



TWA/43/24

ORIGINAL: English

DATE: November 9, 2014

INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

Geneva

TECHNICAL WORKING PARTY FOR AGRICULTURAL CROPS

Forty-Third Session

Mar del Plata, Argentina, November 17 to 21, 2014

REPORT ON DEVELOPMENTS WITHIN UPOV

Document prepared by the Office of the Union

1. The Annex to this document contains a copy of a presentation "Report on Developments within UPOV" prepared by the Office of the Union for the forty-second session of the Technical Working Party for Agricultural Crops (TWA).

2. *The TWA is invited to note the "Report on Developments within UPOV", as presented in the Annex to this document.*

[Annex follows]

TECHNICAL WORKING PARTY FOR AGRICULTURAL CROPS

Forty-Third Session

REPORT ON DEVELOPMENTS IN UPOV

**Mar del Plata, Argentina,
November 17 to 21, 2014**

OVERVIEW

- Membership, Observers and Statistics
- Chairmanship of UPOV Bodies and staff
- UPOV Collection
- UPOV Denomination Search Tool
- Publications, Activities and Training
- Developments in Other International Fora

2

OVERVIEW

- Membership, Observers and Statistics
- Chairmanship of UPOV Bodies and staff
- UPOV Collection
- UPOV Denomination Search Tool
- Publications, Activities and Training
- Developments in Other International Fora

3

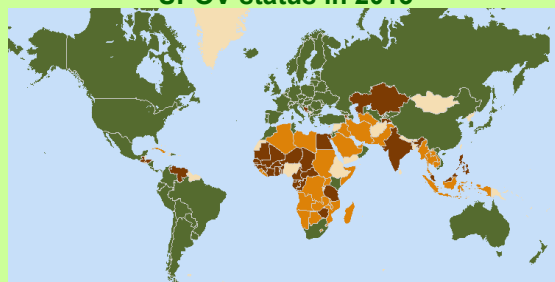
MEMBERSHIP OF UPOV**72 Members**New Member

**African Intellectual Property
Organization (OAPI)**

as of July 10, 2014



OAPI operates a plant variety protection system which covers the territory of its 17 member States: Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Comoros, Congo, Côte d'Ivoire, Equatorial Guinea, Gabon, Guinea, Guinea Bissau, Mali, Mauritania, Niger, Senegal and Togo. The headquarters of OAPI are in Yaoundé, Cameroon

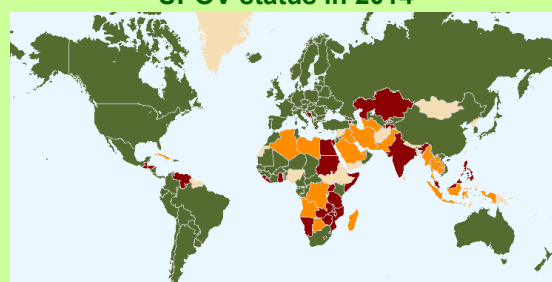
UPOV status in 2013

Members of UPOV (71)

Initiating States (16) and Organizations (1)

States (23) and Organizations (2) in contact with the UPOV Office

The boundaries shown on this map do not imply the expression of any opinion whatsoever on the part of UPOV concerning the legal status of any country or territory

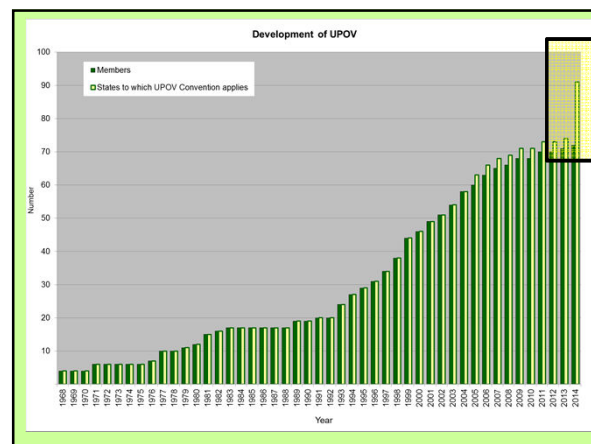
UPOV status in 2014

Members of UPOV (72)

Initiating States (16) and Organization (1)

States (24) and Organization (1) in contact with the UPOV Office

The boundaries shown on this map do not imply the expression of any opinion whatsoever on the part of UPOV concerning the legal status of any country or territory

