



CAJ/52/4

ORIGINAL: English

DATE: August 9, 2005

INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
GENEVA

ADMINISTRATIVE AND LEGAL COMMITTEE

Fifty-Second Session
Geneva, October 24 and 25, 2005

**APPROACH FOR THE DEVELOPMENT OF INFORMATION MATERIALS
CONCERNING THE 1991 ACT OF THE UPOV CONVENTION**

Document prepared by the Office of the Union

Introduction

1. The Consultative Committee, at its sixty-second session, held in Geneva on October 24, 2001, endorsed the development of explanatory notes on the 1991 Act of the UPOV Convention (1991 Act) (documents CC/62/3 and CC/62/8). It was agreed that the purpose of those explanatory notes would not be to provide an interpretation of the provisions of the 1991 Act, but to provide guidance and examples on the implementation of relevant Articles of the 1991 Act. The draft explanatory notes were meant to provide assistance to the Office of the Union (the "Office") which was often requested to clarify to government officials, legislators, lawyers and breeders the provisions of the 1991 Act.

2. At its fiftieth session, on October 18 and 19, 2004, the Administrative and Legal Committee (CAJ) agreed to elaborate a program for the development of explanatory notes. Document CAJ/51/5, which was introduced at the fifty-first session of the CAJ, on April 7, 2005, contained a proposal for a program for the development of draft explanatory notes on the 1991 Act. The program was intended to illustrate certain priorities and to refer to relevant documents which might provide guidance for the elaboration of draft explanatory notes. Due to time constraints, the Chair concluded that it was not possible to consider the program, proposed in document CAJ/51/5, and that further discussion on this matter would take place at a future session of the CAJ.

3. Preliminary discussions at the CAJ on April 7, 2005, and comments received after the session, illustrated the need to clarify the nature and the purpose of the explanatory notes and to seek further guidance from the CAJ to identify certain provisions of the 1991 Act and the type of work that should be undertaken in order to prepare an appropriate program.

4. When the Consultative Committee, at its sixty-second session, endorsed the proposal to draft explanatory notes on the 1991 Act (document CC/62/3), that proposal was explained as follows:

“9. The purpose of the explanatory notes is to deal in a user-friendly style with the principal questions relating to the 1991 Act of the UPOV Convention.

“10. The elaboration of those notes will benefit from the information gathered by the Office of the Union, entrusted with the administration of the Convention. The Office of the Union will consult experts from Contracting Parties in order to take into account their experience in the implementation of the Convention.

“11. These explanatory notes are not meant to provide an official interpretation of the provisions of the 1991 Act. Their objective is to provide an open window to understand certain provisions and concepts, provide for their appropriate context, their evolution in relation to previous Acts and, if available, references to national legislation and case law. The explanatory notes will not have any other function than their usefulness as a source of information.”

5. The summary above was intended to clarify that the intention was to develop a set of information which would promote the efficient and effective work of the Office. The information would be used in various ways and, in particular, to form the basis for standard presentations, distance learning materials, standard replies to frequently asked questions and to provide assistance in drafting legislation. The intention of the Office is not to increase its overall workload by this exercise but recognizes that, with such materials, the work of the Office can be greatly enhanced, which has become increasingly important as the membership of UPOV continues to grow whilst resources remain limited. The Office relies heavily on the routine use of materials which have been endorsed by the UPOV bodies, e.g. document TG/1/3 “General Introduction to the Examination of Distinctness, Uniformity and Stability and the Development of Harmonized Descriptions of New Varieties of Plants” (General Introduction), and can use such materials with confidence.

6. It was also intended that the involvement of the CAJ and the Consultative Committee in the development of those basic materials would help to ensure that they would be developed in an open way, with effective peer review of the quality, and could identify, as appropriate, the value and scope of harmonized explanations.

7. On the basis of the points above, it is proposed to modify the approach to the development of information materials on the 1991 Act as set out below.

Proposed Approach for the Development of Information Materials Concerning the 1991 Act of the UPOV Convention

8. The term “information materials” should be understood to cover different forms of information, such as those used in relation to frequently asked questions, model forms, explanatory notes, distance learning materials, guidance documents or position papers.

9. The modified approach that is proposed would allow that basic information materials be prepared in an open way and with effective review by members of the Union, while reducing the workload at the CAJ sessions. The revised approach would be for the Office, according to need, to develop certain draft materials which it considered covered aspects of a straightforward nature and to circulate these to the CAJ, for comment within a specified time. In addition, in the particular case of distance-learning course materials, it is considered that tutors will provide effective peer review of such materials. In the absence of major concerns with those drafts, revisions could be made on the basis of comments made and the materials brought into regular use by the Office for the purposes explained in paragraph 5, above.

10. In cases where it is considered that there are difficult issues, where discussions would be important for the development of suitable materials, and also in cases where the drafts on seemingly straightforward materials provoked unexpected concerns when circulated for comments, it is proposed that the CAJ should be invited to discuss the matters at its sessions.

