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NEWSLETTER

INTERNATIONALER VERBAND
ZUM SCHUTZ VON
PFLANZENZÜCHTUNGEN

UNION INTERNATIONALE
POUR LA PROTECTION
DES OBTENTIONS VÉGÉTALES

INTERNATIONAL UNION
FOR THE PROTECTION OF
NEW VARIETIES OF PLANTS

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INFORMATION FROM UPOV

Thirteenth Session of the Technical Committee, March 1979

The Technical Committee held its thirteenth session from March 26 to 28, 1979, under the chairmanship of Mr. A.F. Kelly (United Kingdom). All member States were represented.

The main business of the session was as follows:

The Committee continued its discussion on data recording and interpretation in the examination of plant varieties for distinctness, homogeneity and stability and considered thereby a number of observations and suggestions submitted by ASSINSEL.

The Committee started work on the revision of the General Introduction to the Guidelines for the Conduct of Tests for Distinctness, Homogeneity and Stability of New Varieties of Plants.

The Committee considered the state of cooperation in examination and various proposals for intensifying such cooperation and held a preliminary discussion on the possibility of introducing other forms of cooperation.

The Committee considered a number of proposals for a different grouping of species of vegetables for the purpose of the provision of the Convention according to which the denomination proposed for a variety must be different from every denomination which designated an existing variety of the same botanical species or of a closely related species. It was agreed that the present grouping should be maintained.

The Committee adopted Test Guidelines for Almond, for Hazelnut and for Lily.

Third Session of the Administrative and Legal Committee, April 1979

The Administrative and Legal Committee held its third session on April 24 and 25, 1979, under the chairmanship of Dr. D. Böringer (Federal Republic of Germany). All member States were represented. Canada, Ireland, Japan, Norway, Spain and the United States of America were represented by observers, as was the Commission of the European Communities.

The main business of the session was as follows:

The Committee conducted a first investigation into the possibilities offered to the Union for closer cooperation and for further harmonization of national laws and practices in the field of plant variety protection.

The Committee adopted two UPOV Model Forms (for the invoicing of examination costs and for the designation of the sample of the variety) designed to facilitate the implementation of the agreements on cooperation in examination, and an improved UPOV Form for the Transmittal [by one competent authority] of Observations on a Submitted Variety Denomination [to another authority].

The Committee considered the systems applied by member States for the fees paid by applicants in the case of cooperation in examination and for the amount paid by the authority receiving the examination report to the authority providing the report.

The Committee adopted a UPOV Model Plant Breeders' Rights Gazette to serve as a guide for the publication of national plant breeders' rights gazettes, mainly for those States starting publication of a gazette or of a new type of gazette.

Nineteenth Session of the Consultative Committee, April 1979

The Consultative Committee held its nineteenth session on April 26, 1979, under the chairmanship of Mr. H. Skov (Denmark). Besides the discussion of some administrative matters, it mainly reviewed the invitations of non-member States and intergovernmental organizations to UPOV meetings.

GENERAL STUDIES

Technical and Legal Aspects of the Protection of
New Plant Varieties and the Use of Plant
Breeder's Rights in the
Marketing of Seeds*

Dirk Böringer**

Ladies and Gentlemen,

High quality seed is one of the most economic means of increasing the yield of plants. But, in addition, seed of clearly defined varieties is of great importance in improving the quality of agricultural products. It is for this reason that many States devote considerable effort to promoting the breeding of new varieties, the creation of qualitatively first-class seed and distribution of the seed to farmers. These are also the aims of the Subregional Andean Forum on Seed.

It is a great honor for me to participate in your meeting and to be allowed to present a paper. The Director-Secretary of the Cartagena Agreement approached the International Union for the Protection of New Varieties of Plants in Geneva--usually referred to as "UPOV"--to send a representative to your meeting. Mr. Thiele-Wittig of the Secretariat of UPOV and Mr. Lopez de Haro of Madrid--a representative of a country which will soon be a member of UPOV--have already participated in the Eighth Panamerican Seed Seminar in Honduras, which was held in March last year. So this occasion is the second time within 12 months that a representative of UPOV has had the opportunity to be present in a Latin American discussion on varieties and on seed. For this opportunity, I would like to say a warm "thank you" on behalf of UPOV.

UPOV? Who and what is that? UPOV is an international union grouping together those States that apply on their territories the 1961 Convention for the Protection of New Varieties of Plants--referred to as "the Convention". At present, these States are Belgium, Denmark, France, Italy, the Netherlands, Sweden, Switzerland, South Africa, the United Kingdom and the Federal Republic of Germany. In the near future, Spain and several other States are also to accede. For some years already, a number of States from all parts of the world have attended meetings of the Union as observers.

1. Contents of the International Convention for the Protection of New Varieties of plants***

It was in 1961 in Paris that eight States--convinced of the importance of protecting new varieties of plants, not only for the development of agriculture but also for safeguarding the interests of breeders--concluded a convention laying down the content and the conditions of exercise of a right granted for the protection of a new plant variety.

The following are the most important substantive provisions of the Convention:

A protection right can be granted for varieties of all botanical genera and species. It is immaterial whether the varieties are the result of systematic breeding activities or have been discovered, for instance, as mutations. Nor does it matter how the varieties are reproduced, in a vegetative, apomictic, autogamous or allogamous way. The effect of the right granted to the breeder --or discoverer--of a new plant variety or to his successor in title is that he alone is authorized to produce or market generative or vegetative propagation material of the new variety in a commercial way. He can, of course, have these activities performed by others to whom he has granted a license.