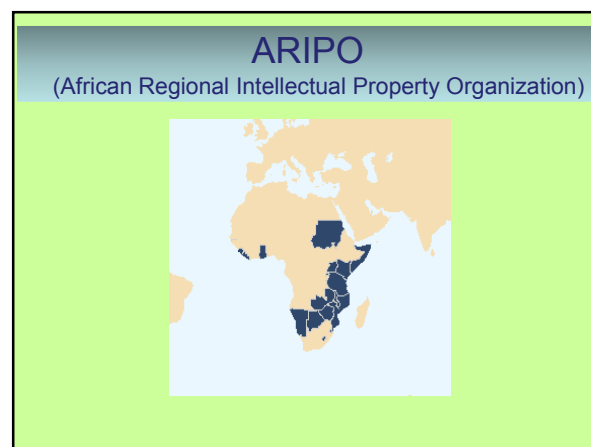


SITUATION in UPOV

Examination of Laws

	<u>Council session</u>	<u>Advice</u>
Bosnia and Herzegovina (Law)	October 24, 2013	Positive
Draft ARIPO Protocol (African Regional Intellectual Property Organization)	April 11, 2014	Positive
Plant Breeders' Rights Act of Zanzibar	October 16, 2014	Positive

9

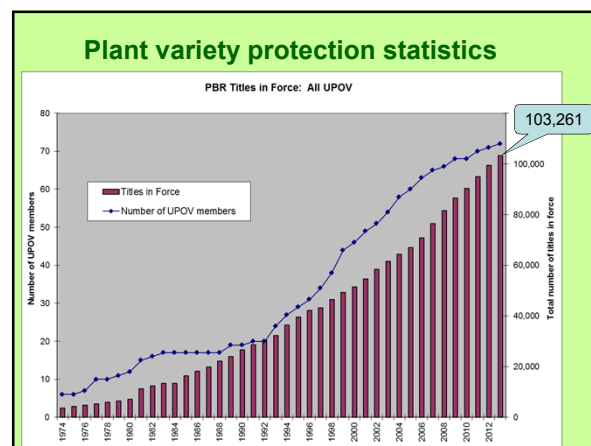


SITUATION in UPOV

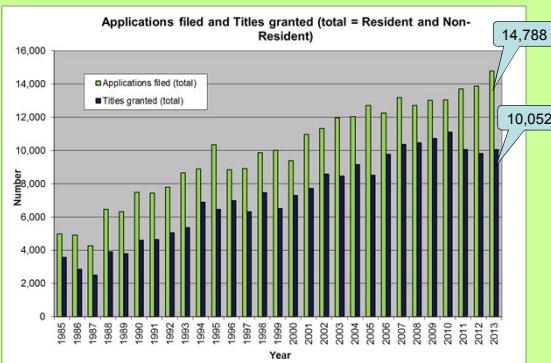
Organizations Granted Observer Status

	<u>UPOV BODIES</u>
South Centre	Council, CAJ
World Farmers' Organization (WFO)	Council, CAJ, TC

