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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

Geneva

ENLARGED EDITORIAL COMMITTEE

Geneva, January 6 and 7, 2016

MOLECULAR TECHNIQUES

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EXECUTIVE SUMMARY

1. The purpose of this document is to report on consideration by the Technical Working Parties on the initial draft question and answer for the Frequently Asked Question concerning the situation in UPOV with regard to the use of molecular techniques for a wider audience, including the public in general.

2. The Enlarged Editorial Committee is invited to note that it is proposed to invite the Technical Committee to consider the revision proposed by the TWA, TWF and TWO to the initial draft question and answer on the situation in UPOV with regard to the use of molecular techniques in DUS examination for a wider audience, including the public in general discussed by the TC at its fifty-first session, as set out in paragraph 14 of this document and to propose any improvements to the document in that regard.

3. The structure of this document is as follows:

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4. The following abbreviations are used in this document:

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| CAJ: | Administrative and Legal Committee |
| TC: | Technical Committee |
| TC-EDC: | Enlarged Editorial Committee |
| TWA: | Technical Working Party for Agricultural Crops |
| TWC: | Technical Working Party on Automation and Computer Programs |
| TWF: | Technical Working Party for Fruit Crops |
| TWO: | Technical Working Party for Ornamental Plants and Forest Trees |
| TWV: | Technical Working Party for Vegetables |
| TWPs: | Technical Working Parties |

BACKGROUND

5. The TC, at its forty-ninth session, held in Geneva from March 18 to 20, 2013, agreed that there was a need to provide suitable information on the situation in UPOV with regard to the use of molecular techniques to a wider audience, including breeders and the public in general. That information should explain the potential advantages and disadvantages of the techniques, and the relationship between genotype and phenotype, which lay behind the situation in UPOV (see document TC/49/41 "Report on the Conclusions", paragraph 136).

6. The Consultative Committee, at its eighty-sixth session held in Geneva, on October 23 and 24, 2013, considered a series of answers to frequently asked questions. One of the questions included was “Does UPOV allow molecular techniques (DNA profiles) in the DUS examination?” In that regard the Consultative Committee agreed that the answer should be developed via the Technical Committee. The Consultative Committee agreed to consider draft answers to this and other frequently asked questions at its eighty-seventh session, held in Geneva on April 11, 2014.

7. The TC, at its fiftieth session, held in Geneva from April 7 to 9, 2014 and the CAJ, at its sixty-ninth session, held in Geneva on April 10, 2014, agreed the proposed explanation of the situation in UPOV with regard to the use of molecular techniques.

8. With regard to a wider audience, the TC agreed that the question was not framed in an appropriate way and, therefore, it would not be appropriate to seek to develop an answer to that question. The TC agreed that the question should be rephrased after clarification of the issues of interest to a wider audience (see document TC/50/36 “Report on the Conclusions”, paragraph 83 to 85).

9. The Consultative Committee, at its eighty-eighth session, held in Geneva on October 15, 2014, agreed that the draft FAQ concerning information on the situation in UPOV with regard to the use of molecular techniques for a wider audience, including the public in general, should be referred to the Technical Committee for consideration (see document C/48/19 “Report by the President on the work of the eighty-sixth session of the Consultative Committee; adoption of recommendations, if any, prepared by that Committee”, paragraph 48).

10. The TC, at its fifty-first session, held in Geneva from March 23 to 25, 2015, considered the development of a draft question and answer concerning the information on the situation in UPOV with regard to the use of molecular techniques for a wider audience, including the public in general. The TC agreed to request the TWPs, at their sessions in 2015, to consider the following initial draft discussed during the TC session (see document TC/51/39 “Report”, paragraph 181).

“Is it possible to obtain protection of a variety on the basis of its DNA-profile?

“For a variety to be protected, it needs to be clearly distinguishable from all existing varieties on the basis of characteristics that are physically expressed, e.g. plant height, time of flowering, fruit color, disease resistance etc. [Molecular techniques (DNA profiles) may be used as supporting information].

“A more detailed explanation is provided in the FAQ ‘Does UPOV allow molecular techniques (DNA profiles) in the examination of Distinctness, Uniformity and Stability (“DUS”)?’

“See also:

“What are the requirements for protecting a new plant variety?”

COMMENTS BY THE TECHNICAL WORKING PARTIES IN 2015

11. The TWV, TWC, TWA, TWF and TWO considered documents TWV/49/2, TWC/33/2, TWA/44/2, TWF/46/2 and TWO/48/2, respectively.

12. The TWV, at its forty-ninth session, held in Angers, France, from June 15 to 19, 2015, and the TWC, at its thirty-third session, held in Natal, Brazil, from June 30 to July 2, 2015, agreed with the initial draft question and answer concerning the information on the situation in UPOV with regard to the use of molecular techniques for a wider audience, including the public in general, discussed during the TC, at its fifty-first session (see documents TWV/49/32 “Report”, paragraph 15 and TWC/33/30 “Report”, paragraph 110, respectively).

13. The TWA, at its forty-fourth session, held in Obihiro, Japan from July 6 to 10, 2015, the TWF, at its forty-sixth session, held in Mpumalanga, South Africa, from August 24 to 28, 2015, and the TWO, at its forty-eighth session, held in Cambridge, United Kingdom, from September 14 to 18, 2015, agreed to propose the text of the initial draft question and answer concerning the information on the situation in UPOV with regard to the use of molecular techniques for a wider audience, including the public in general to read as follows (see documents TWA/44/23 “Report”, paragraph 70, TWF/46/29 “Report”, paragraph 72 and TWO/48/26 “Report”, paragraph 80, respectively):

“Is it possible to obtain protection of a variety on the basis of its DNA-profile?”

“A variety cannot be protected on the basis of DNA profiles. For a variety to be protected, it needs to be clearly distinguishable from all existing varieties on the basis of characteristics that are physically expressed, e.g. plant height, time of flowering, fruit color, disease resistance etc. ~~[Molecular techniques (DNA profiles) may be used as supporting information].~~”

“A more detailed explanation is provided in the FAQ ‘Does UPOV allow molecular techniques (DNA profiles) in the examination of Distinctness, Uniformity and Stability (“DUS”)?’

“See also:

“What are the requirements for protecting a new plant variety?”

PROPOSAL

14. It is proposed to invite the TC to consider the revision proposed by the TWA, TWF and TWO to the initial draft discussed by the TC at its fifty-first session as follows:

“Is it possible to obtain protection of a variety on the basis of its DNA-profile?”

“A variety cannot be protected on the basis of DNA profiles. For a variety to be protected, it needs to be clearly distinguishable from all existing varieties on the basis of characteristics that are physically expressed, e.g. plant height, time of flowering, fruit color, disease resistance etc. ~~[Molecular techniques (DNA profiles) may be used as supporting information].~~”

“A more detailed explanation is provided in the FAQ ‘Does UPOV allow molecular techniques (DNA profiles) in the examination of Distinctness, Uniformity and Stability (“DUS”)?’

“See also:

“What are the requirements for protecting a new plant variety?”

15. The TC-EDC is invited to note that it is proposed to invite the TC to consider the revision proposed by the TWA, TWF and TWO to the initial draft question and answer on the situation in UPOV with regard to the use of molecular techniques in DUS examination for a wider audience, including the public in general discussed by the TC at its fifty-first session, as set out in paragraph 14 of this document and to propose any improvements to the document in that regard.

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