* Paper read at the First Subregional Andean Seed Symposium in Lima on November 21, 1978

** President of the *Bundessortenamt* (Federal Office of Plant Varieties) of the Federal Republic of Germany

*** of December 2, 1961 (Editor's note).

In the case of the usual vegetatively reproduced species of plants, the propagating material also includes whole plants. In the case of ornamental plants, the breeder's right is extended to such parts of plants (cut roses for instance) as are not normally marketed for purposes of propagation, when they are used--contrary to their original purpose--for the commercial production of ornamental plants or cut flowers.

The authorization of the breeder or his successor in title is not necessary where the new variety is used as basic material for the creation of further new varieties. His authorization is, however, required when the new variety has to be repeatedly used for the commercial production of another variety as is the case, for instance, with hybrid varieties of maize or sorghum.

The new variety must be clearly distinguishable by one or by more important characteristics from any other variety which is already commonly known.

The new variety must be sufficiently homogeneous. The particular features of its vegetative or sexual reproduction must be taken into account.

The new variety must be stable in its essential characteristics.

The new variety must have a variety denomination. This may not consist exclusively of figures. The variety denomination is a generic term in the legal sense. Therefore it cannot be registered as a trademark. It is, however, permissible to add a trademark to a variety denomination. Finally, all persons are obliged to use the variety denomination, even after expiry of protection, when marketing seed or planting material of the variety.

At the time of the application for protection, the new variety may not have been marketed, with the agreement of the breeder or his successor in title, on the territory of the State of application or for more than four years on the territory of any other State.

Protection is granted if a growing test shows that the conditions mentioned above are fulfilled and no objections to the proposed variety denomination are raised.

The minimum period of protection is 15 years. For plants such as vine, fruit trees and their rootstocks, forest trees and ornamental trees, the minimum period is 18 years.

If a breeder has duly filed an application for protection of a new variety in a member State of the Union, he enjoys a priority right for the filing of an application in another member State for a period of 12 months.

For varieties belonging to certain botanical genera or species, the member States afford national treatment to nationals or residents of other member States. For the rest, the principle of reciprocal treatment is applied--with one or two exceptions.

The right granted to the breeder or his successor in title is independent of the measures taken by the member States of the Union to regulate the production, the supervision and the marketing of seed and planting material. Such measures must not, however, hinder the exercise of the right of protection.

The States applying the Convention form a Union. The permanent organs of the Union are the Council and the Secretariat General. The Secretariat General is entitled the Office of the International Union for the Protection of New Varieties of Plants. The Council is composed of the representatives of the member States. It takes all appropriate measures which are necessary for the running and development of the Union as well as for cooperation between the member States.

2. Working Methods and Progress within UPOV

As can be seen from what I have said so far, no international protection right is granted under the Convention. On the contrary, protection is granted at national level. In view of the increasing international integration of both plant breeding and trade in seed and plant material, the granting of protection for a new plant variety has now become meaningful only in the framework of international cooperation. The Convention has created the necessary legal basis for such cooperation. It is at the same time the driving force behind the harmonization of a large number of administrative and technical arrangements.

When a breeder submits a new variety for the grant of protection and the variety is examined in an official or officially supervised growing test in the open air or in the glasshouse for compliance with the requirements for protection, he needs to know what methods and standards will be used in carrying out the examination. If several States are to grant parallel protection at the same time, the examination methods and criteria in those States must be as similar as possible. To achieve this, UPOV has created working parties to draw up guidelines for the performance of examinations for distinctness, homogeneity and stability. Technical Working Parties of this kind exist for agricultural crops, vegetables, fruit crops, ornamental plants and forest trees. Up to now, guidelines have been established for 52 plant species. Guidelines are in preparation for over 20 more plant species.

In the Technical Working Parties, the guidelines are not only considered by governmental experts. The international professional organizations also have the opportunity to make technical comments on the drafts of such guidelines during their preparation. If necessary, scientific bodies are also consulted. The Council of UPOV has recommended to its member States that they apply these technical guidelines. All UPOV member States follow this recommendation.

The submission of a variety for protection has to be made on an application form issued by the competent authority. The applicant is also required to describe the subject of protection, that is the variety, by means of its characteristics, on a so-called technical questionnaire. The application form and the individual technical questionnaire for each plant species have also been harmonized by UPOV. This is an advantage not only for the national authorities but also for the breeders.

The breeder's description of the most important characteristics of the variety and the detailed official description, established at the time of granting protection, follow a common UPOV system. Under this system, a distinction is made between qualitative and quantitative characteristics. In the case of qualitative characteristics in which, by nature, no transition can exist between the different states of expression (for example, the number of rows of grains of an ear of barley), the weakest expression is given the Note 1. For the following, increasingly stronger, expressions, a continuous numbering system without an upper limit is used.

In the case of quantitative characteristics (for example, the stem length of maize), the individual states of expression merge one into the other. States of expression therefore had to be created artificially. In principle there are nine states, numbered from 1 to 9. In each case the Notes are accompanied by a specified wording. Note 1 describes the weakest state of expression of a characteristic (for example, very short) and Note 9 describes its strongest state (for example, very long), with Note 5 indicating the mean state. The nine states and the use of Notes facilitate the computerization of data. They also help to overcome difficulties in translation where different languages are used.

The growing tests are generally performed over two periods of vegetation. For the purposes of comparison, live collections of a great number of plant varieties have to be maintained. Both are expensive. A recommendation was therefore added in 1961 to the Convention, requesting member States to make available their testing facilities, that means in practice their growing fields, glasshouses and laboratories, for the examination of varieties filed in other member States.