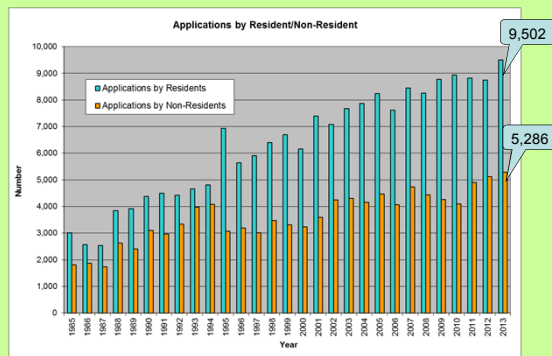
11



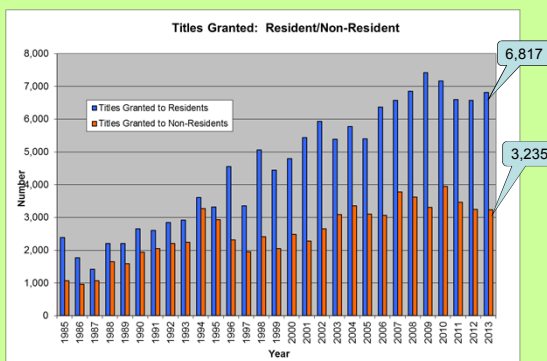
Plant variety protection statistics



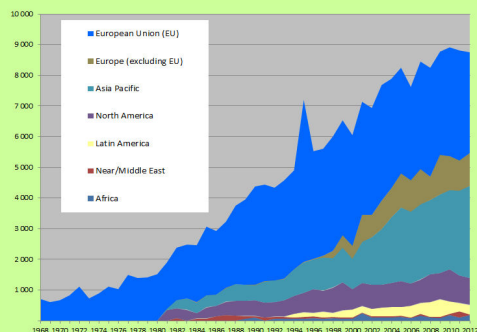
Plant variety protection statistics



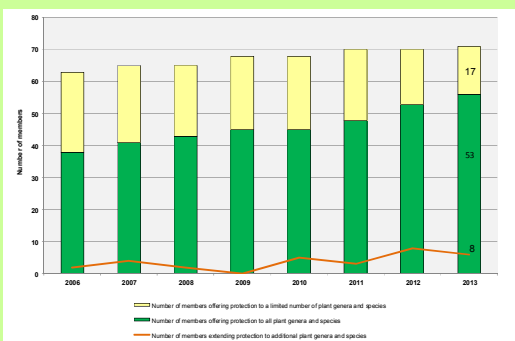
Plant variety protection statistics



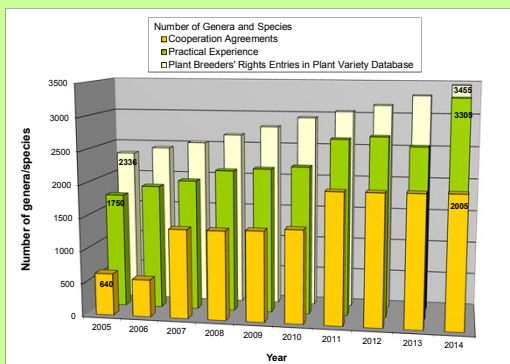
Development of Plant Variety Protection Applications for Plant Breeders' Rights



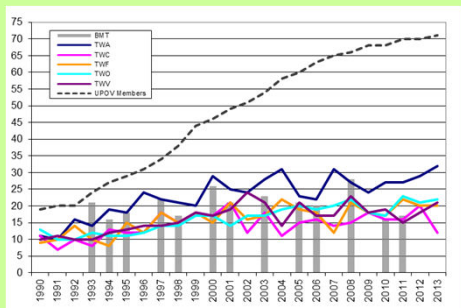
Taxa protected by the members of the Union (C/47/6)



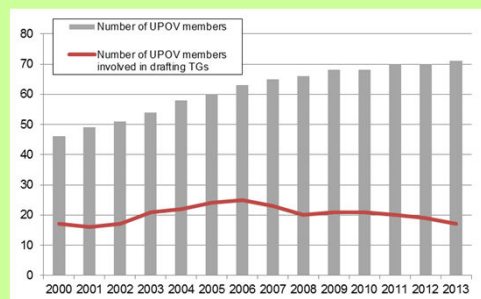
Cooperation in examination (C/47/5)



Number of Participating Members and Observer States/Organizations in the TWP



Number of members of the Union involved in drafting Test Guidelines



OVERVIEW

- Membership, Observers and Statistics
- Chairmanship of UPOV Bodies and staff
- UPOV Collection
- UPOV Denomination Search Tool
- Publications, Activities and Training
- Developments in Other International Fora

21

CHAIRMANSHIP OF UPOV BODIES ELECTIONS

for a term of three years ending in 2016



Chair, Administrative and Legal Committee

Mr. Martin Ekvad
(European Union)



Vice-Chair, Administrative and Legal Committee

Mr. James M. Onsando
(Kenya)



Chair, Technical Committee

Mr. Alejandro F. Barrientos-Priego
(Mexico)



Vice-Chair, Technical Committee

Mr. Kees van Ettekov
(Netherlands)

CHAIRMANSHIP OF UPOV BODIES ELECTIONS

for a term of three years ending in 2017



Technical Working Party for Agricultural Crops (TWA)
Mr. Tanvir Hossain (Australia)



Technical Working Party on Automation and Computer Programs (TWC)
Mr. Adrian Roberts (United Kingdom)



Technical Working Party for Fruit Crops (TWF)
Mr. Katsumi Yamaguchi (Japan)



Technical Working Party for Ornamental Plants and Forest Trees (TWO)
Mr. Kenji Numaguchi (Japan)



Technical Working Party for Vegetables (TWV)
Ms. Swenja Tams (Germany)



Chairman, Working Group on Biochemical and Molecular Techniques and DNA-Profiling in Particular (BMT)
Mr. Kees van Ettekov (Netherlands)

