



# EU legislation and experiences on the enforcement of PVR 植物品种权执法：欧盟立法与经验

## IP Key China Plant Variety Rights Enforcement Seminar 植物品种权执法研讨会

**Francesco Mattina, Vice-President**

[mattina@cpvo.europa.eu](mailto:mattina@cpvo.europa.eu)

CPVO

30 November – 2 December 2020

**Francesco Mattina 副局长**

[mattina@cpvo.europa.eu](mailto:mattina@cpvo.europa.eu)

欧盟植物品种局

2020年11月30日-12月2日

# Outline 目录

1. The CPVO 欧盟植物品种局
2. EU legislative framework 欧盟立法框架
3. PVR Protection discipline 植物品种权保护原则
4. PVR Enforcement discipline 植物品种权执法原则
5. The Role of the CPVO 欧盟植物品种局的作用
6. Experiences in different EU Member States 欧盟成员国的经验
7. Examples and Case-law 实例与判例

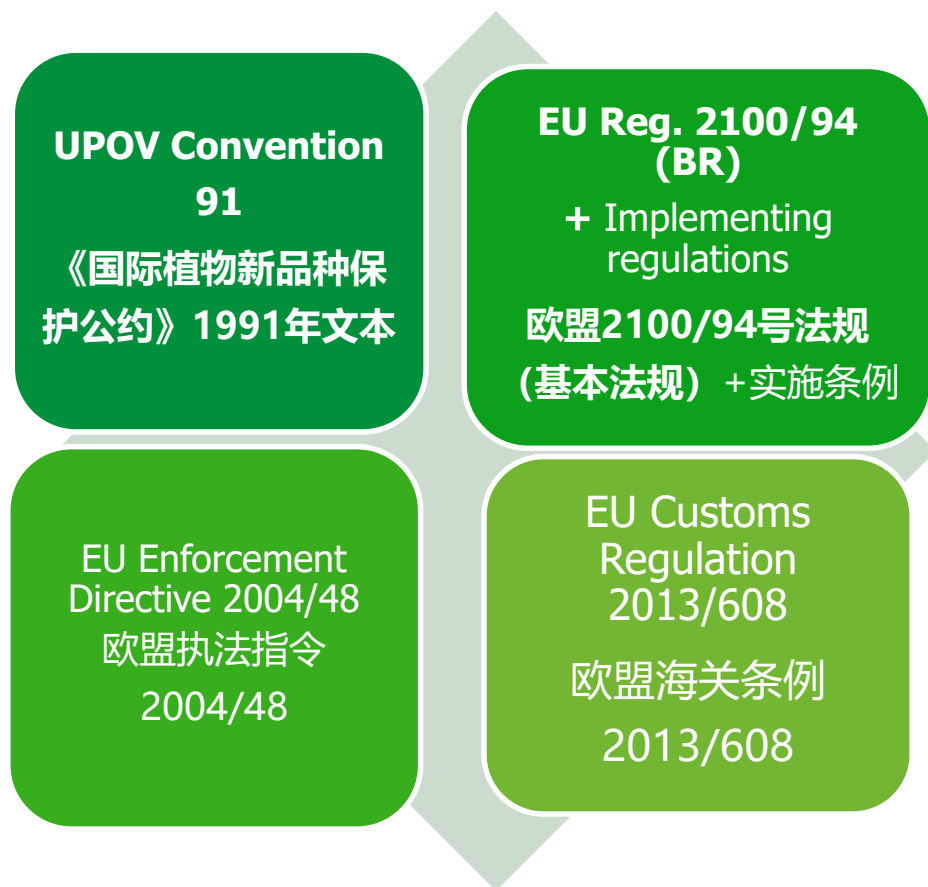


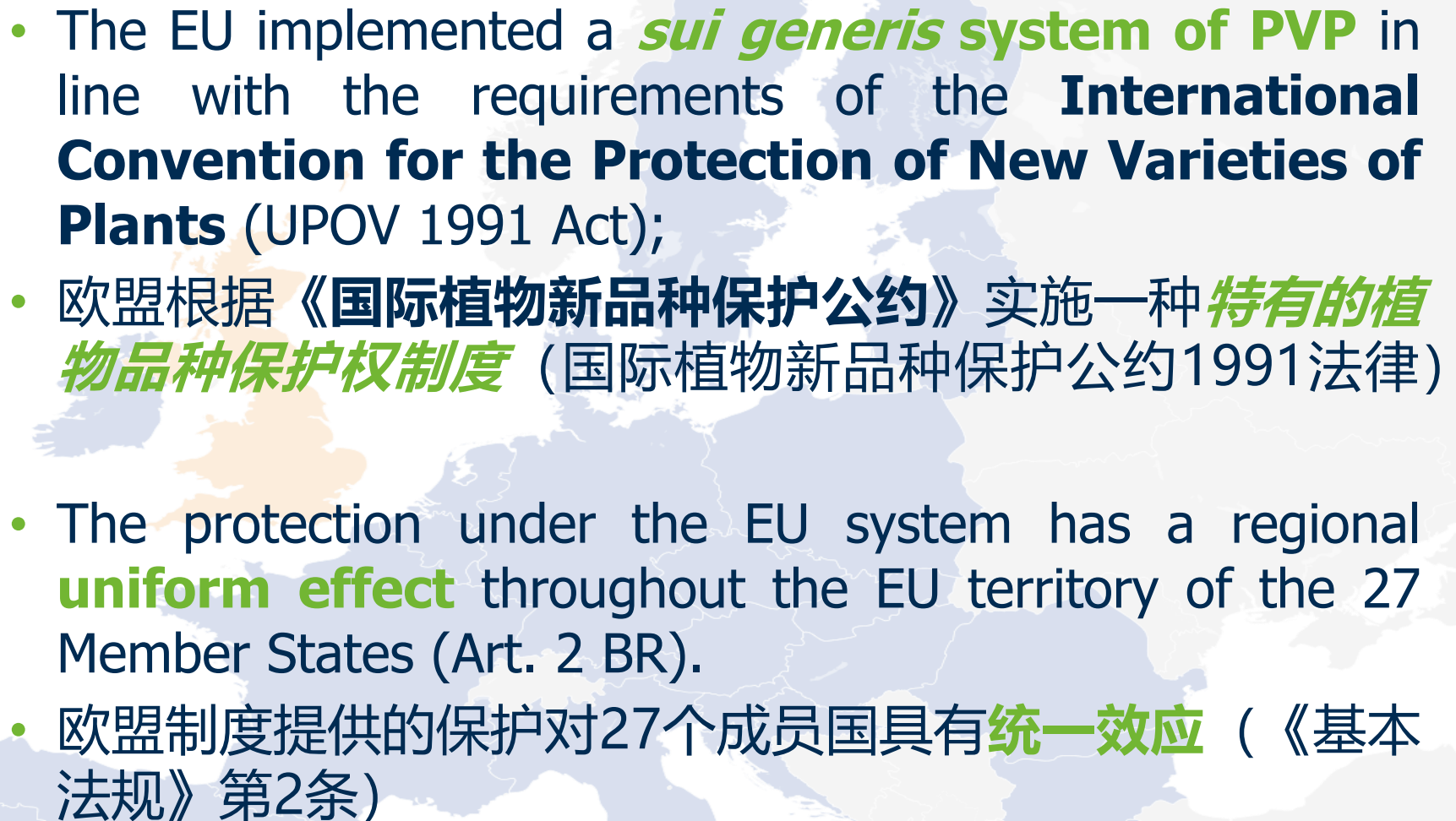
# 1. The Community Plant Variety Office (CPVO) 欧盟植物品种局 (CPVO)

- The CPVR system is run by the **Community Plant Variety Office** (CPVO), Agency of the EU operational since 1995 and currently based in Angers, France.
- 欧盟植物品种权制度归口**欧盟植物品种局** (CPVO) 管理, CPVO 为欧盟机构, 1995年开始运作, 目前办公地点在法国昂热。
- **Self-financed.**
- **经费自筹。**
- **Directed** by the President and the Vice-President, elected by the Council of the EU.
- **领导**为由欧盟理事会选举任命的局长和副局长



## 2. The EU legislative framework 欧盟立法框架



- 
- The EU implemented a ***sui generis* system of PVP** in line with the requirements of the **International Convention for the Protection of New Varieties of Plants** (UPOV 1991 Act);
  - 欧盟根据《**国际植物新品种保护公约**》实施一种**特有的植物品种保护权制度**（国际植物新品种保护公约1991法律）
  - The protection under the EU system has a regional **uniform effect** throughout the EU territory of the 27 Member States (Art. 2 BR).
  - 欧盟制度提供的保护对27个成员国具有**统一效应**（《基本法规》第2条）

# Coexistence of national and EU protection 国家保护与欧盟保护共存

The Applicant can decide to OPT for National or European Protection (Art. 3 BR) 申请人可选择国家级或欧洲级保护 (《基本法规》第3条)