All the present member States of UPOV have already followed this recommendation for numerous species of plants. For instance, species of pears and cherries are examined in France, apples and chrysanthemums in the United Kingdom, carnations and freesias in the Netherlands, rye and lupins in the Federal Republic of Germany.

Such cooperation is only possible where the examining bodies of the different countries have considerable confidence in each other. Breeders must also have confidence in the probity of examinations in another member State. In order to provide a legal guarantee, the Council of UPOV adopted, in 1976, a model for an administrative agreement for bilateral cooperation in the field of technical examination. On the basis of this model agreement all the UPOV member States have concluded bilateral agreements with one another.

Carrying out examinations is not altogether cheap. Part of the expenses incurred is now covered by fees paid by the breeders. In a Union like UPOV the fees which breeders have to pay should as far as possible be the same in all member States. However, it is not easy to harmonize fees internationally. Nevertheless the Council of UPOV has made certain recommendations. These concern the uniform amount of application fees (500 Swiss francs), the uniform amount for the examination fee for cereal varieties (1350 Swiss francs over two years) and a uniform system for the annual fees which the holders of a title of protection have to pay after protection has been granted. Finally, the Council has established a system under which a financial balance can be achieved between the member States where they cooperate in the technical examination of plant varieties. This balance is also advantageous for the breeders since they have to pay only one fee for the technical examination when filing an application for a variety in several member States.

A further working party within UPOV has elaborated guidelines for variety denominations. These guidelines are instrumental in ensuring that the member States adopt basically identical attitudes as regards the requirements for variety denominations. The aim of the guidelines is to avoid as far as possible the use of confusing, misleading or unsuitable variety denominations.

Recent years have shown that more and more States are becoming interested in the work of UPOV. Many of them have already been represented at sessions of the Council by interested observers. Representatives of UPOV have visited other States on numerous occasions to discuss questions concerning the granting of protection for new plant varieties. The discussions with representatives of other States have shown that for States thinking of introducing protection for new plant varieties in their territories it would be helpful to have a model law on which they could base themselves. A model law of this kind is therefore being prepared at present on the basis of the Convention.

3. Application of the Right of Protection in the Marketing of Seed

Once a new variety is protected and the owner wishes to reproduce and sell seed and other plant material belonging to the variety, he has in most cases to take account of a number of other aspects of a legal nature. Of these aspects, I will mention the following three:

- rules for trade in seed, especially the mandatory registration in national lists of varieties and the certification of seed,
- plant health rules,
- and, finally, rules on competition, where they exist.

As far as the mandatory registration in national lists of varieties and the certification of seed are concerned, permit me to use the example of my own country, the Federal Republic of Germany. The Federal Republic of Germany is not only a member State of UPOV, it is also a Member State of the European Economic Community, which in various respects resembles the community of States under the Cartagena Agreement. Under the rules of the European Economic Community, its Member States are required to include varieties of agricultural crops in their national list of varieties, and thereby authorize them for commercial production and marketing of seed, only when they have been successfully examined for their value for cultivation and use.

For the owner of a protected variety, for instance of maize, wheat or potato, this means that he can make use of his protection right in practice only if the variety has been submitted with success to a growing test, usually lasting three years, on yield, quality and resistance to pests and diseases. These growing tests are performed in respect of one or more factors with four to six replications at between 12 and 15 sites spread over the whole country. In Germany, 80% of the varieties of the above-mentioned plant crops, filed for entry in the list of varieties, fail to pass the test. Breeders therefore usually start by filing their varieties for registration in the list of varieties. Only when they are sure that their varieties will probably pass the test for value for cultivation and use, do they also file an application for protection of the variety. It is possible for the breeder to act in such a way since the Convention, and therefore also the national laws of the States of UPOV, already consider that the initiation of the procedure for entering a variety in an official register of varieties--and the national list of varieties is such an official register--makes the variety common knowledge. This provision, which does not exist in the law of patents, safeguards the breeder against a possible loss of priority.

The examinations for distinctness, homogeneity and stability and their results can be used especially in both the procedure for protecting a variety and the procedure for registering a variety in the list. In my country, the entry in the list and the grant of protection are generally effected at the same time. Both decisions are taken by the same authority. In Germany, the examinations are performed, as in the other member States of UPOV, by an institution which belongs to the Ministry of Agriculture. In countries such as the Netherlands and the Federal Republic of Germany, which have already been granting protection rights for new plant varieties for many years, all species of agricultural crops which are registered in the national list--with a very few exceptions--are also protected. In the other member States of UPOV, which did not introduce the system of protection until later, this is not yet the case.

Under the rules adopted by the European Economic Community, the owner of a protected variety not only has to negotiate the obstacle of registration in the national list of varieties but, in addition, may only market seed of his variety if it is recognized as "basic seed" or "certified seed." He must therefore submit to all the requirements of certification and supervision.

The national certification provisions often stipulate the maximum permissible infestation with pests and diseases. In addition, plant health regulations exist in practically every country in respect of the import and marketing of goods. When applying the protection right in practice, these provisions also have to be observed.