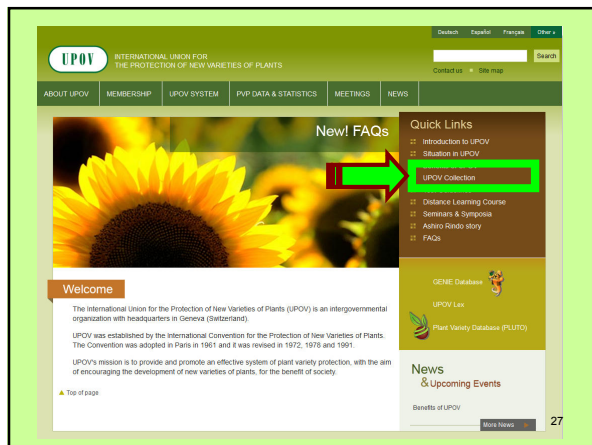




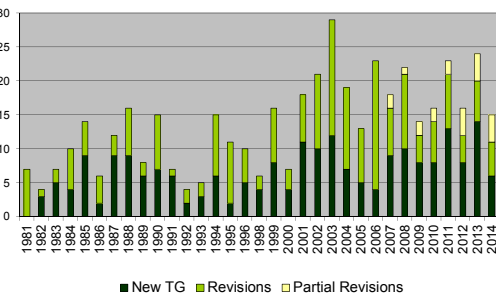
OVERVIEW

- Membership, Observers and Statistics
- Chairmanship of UPOV Bodies and staff
- UPOV Collection
- UPOV Denomination Search Tool
- Publications, Activities and Training
- Developments in Other International Fora

26



Adoption of Test Guidelines



TEST GUIDELINES ADOPTED IN 2014

NEW TEST GUIDELINES		
Drafter	TWP	English
NL	TWO	Funkia, Hosta, Plantain Lily
CN	TWO	Lilac
CN	TWF	Litchi, Lychee
NL	TWO	Brazilian-jasmine, Mandevilla
AU	TWA	Rhodesgrass
MX	TWF	Vanilla
REVISIONS OF TEST GUIDELINES		
DE	TWA	Kentucky Bluegrass
ZA	TWA	Groundnut
HU	TWV	Opium/Seed Poppy
DE	TWF	Prunus Rootstocks
NL	TWV	Chives, Asatsuki
PARTIAL REVISIONS OF TEST GUIDELINES		
FR	TWV	Pea
FR	TWF	Peach
NL/FR	TWV	Cucumber, Gherkin
NL/FR	TWV	Melon

USE OF IMAGES IN TEST GUIDELINES

- Indication of source mandatory
- Complete literature reference
- Clearance by author

TECHNICAL COMMITTEE March: 2015				
Monday	Tuesday	Wednesday	Thursday	Friday
TC	TC	TC Discussion	(a) Molecular Techniques;	
TC	TC	TC	(b) Improving the effectiveness of the TC, TWPs and Preparatory Workshops.	

INFORMATION MATERIALS ADOPTED IN 2013 AND 2014	
Document reference	Title
UPOV/INF/4/3	Financial Regulations and Rules of UPOV (Revision)
UPOV/INF/6/3	Guidance for the preparation of laws based on the 1991 Act of the UPOV Convention (Revision)
UPOV/INF/15/2	Guidance for members of UPOV on ongoing obligations and related notifications and on the provision of information to facilitate cooperation (Revision)
UPOV/INF/16/3	Exchangeable software (Revision)
UPOV/EXN/BRD/1	Explanatory Notes on the Definition of Breeder under the 1991 Act of the UPOV Convention
UPOV/EXN/HRV/1	Explanatory Notes on Acts in Respect of Harvested Material under the 1991 Act of the UPOV Convention
TGP/14/2	Glossary of Terms Used in UPOV Documents (Revision) and Supplement (Revision)
TGP/15/1	Guidance on the Use of Biochemical and Molecular Markers in the Examination of Distinctness, Uniformity and Stability (DUS)

INFORMATION MATERIALS ADOPTED IN 2014	
Document reference	Title
UPOV/INF/16/4	Exchangeable Software (Revision)
UPOV/INF/22/1	Software and Equipment Used by Members of the Union
TGP/2/2	List of Test Guidelines Adopted by UPOV (Revision)
TGP/5	Experience and Cooperation in DUS Testing: Section 10/3: Notification of Additional Characteristics and States of Expression (Revision)
TGP/7/4	Development of Test Guidelines (Revision)
TGP/8/2	Trial Design and Techniques Used in the Examination of Distinctness, Uniformity and Stability (Revision)
TGP/14/2	Glossary of Terms Used in UPOV Documents (correction of Spanish version)