11. In cases where documents are to be prepared for discussion in the CAJ, it is further proposed that the preparation of documents might be improved. At the time when the proposal to elaborate explanatory notes was presented to the Consultative Committee, it was suggested that the Office would consult with experts from members in order to take into account their experience in the implementation of the UPOV Convention. In that regard, it is proposed to establish an advisory group to assist the CAJ in the preparation of documents concerning information materials on the 1991 Act.

12. It is proposed that the Office, in consultation with the Chairman of the CAJ, would invite experts to participate in the advisory group. The group of experts would reflect the need to ensure an appropriate range of expertise and experience and a good regional coverage while remaining at a sufficiently compact size to act as an effective advisory group. Depending on the information materials under development, the need for particular expertise might be identified by the CAJ, or by the advisory group itself.

13. It is suggested that the advisory group meet once a year in connection with the October session of the CAJ, perhaps on the Friday immediately following the ordinary session of the Council. The advisory group would report regularly to the CAJ on the progress of its work. Any meetings of the advisory group would be notified to the CAJ. Documents of the advisory group would be accessible to the CAJ. The CAJ members and observers would be able to send comments directly to the advisory group. Members of the Union would be free to participate at any meeting of the advisory group where so desired.

14. Observer organizations, in particular those representing the interests of breeders, might be invited by the advisory group to present their views on a particular provision of the 1991 Act to assist in their work. Where appropriate, those presentations might be made in conjunction with a CAJ session.

15. It is proposed that the approach for the development of information materials concerning the 1991 Act described in paragraphs 8 to 14, above, is undertaken within the approved budgetary resources. On that basis, the first step would be to identify the provisions of the 1991 Act where the need to develop suitable information materials is most urgent. The second step would be to identify matters considered to be straightforward, for which the draft materials could be circulated for comments, and those for which documents should be

prepared for discussion by the CAJ. The following Table contains a list of provisions where materials are most urgently required, together with an indication of whether it is foreseen that the input at a CAJ session would be necessary.

Article	Title	Relevant Documents	Approach
Article 5	Conditions of Protection	Annex III of C/37/21	CAJ document
Article 18	Measures Regulating Commerce		
Article 6	Novelty	CAJ/33/3; CAJ/39/3; CAJ/39/3 Add.; CAJ/40/3; CAJ/41/4; CAJ/42/5; Articles 6 and 56 of UPOV Publication No. 842(E)	Approval by circulation
Articles 7, 8, 9	Distinctness, Uniformity, Stability	General Introduction (TG/1/3) - adopted TGP/4 “Management of Variety Collections” (draft) TGP/9 “Examining Distinctness” (draft) TGP/10 “Examining Uniformity” (draft) TGP/3 “Varieties of Common Knowledge” (see paragraph 16)	TGP/4; TGP/9; TGP/10; to be submitted to CAJ by the TC (see document TC/41/5 Add.)
Article 11	Right of Priority		Approval by circulation
Article 12	Examination of the Application	General Introduction (TG/1/3) - adopted TGP documents	(see Articles 6, 7, 8, 9, and 20)
		CAJ/51/4	CAJ/52/1 agenda item 4
Article 14	Scope of the Breeder’s Right (5) <i>Essentially derived and certain other varieties</i>	Annex III of CAJ/47/8	CAJ document
Article 15	Exceptions to the Breeder’s Right	CAJ/51/3	CAJ/52/1 agenda item 3
Article 20	Variety Denomination	WG-VD/7/2; TC/41/8 UPOV/INF/12 Rev. Annex III of C/XVIII/9 Add.	CAJ document (CAJ/52/3)
Article 21	Nullity of the Breeder’s Right		Approval by circulation
Article 22	Cancellation of the Breeder’s Right		Approval by circulation
Article 30	Implementation of the Convention (1) <i>Measures of implementation</i> (i) provide for appropriate legal remedies for the effective enforcement of breeders’ rights;		Meeting on Enforcement of Plant Breeders’ Rights (October 25, 2005)

16. With regard to the development of Test Guidelines’ Procedures (TGP) documents, the Technical Committee (TC) noted at its forty-first session from April 4 to 6, 2005, that, whilst the document used as a basis for document TGP/3/1 Draft 2 “Varieties of Common Knowledge” had been adopted by the Council (document C(Extr.)/19/2 Rev. “The Notion of Breeder and Common Knowledge in the Plant Variety Protection System based upon the UPOV Convention”), the Enlarged Editorial Committee (TC-EDC) wondered whether the document went beyond what was contained in the General Introduction in terms of practical clarification in relation to varieties of common knowledge. The TC agreed that it would be better to try to elaborate a more practical and comprehensive document in respect of varieties of common knowledge in conjunction with the CAJ.

17. It was anticipated that drafts of documents TGP/4 (Management of Variety Collections) and TGP/9 (Examining Distinctness) would be submitted for consideration by the CAJ in 2006 and TGP/10 (Examining Uniformity) in 2007.

18. The CAJ is requested to provide comments on:

(a) the proposed approach to prepare information materials concerning the 1991 Act, as explained in paragraphs 8 to 10, above;

(b) the establishment of an advisory group, as proposed in paragraphs 11 to 14, above; and

(c) the proposed list of provisions presented in paragraph 15, above.

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