And now to the third aspect: the protection right for a new plant variety is an exclusive right in respect of a certain variety. This could mean in theory that there would be a risk that all competition might be excluded in respect of the variety in question, which could have great economic potential. In States such as my country, in which very extensive rules on competition exist, it is normally forbidden to exploit a monopoly position which restricts competition. At first sight, protection would seem to clash with competition law. But this is not a question which concerns only the protection of new plant varieties since it is even more important for patent law. Patents and plant breeders' rights are similar in a legal respect. It can be assumed therefore that the exercise of a protection right for a new plant variety stands in the same relation to competition law as the exercise of a patent for an invention in the industrial sector. In other words, plant breeders' rights and their exercise do not normally infringe competition law. Infringement only arises if, in exercising the plant breeders' rights, measures are taken which go beyond the content of protection and are not necessary for maintaining the legal position afforded by the protection right. The authorities responsible for competition law are therefore only interested in the conditions and special clauses contained in propagation contracts and in the way in which licenses are formulated.

As I mentioned before, the effects of protection concern the seed and plant material of the protected variety. Owners of plant breeders' rights generally conclude, through a commercial enterprise, propagation contracts with seed producers. Under such contracts, the breeder is required to deliver "basic seed" to the grower in time for sowing at the breeder's price. The grower is required, for his part, to grow the "basic seed" with a maximum of care in order to produce "certified seed." For this propagation, the breeder pays a fee to the grower. The fee for propagation is calculated on the basis of each 100 kg of "certified seed" which is sold. In addition to this fee, the grower receives remuneration corresponding to the amount of the producer price for consumer goods. The producer price is calculated on the basis of normal market conditions. The "certified seed" which has been produced may not be sold by the grower; under the protection right, this is reserved to the owner of the variety or the commercial enterprise with which he has a contract.

The sale of the seed of the protected variety must cover the expenses incurred by four parties: the breeder, the grower, the commercial enterprise under contract to the breeder and the retailer. Perhaps I can use the example of a cereal variety to illustrate the breakdown of the consumer price as between these four partners.

The consumer of the seed pays	100 %
broken down as follows:	
- the breeder	10 %
- the commercial enterprise under contract to the breeder	7.5 %
- the grower:	
a) as basic price: 60 %	75 %
b) as propagation fee: 15 %	
- the retailer	7.5 %

This is an example from my own country. Such an example cannot be generalized. The amount of the license fee varies depending on the species of plant and the variety. In the case of potato varieties, it amounts at present to between 7% and 12% of the wholesale price. Furthermore a relatively low propagation fee--based on the size of the propagation area--is charged in the case of potatoes. As far as grasses are concerned, the amount of the license fee is generally lower than in the case of cereals and potatoes. For varieties which have been bred in another UPOV member State and are also protected there, the domestic breeder normally receives only half the breeding license fee, the other half being payable to the original breeder.

The breeders do not usually collect the license fees themselves; they make use of private societies.* These societies not only collect the fees for the propagation area and/or the quantity of seed produced or sold but are also entrusted with supervising the commercial enterprise under contract to the breeder. The purpose of this procedure is to ensure that the owner of the protected variety actually receives as much as possible of the license fees. For those plant species where national law permits only "certified seed" to be marketed, this is relatively easy to achieve since there is a complete record of the delivery of "basic seed," the extent of propagation areas, the size of the inspected and approved areas, the amount of seed harvested and the amount of "certified seed" actually sold.

The story is different in the case of plant species for which a mandatory certification procedure does not exist. In Germany, these species include vegetables, fruit plants and ornamental plants in particular. For varieties belonging to these species therefore, often no commercial enterprise is involved in the propagation.

The contents of the propagation contracts for varieties of the last-mentioned species basically correspond to those of the propagation contracts for varieties of species of which only "certified seed" may be marketed. For varieties of normally vegetatively reproduced species, such as rose varieties, license fees are usually agreed upon by numbers of produced plants. A fixed amount is agreed for each plant. The procedure for payment is usually that the propagator is required to communicate the number of plants he has grafted each year after termination of the grafting period. The owner of the protection right then sends the propagator original breeder's labels for this number of grafted plants. This procedure offers the maximum possible security to the breeder and the propagator. If plants of the protected variety are found on the market without original breeder's labels, it is obvious that they have been marketed without authorization of the owner of the plant breeder's right. It is an infringement of the plant breeder's right and the owner of the right can start legal proceedings if he wishes to do so.

In the member States of UPOV in which protection of ornamental plants does not extend to the final product--for example, cut flowers--serious problems exist for the owner of the right, for instance of varieties of roses and carnations, as a result of international trade. These difficulties stem from the fact that in those countries which do not grant protection to plant varieties, plants are propagated without authorization from the owner of the protected variety. From this propagation, cut flowers are very often produced on a large scale. These cut flowers are imported into numerous countries, including the country of the owner of the protection right, where they are sold at a price lower than the price of merchandise duly produced under a license from the breeder. It is therefore understandable that breeders of vegetatively reproduced ornamental plants and their international professional organizations are pressing all the present member States to extend the scope of protection to cut flowers. The Convention allows such extension of protection. As yet, only France and Italy have made use of it for certain ornamental plants.

Organizations which collect license fees on behalf of the owner of the protection right are not only important these days at the national level, but they also play an important role in international cooperation between plant breeders and the seed industry where they are active in the drafting and negotiating of license contracts.

* For example: *Caisse de gestion* in France,
Plant Royalty Bureau in the United Kingdom,
Saatguttreuhand in the Federal Republic of Germany

4. The Private and the National Economic Advantage of Protecting New Plant Varieties

The legal protection of a new plant variety is of great advantage to two parties: first of all, to the private party, by which I mean the breeder, whether he be an individual person, a corporation, a semi-governmental or governmental breeding facility, such as an institute. Secondly, protection is also of advantage to the grower, to the processor and to the commercial enterprise dealing in agricultural or horticultural products, and finally, though not of least importance, to the customer. This I would call the advantage for the national economy.

