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INTERNATIONALER VERBAND
ZUM SCHUTZ VON
PFLANZENZÜCHTUNGEN

UNION INTERNATIONALE
POUR LA PROTECTION
DES OBTENTIONS VÉGÉTALES

INTERNATIONAL UNION
FOR THE PROTECTION OF
NEW PLANT VARIETIES

COUNCIL

Seventh Ordinary Session

Geneva, October 10 to 12, 1973

FEE QUESTIONS

Report by the Secretary General

1. At its second meeting, held in Geneva on June 21 and 22, 1973, the Fee Harmonization Working Party adopted a Draft Resolution to be presented to the Council for consideration and adoption.
2. The Draft Resolution is contained in the Annex to this Report.
3. The principles on which the Draft Resolution is based can be summarized as follows:
 - (i) The work performed under national legislations for the grant of rights is not done exclusively in the private interest of breeders, but also in that of the public. An example which should be mentioned is the tests for distinctness, homogeneity and stability; the results of these tests are the basis for certification, and as a whole they ensure the ordinary grower against surprises when using the seed. Another example is the checking of variety denominations, which is the basis for an orderly nomenclature system. A general reference to the public interest is contained at the beginning of the preamble to the Convention.
 - (ii) There is a need to avoid unnecessary expenditure, in particular by reducing the high costs of tests, preferably by joint trial arrangements adhered to by all member States, and, if that is not possible, by arrangements between a limited number of member States, thus avoiding repeated tests of the same variety.
4. Special attention is drawn to Recommendation No. 4 concerning payment for the use of test results from another country.
5. The Working Party discussed in detail whether or not special payment should be made for the use of the test results of another country. The advantage of not making any payment for such use is clearly the simplicity and, if the species to be tested in the different member States were evenly distributed among those States, a system of no payment would obviously be preferable. It is hardly possible, however, to devise such a balanced system, and, since moreover, it must be anticipated that new member States may wish to make use of the testing facilities already existing in the present member States, the balance is bound to be disturbed.
6. For the reason mentioned in the preceding paragraph, the Working Party decided to recommend that the authority making use of the results of tests carried out by the authority of another country should pay an amount to that authority. The amount should be equal to the test fee normally charged by the testing authority, which would mean that, if the authorities of several countries made use of the same test results, the testing authority would receive the same amount several times for the same test. This might at first glance seem unjust.
7. However, it should be kept in mind that testing costs are the major cost item in the protection systems of member States: they amount, in some countries at least, to 65% or even 85% of the total cost.
8. The test fees, on the other hand, represent a relatively small percentage of the total amount of fees charged to the breeder from the time of the application until the expiration of protection. This percentage varies according to the country and the species and, in relation to the total amount of fees (application fee, trial fee, grant fee, if applicable, and annual fees for ten years), the test fees for some important species amount to around 15% (between 10 and 20).
9. Moreover, in some countries, the fees do not cover the total cost of the protection system, but only around two-thirds.
10. Assuming that the total amount of fees received by the testing authority covers two-thirds of its total cost, and that its test fees represent 15% of the total amount of fees received for a variety (ten-year protection), which corresponds to 10% of the total average cost for the variety, the testing authority will, on the average, obtain approximately full coverage for the variety (96.7%) if the authorities of three other States make use of the test results, and will make a profit if four or more States make use of them. As to this latter possibility, it should be kept in mind that a considerable number of applications are withdrawn before the end of the testing period or are rejected, in which case the testing authority suffers a loss for which it receives no compensation.

11. For the authorities making use of the test results of another authority, the fact that they are relieved of the task of performing the tests, the cost of which is considerably higher than the fee they have to pay to the testing authority, is an important economic advantage.

12. The Working Party therefore decided to recommend that authorities making use of the test results of another authority should share the advantage with the breeders. After some discussion the Working Party recommended that the authorities in question should refrain from charging the breeders test fees.

13. It might seem peculiar that while the authorities having made use of the test results should pay test fees to the testing authority, they should not themselves charge the breeders test fees. However, the other fees they would receive from the breeders would more than compensate this expenditure, and their advantage would probably be much greater than that of the testing authorities and the breeders.

14. While recognizing that the system outlined in the preceding paragraphs gave the greatest advantage to the non-testing authorities, the Working Party thought it unwise to go further at that stage and considered that after two or three years of operation of the proposed system it could be reviewed in the light of experience.

15. The proposed system is applicable not only in the case of joint trial arrangements under Article 30(2) of the Convention, but also when, in special cases, the authority of a country without such arrangements makes use of a test report prepared by another authority.

16. In the case of joint trial arrangements under Article 30(2) of the Convention, it may occur that a breeder submits the first application for the protection of a new variety to a national authority other than the testing authority, and that the latter authority performs the test before it receives an application for the protection of the same variety. In this case, the Working Party considered that the authority having received the first application should charge the breeder the test fee and that the testing authority should refrain from charging this fee when later it received the corresponding application.

17. The Council is invited to decide upon the Draft Resolution contained in the Annex.

[Annex follows]

Draft Resolution

The Council,

Considering that--as stated in the first paragraph of the Preamble to the International Convention for the Protection of New Varieties of Plants--the grant of rights to plant breeders is not only in the private interest of breeders, but also of interest to the development of agriculture and as such in the interest of the public,

Considering that the authorities entrusted, under Article 30 of the above-mentioned Convention, with the implementation of the protection of breeders' rights must

- (1) in the interests of financial stability and budgetary control, limit their operating expenses strictly to those relating to the protection of breeders' rights, to the exclusion of all others,
- (2) endeavor to minimize the cost to be borne by the breeder for protection within the Union,

Recommends to member States:

- (1) that they harmonize the amounts of administrative fees relating to applications for and the grant of titles of protection, which together should be in the region of 500 Swiss francs;
- (2) that they take seriously into account the fact that the technical examination of the variety prior to its commercialization is carried out in the interest of the breeder as well as that of the user, that it is therefore an operation performed largely in the general interest, and that for the same reason the cost of the examination must be borne partly by the breeder and partly by the public authorities;
- (3) that, when a member State has determined the degree to which proposed variety denominations should be checked against other variety denominations and trademarks, it regard this work as being largely done in the public interest, and that this be taken into account in determining the administrative fee to be charged to the breeder;
- (4) that they enter into agreements under which the technical examination of a variety carried out in one State may be used by any other UPOV member State. Where such agreements are entered into, it would be highly desirable that they be concluded on the basis of the following uniform requirements:
 - (a) Any authority having entered into such an agreement for its own benefit shall be given a full examination report. This report shall be transmitted to it by the authority which has drawn it up.
 - (b) The authority having received these results shall refrain from any claim on the breeder with respect to a fee for a technical examination, unless the breeder has not already paid a trial fee to another country for the test of the same variety. However, the authority making use of the results can charge normal administrative and annual fees collected by virtue of the national legislation.
 - (c) The authority having received these results shall undertake to pay the authority which carried out the examination, on request, the amount of the fee payable in the country where the tests were carried out.