INFORMATION MATERIALS UNDER DEVELOPMENT IN THE CAJ	
Title	
Explanatory Notes:	
<ul style="list-style-type: none"> Essentially Derived Varieties under the 1991 Act of the UPOV Convention (Revision) Propagation and Propagating Material (New) Acts in Respect of Harvested Material under the 1991 Act of the UPOV Convention (Revision) Cancellation of the breeder's right (Revision) Nullity of the breeder's right (Revision) Provisional protection (Revision) 	
Matters concerning:	
<ul style="list-style-type: none"> Variety descriptions 	

INFORMATION MATERIALS UNDER DEVELOPMENT IN THE CAJ	
Administrative and Legal Committee Advisory Group (CAJ-AG)	
<ul style="list-style-type: none"> The CAJ agreed in October 2014 that: All matters under consideration by the CAJ-AG should be considered by the CAJ The CAJ-AG should only be convened, on an ad hoc basis, as considered appropriate by the CAJ. 	

Document TGP/15: Guidance on the Use of Biochemical and Molecular Markers in the Examination of Distinctness, Uniformity and Stability (DUS)

Model: Characteristic-specific molecular markers

Model: Combining phenotypic and molecular distances in the management of variety collections

Seminar on Essentially Derived Varieties (EDVs)

CLOSING REMARKS

Kitisri Sukhapinda
President of the Council of UPOV

Geneva, October 22, 2013

Session I: Technical and legal aspects of essentially derived varieties and the possible impact on breeding and agriculture

- The [1991] Diplomatic Conference requested the Secretary-General of UPOV to start work immediately after the Conference on the establishment of draft standard guidelines [...]
- Key elements of the guidelines on EDV were considered at 1992 Meeting with Intergovernmental Organizations (IOM/6/2) – and provide a good starting point for future work.
- Currently, genetic distance measurements are not well correlated with phenotypic differences.
- Guidelines would need to consider the situation in different crops/species and methods of breeding, e.g. mutants.
- Two possible starting points:
 - predominant derivation (genetic conformity)
 - essential characteristics (phenotype)
- Need to consider impact on breeders, including farmer-breeders, farmers, growers and society as a whole.

Session 2: Experience in relation to essentially derived varieties

- Australian PBR law provides a **workable "bright line"** on EDV
- Japan: certain **examples** which may be considered as EDVs are provided, **but it is a matter for the courts**
- Court case experience in the Netherlands:
 - for a variety to be qualified an EDV the **differences** with the Initial Variety **should not be more than one or very few inheritable characteristics** (both in terms of genetics and phenotype)
 - breeders need clear guidance**
- Court case experience in Israel:
 - if there exists a genetic or a morphological **conformity** between the two varieties, the **assumption** is that the **defendant** actually **used the original variety** to produce the EDV: this is only prima facie evidence, by which the **burden of proof is shifted to the defendant**, who now has to explain the suspicious conformity

Session 3: Possible role of future UPOV guidance on essentially derived varieties

- "**Soft law**" is an option, e.g. Guidelines.
- Guidelines that **embrace a broad spectrum of stakeholders and interests** may be more credible and persuasive for the Courts.
- The **international standing of UPOV** may help in the use of guidelines by Courts.
- Alternative Dispute Resolution (ADR)** mechanisms - Mediation, Arbitration and/or Expert Determination - **could be useful tools for EDV**
- ISF and WIPO provide ADR options
- Publication of an anonymized summary of ADR outcomes** could offer guidance and could lead to harmonization

OVERVIEW

- Membership, Observers and Statistics
- Chairmanship of UPOV Bodies and staff
- UPOV Collection
- UPOV Denomination Search Tool
- Publications, Activities and Training
- Developments in Other International Fora

Working Group for the Development of a UPOV Denomination Similarity Search Tool (WG-DST)

Aim: to review the search types currently available in the denomination search tab of the PLUTO database, particularly the Similarity factor (CPVO search tool), and to review search types in use in other situations (e.g. in relation to trademarks) that might provide an alternative basis for a UPOV similarity search tool

Working Group for the Development of a UPOV Denomination Similarity Search Tool (WG-DST)

Test Study

Object the Study

To seek a search tool to identify those denominations that are similar to existing denominations to the extent that they would require further, individual consideration.

To be most effective, the tool should eliminate as many different denominations as possible without "missing" any denominations that would not be considered to be (sufficiently) different from any existing denomination.