First let us consider the breeder as the owner of the plant breeder's right. Breeding is a long-term activity. Breeding successes of today were conceived and put into breeding programs 10 or 15 years ago. As a result of the increasing complexity of the methods used, breeding activity costs not only time but also money. The positive effect of a breeder's right is that the breeder can direct and supervise the production and sale of seed and plant material of a protected variety. For each quantitative unit sold he receives a royalty which he can use to cover his costs.

This material profit is however a new incentive for the breeder to produce further, still more efficient varieties. This requires scientific and technical investments and again costs more money. In only a very few cases does the breeder discover by chance a new variety with enhanced performance.

But it is not only this possibility of action in respect of production and marketing of seed and plant material which is important for the breeder; it is also important for him to be able to make use of his right to prohibit, which derives from the protection right. If he uses his right as a defense against the illegal marketing of seed or plant material of his own or of another variety which is not sufficiently distinguishable from his variety, this brings him further advantage since he is able to sell more of the protected variety.

The plant breeder's right--as experience in UPOV member States has shown--is also an important element in concluding license contracts. Normally, the breeder cannot produce all the seed or plant material needed by the market; he has therefore to make arrangements with commercial enterprises possessing the experience and the technical facilities to supply the public with seed on a large scale. This is not only true for the market in his own country, but also for cases where, for ecological or economical reasons, seed for economic consumption in his own country has to be produced in another country or where seed of the variety must be produced for use in a foreign country. In such cases, production and marketing is carried out under license contracts. It is for the owner of the protected variety to choose those commercial partners best equipped to accomplish this responsible task.

Two further possibilities should also be mentioned. Small breeders in particular are very often not in a position to exploit their protected variety on a broad enough scale economically. This is also true in some ways of government breeding institutes. These are cases where the granting of an exclusive license appears justified. On the other hand, the protection right, the claim for protection and the right deriving from protection can be assigned, with or without restrictions. I am mentioning these possibilities to make clear that they do not exist for unprotected varieties and that that is a disadvantage from the point of view of commerce and of the national economy.

This leads me to the advantage of the breeder's right for the national economy. For the grower, the most important aspect is that he actually receives seed of the variety he wants. The authenticity and purity of the variety should always be guaranteed by the breeder. Experience over many years of official variety supervision, for instance in my own country, has shown that this security for the user of seed is generally greater with protected than with non-protected varieties.

The second priority for the grower is obtaining the best possible variety, as regards yield, quality and resistance to disease, for his conditions of production. He must therefore be keenly interested in efficient plant breeding.

Recently the director of a government breeding institute in one of the UPOV member States experimentally established a productivity calculation for his institute. He did this using the example of a cereal variety. The variety bred by the institute achieved a yield which was 5% higher than for comparable varieties. As a result the variety very rapidly became one of the leading varieties

in the country in question, to such an extent that it soon covered a growing area of more than 100,000 hectares. Over this area the variety has brought --calculated at market prices--an economic surplus of 12 million Swiss francs a year. This amounts to twice the yearly budget of the breeding institute.

In my own country we have made another calculation. According to our data and calculations, the quantifiable progress in breeding corresponds--independently of improved growing and fertilizing methods--to a yearly increase of 1%. From a national economy point of view, this corresponds, on the basis of gross agricultural production, to a surplus of more than 100 million Swiss francs. Of course, progress would also be achieved by plant breeding if no plant breeder's right existed. But it can be safely assumed that, under the conditions as they exist in the member States of UPOV, progress would not have been as great or as lasting.

From countries having introduced plant variety protection only recently, it is known that until such protection was introduced private breeders or breeding institutes were primarily occupied with breeding allogamous plant varieties or producing hybrid varieties. The reason was that in these cases the variety comes into existence only at the stage of seed produced for economic consumption. Varieties of these species possess in themselves a genetic protection. An imitation of these varieties for the consumer would be pointless. After the introduction of plant breeders' rights it became quickly apparent that the breeders also turned to breeding vegetatively reproduced varieties and, above all, autogamous plant varieties. These activities shifted from government institutes to private enterprises. The government institutes were then able to turn their attention to basic research in plant breeding.

I already mentioned the increasing division of work between the countries of the world. I refer first to the propagation of seed in a country other than that in which a variety has been bred and protected. The lack of protection in another country has frequently inhibited the breeder from transferring the valuable basic material, namely the "basic seed," to another country for propagation. This may be equated with a loss of profit for that other country.

There is a further aspect: many plant breeders not only breed varieties valuable for the country in which they are located, but increasingly produce varieties for the growing conditions and needs of other countries in which, for whatever reason, there is no breeding activity at all or it is insufficient. The export of such varieties will in the long run only be undertaken if in the importing countries the same possibilities for protection of the breeder's product exist as in the exporting countries.

The representatives of private breeding firms, in particular, have frequently pointed to this situation. It is generally their view that it is the task of the State to pave the way for private initiative. The granting of breeders' rights for new plant varieties is an important step in paving the way.

In conclusion, I should like to demonstrate, by quoting a few figures, that granting plant breeders' rights for a new plant variety is both an incentive to the breeder and an advantage for the national economy. On average, in the years 1974 to 1976, 1486 varieties have been filed yearly for protection in the UPOV member States which at that time formed the Union. In these States, 4613 protection rights existed on December 31, 1976.

