

1st Report UPOV Expert Group

on article 14 (1) & (2) UPOV 1991

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Article 14(2) UPOV 1991

[Acts in respect of the harvested material] Subject to Articles 15 and 16, the acts referred to in items (i) to (vii) of paragraph (1)(a) in respect of harvested material, including entire plants and parts of plants, obtained through the unauthorized use of propagating material of the protected variety shall require the authorization of the breeder, unless the breeder has had reasonable opportunity to exercise his right in relation to the said propagating material.

In order to explain and to understand the meaning and the scope of article 14, it is important to agree on the definition of its concepts.

The concepts of article 14(2)

- ‘propagating material’ vs. ‘harvested material’
- ‘acts of harvesting’
- ‘authorisation’ and ‘unauthorised use’
- ‘exercise his right’ vs ‘infringement’
- ‘reasonable opportunity’

How can these concepts be clarified and used in the interpretation of article 14 ?

Propagating material vs. Harvested material

In the first draft of the revision of the UPOV 1978 Convention, it was proposed that all material of the variety would have the same scope of protection.

But, during the course of the deliberations this was amended by the so called “Cascade”:

“Where the owner of the breeder's right is unable to exercise his right on the propagating material, his right shall extend to the harvested material of the variety”

As a consequence the varietal material was split in two categories: Propagating and Harvested material.

Besides the definitions in national laws, would a UPOV definition for these categories be necessary?

Authorisation vs Unauthorised use

Article 14(2):

Harvested material obtained through the unauthorised use of propagating material of the protected variety requires the authorisation of the breeder, unless (...)

1. Is the “(un)authorised use” linked with the protected status of the variety?
2. Can a breeder authorise someone to perform acts in a territory where the variety is not protected?
3. Is the use of propagation material of a variety, not protected in a particular territory, unauthorised with regard to its protection in another territory?

Exercise his right vs infringement

Is the exercise of the breeder's right limited to conclude license contracts, fees etc., or does it include the 'duty' of enforcement of his right in case of a possible infringement noticed by the breeder?

Reasonable opportunity

The designation “reasonable” opportunity was introduced by the “Working Group on article 14(a) and (b)” during the Diplomatic Conference. But with no further reference.

How must “reasonable” be defined and understood in the domain of IPR?

Thank you for your attention

Any questions?