Steps for the Study

1. Select test denominations
2. Create a very large dataset of denominations
3. Invite lists of similar denominations
4. Collect the lists and run a program to identify an algorithm(s)
5. Identify the algorithm(s) with the best match

Example

>test denomination: **Aladin**
>search tool: tools in PLUTO database

(Following example is only on genus class Rosa L. as a very large dataset is not yet available)

Similarity Factor (CPVO tool)

ALADIN	Alpine Glow
LAVDIAN	ALPINE SUNSET
Lavdian	Alpine
LANDIA	Claudia
Dalida	Baidan
Lady Ann Kidwell	Always A Lady
Valdia	Alexan
Mary Adain	Alessia
SALIDA	Alesia, etc.
Elaine	(Total 121)

Fuzzy

ALADIN	Alpine Glow
LAVDIAN	ALPINE SUNSET
Lavdian	Alpine
LANDIA	Claudia
Dalida	Baidan
Lady Ann Kidwell	Always A Lady
Valdia	Alexan
Mary Adain	Alessia
SALIDA	Alesia, etc. (Total 121)
Elaine	(note: all of them are equal to "Similarity Factor")

Phonetic

ALADIN
Wildawn
Doctor Eldon Lyle (Total 3)

Contains, Starts, Ends

ALADIN (Total 1 each)

3. Invite lists of similar denominations

- Add other similar denominations that are not in the data set

e.g. (proposed by CPVO)

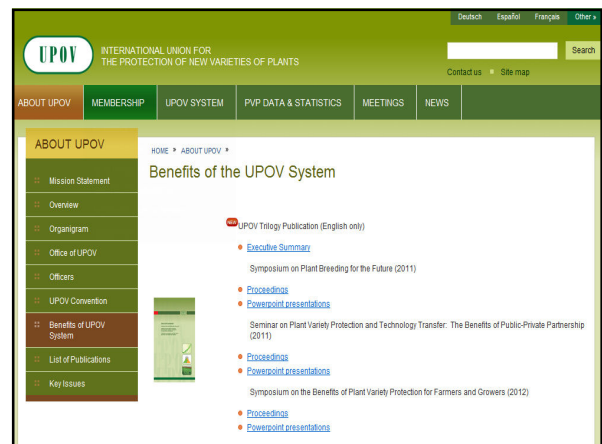
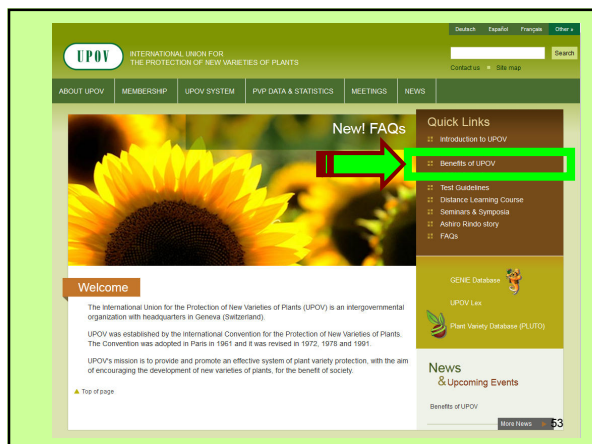
List of Similar denominations for "Aladin"

Alladin, Aladdin, Alladdin, Yellow Alladin, Aladyn, Eladin, Alydin, Aladim, Meialadino, Nachtaladin, etc.

OVERVIEW

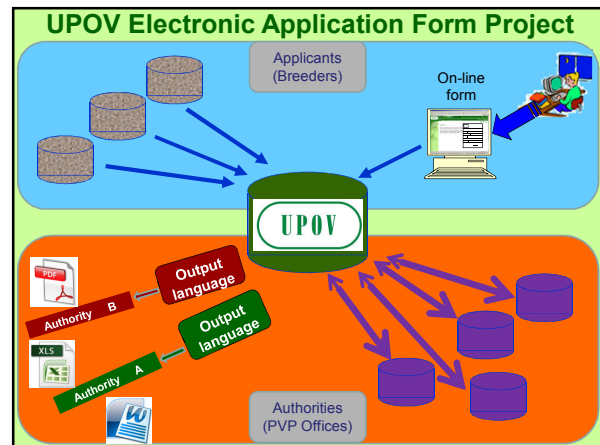
- Membership, Observers and Statistics
- Chairmanship of UPOV Bodies and staff
- UPOV Collection
- UPOV Denomination Search Tool
- Publications, Activities and Training
- Developments in Other International Fora

52



Benefits of the UPOV System: UPOV Trilogy Publication

English, French and Spanish available!