5. Final Remarks

Ladies and Gentlemen, I have taken up a great deal of your time. Unfortunately I could not report on anything which would be of immediate practical use for the States in your region. I did, however, mention in one part of my paper that, in the field of plant breeding, success must be planned and programmed many years ahead. In my view--and this is also the view of UPOV--success in plant breeding and the protection of new plant varieties go hand in hand. If this is so future success in this field must also be planned well ahead, both in the practical and in the legislative fields.

Thank you very much.

INFORMATION FROM MEMBER STATES

Belgium and the Federal Republic of Germany: Extension of the Agreement on Cooperation in Examination

The Administrative Agreement providing for cooperation in the examination of plant varieties for distinctness, homogeneity and stability concluded between the *Service de la protection des obtentions végétales* (Service for the Protection of New Plant Varieties) of Belgium and the *Bundessortenamt* (Federal Office of Plant Varieties) of the Federal Republic of Germany (see UPOV Newsletter No. 13, page 6) was extended to further species with effect from December 1, 1978, and--for four species--from January 1, 1979. The species now covered by this Agreement are listed on page 12.

Belgium and the Netherlands: Agreement on Cooperation in Examination

The *Service de la protection des obtentions végétales* (Service for the Protection of New Plant Varieties) of Belgium and the Minister of Agriculture and Fisheries of the Netherlands have concluded an Administrative Agreement, which entered into force on January 1, 1979, under which the Dutch authorities are to examine varieties of the species listed on page 13 for distinctness, homogeneity and stability, on behalf of the Belgian Service.

France and the Federal Republic of Germany: Extension of the Agreement on Cooperation in Examination

The Administrative Agreement providing for cooperation in the examination of plant varieties for distinctness, homogeneity and stability concluded between the *Comité de la protection des obtentions végétales* (CPOV - Committee for the Protection of New Plant Varieties) and the *Groupe d'étude et de contrôle des variétés et des semences* (GEVES - Group for the Study and Control of Varieties and Seeds) of France, on the one hand, and the *Bundessortenamt* (BSA - Federal Office of Plant Varieties) of the Federal Republic of Germany, on the other hand, (see UPOV Newsletter No. 8, page 8) was extended to further species with effect from September 1, 1977, as far as the list of species examined by the BSA on behalf of the CPOV is concerned, and with effect from December 1, 1978, as far as the list of species examined by the CPOV on behalf of the BSA is concerned. The species now covered by this Agreement are listed on page 14.

Netherlands and Sweden: Agreement on Cooperation in Examination

An Administrative Agreement providing for cooperation in the examination of plant varieties of certain species for distinctness, homogeneity and stability has been concluded between the Minister of Agriculture and Fisheries of the Netherlands and the *Statens Växsortsnämnd* (National Plant Variety Board) of Sweden. It entered into force on January 1, 1979. The species covered by this Agreement are listed on page 13.

Federal Republic of Germany: Change in the Postal Address of the Bundessortenamt (Federal Office of Plant Varieties)

The *Bundessortenamt* has now a post office box at its disposal. Its new postal address is as follows:

Bundessortenamt
Bemeroder Rathausplatz 1
D-3000 Hannover 72
Postfach 72 1226

Netherlands: Appointment of a New Chairman of the Raad voor het Kwekersrecht (Board for Plant Breeders' Rights)

Mr. M. Heuver was appointed Chairman of the *Raad voor het Kwekersrecht*, and alternate to the representative of the Netherlands in the UPOV Council, with effect from March 1, 1979. He succeeds the late Mr. J.I.C. Butler.

Administrative Agreement on Cooperation in Examination
between Belgium and the Federal Republic of Germany

Species whose varieties will be examined by the Federal Republic of Germany/
Espèces dont les variétés seront examinées par la République fédérale d'Allemagne/
Arten, deren Sorten durch die Bundesrepublik Deutschland geprüft werden

