protection to protect the following:**
 - a trait (e.g. disease resistance, flower color)
 - a chemical or other substance (e.g. oil, DNA)
 - a plant breeding technology (e.g. tissue culture)?(document UPOV/EXN/VAR/1)

No. The definition that a variety means a “plant grouping” clarifies that a trait, a chemical or other substance and a plant breeding technology do not correspond to the definition of a variety.

- **Can I protect a hybrid variety under the UPOV system?**
(document UPOV/EXN/VAR/1)

Yes. The definition of variety in the 1991 Act of the UPOV Convention, Article 1 (vi) states that “variety” means a plant grouping within a single botanical taxon of the lowest known rank, which grouping, irrespective of whether the conditions for the grant of a breeder’s right are fully met, can be “defined by the expression of the characteristics resulting from a given genotype or combination of genotypes [...]”. The notion of “combination of genotypes” covers, for example, synthetic varieties and hybrids.

- **Can a farmer replant seed of a protected variety without the authorization of the breeder?**

It is necessary to consult the legislation in each UPOV member to know the answer to this question.

- **Can a farmer sell seed of a protected variety without the authorization of the breeder?**

No.

- **How do I know if a variety is protected?**
(PLUTO)

It is necessary to consult the official publication concerning protected varieties for the UPOV member concerned.

The UPOV Plant Variety Database (PLUTO) (<http://www.upov.int/pluto/en/>) is a compilation of data supplied by many of the competent authorities of the UPOV members. However, the information concerning plant breeders' rights provided in PLUTO does not constitute the official publication of the authorities concerned. To consult the official publication, or to obtain details on the status and completeness of the information in PLUTO, please contact the relevant authority, contact details for which are provided at http://www.upov.int/members/en/pvp_offices.html.

All contributors to PLUTO are responsible for the correctness and completeness of the data they supply. Users are particularly requested to note that it is not obligatory for members of the Union to supply data for PLUTO and, for those members of the Union who supply data, it is not obligatory to supply data for all items.

- **Who is responsible for enforcing plant breeders' rights?**
(document UPOV/EXN/ENF/1)

While the 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.

- **Does UPOV allow biochemical or molecular data in the DUS examination?**

[answer to be developed via the Technical Committee]

- **Is it true that UPOV only promotes commercially bred plant varieties geared to industrialized farmers?**

The aim of the UPOV system is encourage breeding of new plant varieties for all types of farmers. The "Seminar on Plant Variety Protection and Technology Transfer: the Benefits of Public-Private Partnership" and the "Symposium on the Benefits of Plant Variety Protection for Farmers and Growers" demonstrated, for example, the way in which plant breeders' rights have been used by the public sector to transfer new varieties to both commercial and resource-poor farmers.

[End of Appendix and of document]