Prototype Electronic Application Form

Participating UPOV members	Partners
<ul style="list-style-type: none"> • Argentina • Australia • Brazil • Canada • Colombia • Dominican Republic • Ecuador • European Union • France • Germany 	<ul style="list-style-type: none"> • Japan • Mexico • Netherlands • New Zealand • Paraguay • Republic of Korea • Switzerland • United States of America • Viet Nam

↓

• (China)

≥ 60% of the total applications
within UPOV members

61

Prototype Electronic Application Form

Participating UPOV members

The boundaries shown on this map do not imply the expression of any opinion whatsoever on the part of UPOV concerning the legal status of any country or territory.

International Filing System,

- The Consultative Committee considered the written contribution by ISF, CIOPORA and CropLife International, in conjunction with their joint presentation at the eighty-eighth session of the Consultative Committee.
- The Consultative Committee requested the Office of the Union to prepare a document to clarify the issues raised and possible ways forward with regard to an international system of cooperation, for consideration by the Consultative Committee at its eighty-ninth session, in March 2015.

New! (2015)

DL-205

DL-305A: Administration of Plant Breeders' Rights

DL-305B: DUS Examination

64

DL-205

Introduction to the UPOV System of Plant Variety Protection under the UPOV Convention

Session I

Study period: May to June, 2015
Registration: February to March, 2015

Session II:

Study period: October to November, 2015
Registration period: July to September, 2015

Registrations can be made in three different categories:

Category 1:
Government officials of members of the Union nominated by the relevant representative to the UPOV Council
No fee

Category 2:
Officials of observer States / intergovernmental organizations nominated by the relevant representative to the UPOV Council
(One non-fee paying student per State / intergovernmental organization;
Additional students: CHF1,000 per student)

Category 3:
Others
Fee: CHF1,000

DL-305

Examination of applications for plant breeders' rights

SECTION I ADMINISTRATION OF PLANT BREEDERS' RIGHTS

Module 1: The Plant Breeder's Right's Office
Module 2: Administration of applications

SECTION II ENTITLEMENT

Module 3: Entitlement to file an application

SECTION III NOVELTY

Module 4: Examining Novelty

SECTION IV DUS EXAMINATION

Module 5: Introduction to the DUS examination
Module 6: Variety collections
Module 7: Examining Distinctness
Module 8: Examining Uniformity
Module 9: Examining Stability
Module 10: Trial Design and Data Analysis
Module 11: Approaches and cooperation in DUS examination

SECTION V VARIETY DENOMINATION

Module 12: Examining the variety denomination

SECTION VI PUBLICATION OF INFORMATION AND DECISIONS

Module 13: Information to be published
Module 14: Proposed decisions and Objections
Module 15: Decisions
Module 16: Situations which may arise after the grant of PBR

DL-305A "Administration of Plant Breeders' Rights"

DL-305B "DUS Examination"

Available in 2015 in English, French and Spanish

66

DL-305-1

Administration of Plant Breeders' Rights

Section I "Operating a Plant Breeders' Rights Office"

- Module 1: The Plant Breeders' Rights Office
- Module 2: Administration of applications
- Module 3: Entitlement to a breeder's right
- Module 4: Information to be published

Section II "Examining Novelty"

- Module 5: Examining Novelty

Section III "Examining the Variety Denomination"

- Module 6: Examining the variety denomination

Section IV "DUS Examination"

- Module 7: Introduction to the DUS examination
- Module 8: Cooperation in DUS testing

DL-305-2

DUS Examination

Module 1: Introduction to the DUS examination

Module 2: Variety collections

Module 3: Examining Distinctness

Module 4: Examining Uniformity

Module 5: Examining Stability

Module 6: Conducting the DUS Trial

Module 7: Cooperation in DUS testing

OVERVIEW

- Membership, Observers and Statistics
- Chairmanship of UPOV Bodies and staff
- UPOV Collection
- UPOV Denomination Search Tool
- Publications, Activities and Training
- Developments in Other International Fora

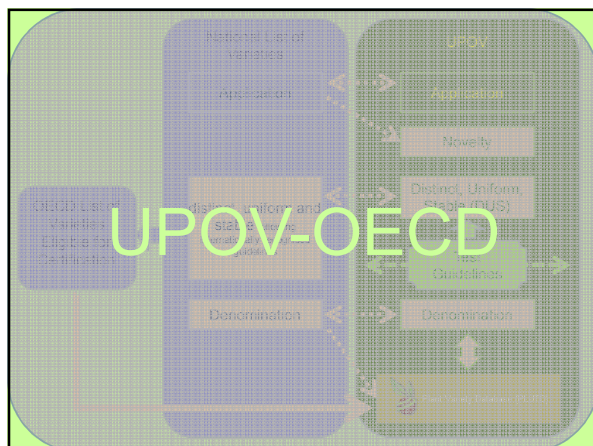


69

OECD-UPOV-ISTA

Working Group on Biochemical and Molecular Techniques, and DNA-Profiling in Particular (BMT)