<u>Latin Name</u>	<u>English</u>	<u>French</u>	<u>German</u>
Apium graveolens L.	Celery, Celeriac	Céleri, Céleri-rave	Sellerie
Brassica oleracea L. convar. acephala (DC.) Alef. var. gongylodes L.	Kohlrabi	Chou-rave	Kohlrabi
Brassica oleracea L. convar. acephala (DC.) Alef. var. sabellica L.	Curly Kale	Chou frisé	Grünkohl
Brassica oleracea L. convar. acephala (DC.) Alef. var. viridis L. & var. medullosa Thell.	Marrow-stem Kale, Fodder Kale	Chou fourrager	Markstammkohl, Futterkohl
Brassica oleracea L. convar. botrytis (L.) Alef. var. botrytis	Cauliflower	Chou-fleur	Blumenkohl
Brassica oleracea L. convar. capitata (L.) Alef. var. capitata	Red Cabbage, White Cabbage	Chou pommé (Chou rouge, Chou cabus)	Rotkohl, Weisskohl
Brassica oleracea L. convar. capitata (L.) Alef. var. sabauda L.	Savoy Cabbage	Chou de Milan	Wirsing
Brassica oleracea L. convar. oleracea var. gemmifera DC.	Brussels Sprouts	Chou de Bruxelles	Rosenkohl
Daucus carota L. ssp. sativus (Hoffm.) Arcang.	Carrot	Carotte	Möhre
Festuca pratensis Huds.	Meadow Fescue	Fétuque de prés	Wiesenschwingel
Fragaria L.	Strawberry	Fraisier	Erdbeere
Humulus lupulus L.	Hop	Houblon	Hopfen
Lycopersicon lyco- persicum (L.)	Tomato (green- house va- rieties)	Tomate (variétés de serre seulement)	Tomate (nur Ge- wächshaussorten)
Phleum bertolonii DC.	Timothy	Fléole diploïde	Zwiebellieschgras
Phleum pratense L.	Timothy	Fléole des prés	Wiesenlieschgras
Populus L.	Poplar	Peuplier	Pappel
Raphanus sativus L. var. sativus	Radish	Radis	Radieschen
Rhododendron L.	Rhododendron, Azalea, Azaleodendron	Rhododendron, Azalée	Rhododendron, Azalee
Ribes L.	Currants, Goose- berry, except ornamental va- rieties	Cassis, Groseillier, sauf variétés ornementales	Johannisbeere, Stachelbeere, ausser Ziersorten
Ribes nigrum L.	Black Currant	Cassis	Schwarze Johannisbeere
Ribes niveum Lindl.	White Currant	Groseillier blanc	Weisse Johannisbeere
Ribes sylvestre (Lam.) Mert. et W. Koch	Red Currant	Groseillier rouge	Rote Johannisbeere
Ribes uva-crispa L.	Gooseberry	Groseillier à maquereau	Stachelbeere
Rubus subg. Eubatus Focke	Blackberry	Ronce	Brombeere
Scorzonera hispanica L.	Black Salsify	Scorsonère,	Schwarzwurzel
Secale cereale L.	Rye	Seigle	Roggen
Triticum spelta L.	Spelt	Epeautre	Spelz
Vicia faba L. var. major Harz	Broad Bean, Horse Bean	Fève	Dicke Bohne
Vicia faba L. var. minor Harz	Field Bean, Tick Bean	Féverole	Ackerbohne

Administrative Agreement on Cooperation in Examination between Belgium and the Netherlands

Species whose varieties will be examined by the Netherlands/Espèces dont les variétés seront examinées par les Pays-Bas/Arten, deren Sorten durch die Niederlande geprüft werden

<u>Latin Name</u>	<u>Dutch</u>	<u>English</u>	<u>French</u>	<u>German</u>
Allium cepa L.	Ui	Onion	Oignon	Zwiebel
Brassica rapa L. emend. Metzg. var. rapa	Raap, Stoppelknol	Turnip	Navet	Herbstrübe, Mairübe
Cucumis sativus L.	Augurk, komkommer (kasrassen)	Cucumber, Gherkin (greenhouse varieties)	Concombre, Cornichon (variétés de serre)	Gurke (Gewächshaus-sorten)
Dianthus caryophyllus L.	Anjer	Carnation	Oeillet	Nelke
Festuca rubra L.	Roodzwenkgras	Red Fescue, Creeping Fescue	Fétuque rouge	Rotschwingel
Lactuca sativa L.	Sla (kasrassen)	Lettuce (greenhouse varieties)	Laitue (variétés de serre)	Salat (Gewächshaus-sorten)
Lolium perenne L.	Engels raaigras	Perennial Ryegrass	Ray-grass anglais	Deutsches Weidelgras
Poa pratensis L.	Veldbeemdgras	Kentucky Bluegrass, Smooth Stalked Meadow-Grass	Pâturin des prés	Wiesenrispengras
Poa trivialis L.	Ruwbeemdgras	Rough Stalked Meadow-Grass	Pâturin commun	Gemeines Rispengras
Solanum tuberosum L.	Aardappel	Potato	Pomme de terre	Kartoffel
Spinacia oleracea L.	Spinazie	Spinach	Epinard	Spinat

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Administrative Agreement on Cooperation in Examination between the Netherlands and Sweden

1. Species whose varieties will be examined by the Netherlands/Espèces dont les variétés seront examinées par les Pays-Bas/Arten, deren Sorten durch die Niederlande geprüft werden

<u>Latin Name</u>	<u>English</u>	<u>French</u>	<u>German</u>
Alstroemeria L.	Alstroemeria	Alstroemère, Lis des Incas	Inkalilie
Dianthus caryophyllus L.	Carnation (glasshouse varieties)	Oeillet (variétés de serre)	Nelke (Gewächshaus-sorten)
Rosa spp.	Rose	Rosier	Rose
Streptocarpus x hybridus Voss.	Streptocarpus	Streptocarpus	Drehfrucht

2. Species whose varieties will be examined by Sweden/Espèces dont les variétés seront examinées par la Suède/Arten, deren Sorten durch Schweden geprüft werden

Allium schoenoprasum L.	Chives	Ciboulette, Civette	Schnittlauch
Anethum graveolens L.	Dill	Aneth	Dill

Administrative Agreement on Cooperation in Examination
between France and the Federal Republic of Germany

1. Species whose varieties will be examined by France/Espèces dont les variétés seront examinées par la France/Arten, deren Sorten durch Frankreich geprüft werden

