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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
GENEVA

ADMINISTRATIVE AND LEGAL COMMITTEE

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**TRANSFER OF MATERIAL FOR THE PURPOSES OF EXAMINATION OF
DISTINCTNESS, UNIFORMITY AND STABILITY:
PROPOSED RECOMMENDATIONS**

Document prepared by the Office of the Union

1. At its forty-sixth session, on October 21 and 22, 2002, the Administrative and Legal Committee (hereinafter referred to as the "CAJ") discussed document CAJ/46/4 on the "Issues Concerning the Use of Material Submitted for Examination of Distinctness, Uniformity and Stability." Document CAJ/46/4, while pointing out the importance of including and exchanging plant material of candidate varieties submitted by the applicant in the collection of varieties used by authorities for the examination of distinctness, uniformity and stability (DUS), identified issues which can arise when this practice cannot be freely undertaken. In particular, it considered the situation where a breeder might wish to attach conditions to the use of plant material for practices, other than the examination of the candidate variety itself, or where the breeder did not permit such practices at all.
2. The discussion of document CAJ/46/4 identified certain issues concerning the transfer of material for DUS examination which required further attention by the CAJ. In particular, the CAJ had proposed to consider the development of standard model agreements for the transfer of material from the breeder to the examination authority, and between examination authorities (see paragraph 38 of document CAJ/46/8). In that respect, the representative of the International Seed Federation (ISF) had proposed its assistance by providing a model agreement concerning the use of the material submitted by the breeder to the authority (see Annex I to document CAJ/47/4).

3. In order to facilitate discussions, the Office of the Union had prepared preliminary draft model agreements, building on the ISF proposal, entitled “Draft Model Agreement Based on the ISF Proposal on the Transfer of Material from the Breeder to the Examination Authority” (see Annex II to document CAJ/47/4) and “Draft Model Agreement on the Transfer of Material Between Examination Authorities” (see Annex III to document CAJ/47/4).

4. The CAJ, at its forty-eighth session, on October 20 and 21, 2003, after a preliminary consideration of document CAJ/47/4, decided to develop guidelines or recommendations instead of considering model agreements as contained in Annexes II and III to document CAJ/47/4. Several delegations had concerns in relation to the contents of model agreements and, in particular, in relation to the issue of responsibility. The CAJ considered that model agreements might be in conflict with provisions of domestic legislation.

5. The CAJ requested the Office of the Union to draft recommendations, based on the discussions during the meeting (see paragraphs 66 to 87 of document CAJ/48/7 Prov.) and written contributions to be provided by November 15, 2003, for the forty-ninth session of the CAJ in 2004. The Office of the Union received two written contributions on November 11 and 26, 2003, from the Delegations of the Netherlands and of Hungary, respectively.

6. It was also noted during the discussions on document CAJ/47/4 that there was a need to clarify the measures taken by authorities in order to reassure breeders. Those measures apply not only to the material required for examination purposes, but also to information or documents provided by the breeder in conformity with Article 12 of the 1991 Act of the UPOV Convention. The draft recommendations concerning information, documents or material required by the authority for examination purposes are reproduced in the Annex to this document.

7. The CAJ is invited to consider and comment on the content of this document and the proposed draft recommendations in its Annex.

[Annex follows]

ANNEX

DRAFT RECOMMENDATIONS CONCERNING INFORMATION, DOCUMENTS
OR MATERIAL FURNISHED FOR EXAMINATION PURPOSES*Draft Recommendation 1 [General principles]*

The authority should safeguard the rights of the breeder in accordance with its public service status and the necessity to obtain information and material for examination purposes and to maintain variety collections.

The applicable law, rules and practices concerning information, documents and material furnished for examination purposes should be available to the breeder. In particular, the authority should clarify which information, documents or material furnished for examination purposes are subject to:

- Publication

Information published in the Official Gazette or by other means may include:

(a) applications for, and grants of, breeders' rights and proposed and approved denominations (see Article 30(1)(iii) of the 1991 Act and Article 30(1)(c) of the 1978 Act of the UPOV Convention);

(b) other information which may be mandatory under the applicable law, for example, changes in persons (applicants, holders and procedural representatives), descriptions and photographs of the variety, licenses.

Where appropriate, the authority should specify exceptions and the basis for such exceptions. For example, it should be specified if the breeding scheme and propagation of the variety is published for some types of varieties, but exceptions are made for others (e.g. parent lines).

- Public inspection

For example, whether any person may, upon request: consult the register(s) of applications and breeders' rights; view the variety collection; or visit a DUS trial. It should specify whether this request might include consultation of:

(a) information, documents and material relating to applications;

(b) information, documents and material relating to breeders' rights already granted;

(c) the growing trials and other necessary tests.

The authority should ensure that appropriate measures are in place to avoid the unauthorized removal of information, documents or material.

Where appropriate, the authority should specify exceptions and the basis for such exceptions.

- Exchange between authorities

Authorities are required to exchange information on variety denominations, in particular the submission, registration and cancellation of denominations (see Article 20(6) of the 1991 Act and Article 13(6) of the 1978 Act of the UPOV Convention). Other exchanges between authorities which may also take place concerning examination purposes (see draft Recommendation 3), might include:

- (a) information, documents and material relating to applications;
- (b) information, documents and material relating to breeders' rights already granted.

Where appropriate, the authority should specify exceptions and the basis for such exceptions.

Draft Recommendation 2

Unless agreed otherwise by the authority (see draft Recommendation 1), it may use information, documents and material of varieties furnished for examination purposes for any of its activities concerning the examination of applications.

Draft Recommendation 3

Authorities are encouraged to exchange information, documents and material, which have been furnished for examination, in ways which will ensure the effective grant of breeders' rights. This exchange of information, documents and material may be subject to formal agreements between authorities.

Draft Recommendation 4

Unless otherwise provided by the authority and made known to the breeder, the authority should take appropriate measures to ensure that material furnished to it for the examination is not used for breeding purposes.

In cases where the authority, or any party to which it contracts examination work, are involved in breeding activities, the authority should follow the "UPOV Recommendations to ensure the independence of those DUS examination centers which have, or have links to, breeding activities."¹

[End of Annex and of document]

¹ A second draft of these draft recommendations (see document CAJ/49/3) will be subject to discussion by the CAJ at its forty-ninth session in April 2004.