To seek to organize a joint meeting of UPOV
BMT in 2014 with ISO, ISTA and OECD
and including breeders



WORKING GROUP ON BIOCHEMICAL AND MOLECULAR TECHNIQUES, AND DNA-PROFILING IN PARTICULAR (BMT)				
Fourth Session, Seoul, Republic of Korea, November 10 to 13, 2014 (Preparatory Workshop, November 10-11, 2014; Last session, November 12, 2014)				
Sunday, Nov. 9	Monday, Nov. 10	Tuesday, Nov. 11	Wednesday, Nov. 12	Thursday, Nov. 13
08:00	08:00	08:00	08:00	08:00
	Item 1. Opening of the session Item 2. Adoption of the agenda Item 3. Reports on developments in UPOV Item 4. Short presentations by participants	09:00 Item 1. Welcome and opening 09:10 Item 2. Introduction to the OECD Seed Schemes and the situation with regard to molecular techniques 09:30 Item 3. Introduction to UPOV and the situation with regard to molecular techniques Item 4. Short presentation + 20min Q&A session Item 5. Short presentation + 20min Q&A session	09:00 Item 1. Welcome and opening 09:10 Item 2. Introduction to the OECD Seed Schemes and the situation with regard to molecular techniques 09:30 Item 3. Introduction to UPOV and the situation with regard to molecular techniques Item 4. Short presentation + 20min Q&A session Item 5. Short presentation + 20min Q&A session	Item 6. Report of work on molecular techniques on a crop-by-crop basis (ISTA)
10:30	COFFEE	COFFEE	COFFEE	COFFEE
11:00	Item 5. Report of work on molecular techniques on a crop-by-crop basis (a) vegetatively propagated crops (b) self-pollinated crops (c) cross-pollinated crops	Item 6. Report of work on molecular techniques on a crop-by-crop basis (ISTA)	11:00 Item 4. Introduction to ISTA and the situation with regard to molecular techniques 11:40 Item 5. Existing areas of cooperation between OECD, UPOV and ISTA	Item 7. Report of the session Item 8. Closing of the session
12:30	LUNCH	LUNCH	LUNCH	SESSIONS END
14:00	PREPARATORY WORKSHOP Item 9. Report of work on molecular techniques on a crop-by-crop basis (ISTA)	Item 6. Report of work on molecular techniques on a crop-by-crop basis (ISTA)	14:00 Item 6. Opportunities for cooperation between OECD, UPOV and ISTA with regard to molecular techniques (discussions) 14:20 Item 7. Closing Item 7. Final discussion (discussions)	
14:30		COFFEE	COFFEE	
15:30		COFFEE	COFFEE	
16:00		COFFEE	COFFEE	
		Item 9. Report of work on molecular techniques on a crop-by-crop basis (ISTA)	Item 9. Report of work on molecular techniques on a crop-by-crop basis (ISTA)	

OECD Scheme for the Certification of Forest Reproductive Material Moving in International Trade

- Technical Working Group Meeting (April, 2014)
 - Presentation on the use of the Test Guidelines for Poplar (TG/21/7, 1981) and the protection of Clones in France
- Annual Meeting (September, 2014)
 - Inclusion of a reference to the definition of "variety" under the UPOV Convention in the Rules of the Scheme.

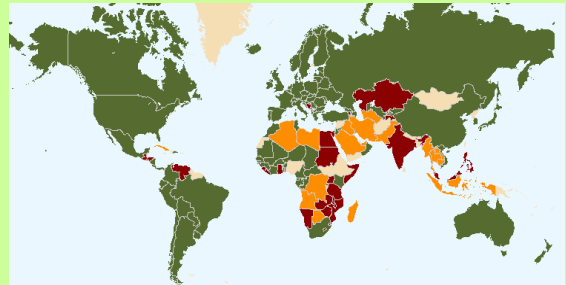
International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA)

- **ITPGRFA Platform for the Co-Development and Transfer of Technologies**
- **Public-Private Partnerships in Pre-breeding**
- **Interrelations between ITPGRFA, UPOV and WIPO**

SUMMARY

75

SUMMARY



[End of Annex and of document]