<u>Purpose</u> ¹	<u>Latin Name</u>	<u>English</u>	<u>French</u>	<u>German</u>
L-P	Capsicum annum L.	Pepper, Capsicum, Chili	Piment, Poivron	Paprika
L-P	Cichorium endivia L.	Endive	Chicorée frisée, Scarole	Winterendivie
P	Cydonia Mill.	Quince	Cognassier	Quitte
L-P	Glycine max (L.) Merrill	Soya Bean	Soja	Sojabohne
L-P	Helianthus annuus L.	Common Sunflower	Tournesol	Sonnenblume
P	Hydrangea L.	Hydrangea	Hortensia	Hortensie
L-P	Linum usitatissimum L.	Flax, Linseed	Lin	Lein
P	Prunus L.	Cherry, except orna- mental varieties	Cerisier, sauf variétés orne- mentales	Kirsche, ausser Ziersorten
P	Prunus avium L.	Sweet Cherry	Cerisier (cerises douces)	Süsskirsche
P	Prunus cerasus L.	Morello, Sour Cherry	Cerisier (cerises acides)	Sauerkirsche
P	Pyracantha M.J. Roem.	Firethorn	Pyracantha, Buisson ardent	Feuerdorn
P	Pyrus L.	Pear, except orna- mental varieties	Poirier, sauf variétés orne- mentales	Birne, ausser Ziersorten
P	Pyrus communis L.	Pear	Poirier	Birne
L-P	Valerianella locusta (L.) Laterrade	Cornsalad, Lamb's Lettuce	Mâche	Feldsalat

2. Species whose varieties will be examined by the Federal Republic of Germany/Espèces dont les variétés seront examinées par la République fédérale d'Allemagne/Arten, deren Sorten durch die Bundesrepublik Deutschland geprüft werden

P	Begonia elatior hybrids	Elatior Begonia	Bégonia elatior hybrides	Elatior Begonie
P	Humulus lupulus L.	Hops	Houblon	Hopfen
P	Rhododendron spec.	Rhododendron, Azalea, Azaleo- dendron	Rhododendron, Azalée	Rhododendron, Azalee
L-P	Ribes niveum Lindl.	White Currant	Groseillier blanc	Weisse Johannisbeere
L-P	Ribes sylvestre (Lam.) Mert. et W. Koch	Red Currant	Groseillier rouge	Rote Johannisbeere
L-P	Ribes uva-crispa L.	Gooseberry	Groseillier épineux	Stachelbeere
P	Rubus subg. Eubatus	Blackberry	Ronce fruitière	Brombeere
P	Saintpaulia ionantha H. Wendl.	African Violet	Saintpaulia	Usambaraveilchen
L	Secale cereale L.	Rye	Seigle	Roggen

¹ L = National List/Catalogue/Sortenliste
P = Protection/Sortenschutz

United Kingdom: Appointment of a New Controller of Plant Variety Rights

Mr. P.W. Murphy was appointed Controller of Plant Variety Rights, and representative of the United Kingdom in the UPOV Council, with effect from April 1, 1978. He succeeds Mr. H.A.S. Doughty.

PUBLICATIONS OF THE OFFICE OF THE UNION

Test Guidelines

Guidelines for the Conduct of Tests for Distinctness, Homogeneity and Stability (Test Guidelines) have been published recently by the Office of the Union in a trilingual--English, French and German--edition for the following species:

<u>English</u>	<u>French</u>	<u>German</u>	<u>Document</u>
Lily	Lis	Lilie	TG/59/3
Almond	Amandier	Mandel	TG/70/3
Hazelnut	Noisetier	Haselnuss	TG/71/3

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in: CIPA, 1978, Vol. 8, No. 1, pp. 2-15

BYRNE (N.J.)

Plant Patent Trouble Over Sunshine May Shoesmith

in: CIPA, 1978, Vol. 8, No. 1, pp. 90-98

Guide to Plant Breeders' Rights in Switzerland (13 pages)

published by Patentanwälte E. Blum & Co., Vorderberg 11, 8044 Zurich

HARDING (Christopher)

Plant Breeders' Rights - The First Impact of the EEC Competition Rules

in: European Intellectual Property Review, January 1979, Vol. 1, pp. 29-30

LEHERTE (Georges)

Le certificat d'obtention végétale en Belgique

in: Revue de droit intellectuel, l'Ingénieur-Conseil, 1978, Vol. 68, No. 10, pp. 287-294.

NOILHAN (Henri) & CASANOVE (Simone de)

La protection juridique des obtentions végétales

in: Gazette du Palais, du 7 septembre 1978, (Doctrine), Vol. 98, pp. 2-3

PLESNER (Mogens)

Retslig beskyttelse af biologiske produkter - her: Planter.

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rättsskydd 1-3 juni 1977 i Helsingfors

in: NIR, Nordiskt Immateriellt Rättsskydd, 1978, No. 1, pp. 87-94

 CALENDAR

1. UPOV Meetings

May 21 to 23 La Minière (France)	Technical Working Party for Agricultural Crops
June 12 to 14 Avignon (France)	Technical Working Party for Vegetables
July 17 to 19 Hanover (Federal Republic of Germany)	Technical Working Party for Ornamental Plants
September 25 to 27 Wageningen (Netherlands)	Technical Working Party for Forest Trees
October 16 and 19 Geneva	Consultative Committee
October 17 to 19 Geneva	Council
November 12 to 14 Geneva	Technical Committee
November 14 to 16 Geneva	Administrative and Legal Committee

2. Meetings of Non-Governmental Organizations

May 23 London (United Kingdom)	International Community of Breeders of Asexually Reproduced Ornamentals (CIOPORA), General Assembly
May 28 and 29 Interlaken (Switzerland)	International Federation of the Seed Trade (FIS), Interim Congress
May 30 and 31 Interlaken (Switzerland)	International Association of Plant Breeders for the Protection of Plant Varieties (ASSINSEL), Congress
November 4 to 12 Tel Aviv (Israel)	International Association of Horti- cultural Producers (AIPH), Congress

Headquarters

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