There is no possibility of double protection (Art. 92 BR) 无法享受双重保护 (《基本法规》第92条)  
→ Previous granted national rights cannot be enforced during EU protection; 不能根据欧盟保护制度执行之前获批的国家级权利





### 3. PVR Protection discipline 植物品种权保护原则

#### The Application procedure: Requirements 申请程序：要求



**Distinctness**  
特异性

**Uniformity**  
一致性

**Stability**  
稳定性



**Novelty**  
新颖性



Granny Smith

**Variety**  
**Denomination**  
品种命名



# Scope of the Community Plant variety Rights

## 欧盟植物品种权的范围

- The authorization of the holder\* is required in respect of the following acts [Art. 13(2) BR]: 如下行为需得到权利人\*的授权【《基本法规》第13(2)条】
  - a) Production or reproduction (multiplication) 生产或繁殖
  - b) Conditioning for the purpose of propagation 为繁殖而进行的种子处理
  - c) Offering for sale, selling or other marketing 进行销售、营销
  - d) Exporting from/Importing to the European Union 从欧盟出口/进口到欧盟
  - e) Stocking for any of the above mentioned purposes 用于上述目的的原种制作

\*The authorization may be subject to conditions/limitations 可根据条件或限制情况决定授权

- The scope of CPVRs includes: 欧盟植物品种权的范围包括:
  - Variety constituents (propagating material) 品种组分 (繁殖材料)
  - Harvested material 收获材料
  - No implementation of the optional extension to products obtained directly from material of the protected variety 不得将此范围选择性地扩大到直接从受保护品种材料获取的产品





# Exceptions to Community Plant Variety Rights

## 欧盟植物品种权的例外

The main exceptions to PVRs, restricting the breeder's rights – are (Art. 15 BR):  
植物品种权的主要例外（限制育种者权利）（《基本法规》第15条）：

- a) Acts done privately for non-commercial purposes 民间非商业性活动
- b) Acts done for experimental purposes 试验性活动
- c) Acts done for the purpose of breeding, or discovering and developing new varieties (the **Breeder's exemption**) 培育或发现和开发新品种的活动（**育种者豁免**）

The agricultural exemption (**Farm-saved seed**) (Art. 14 BR): 农业豁免（**农场留种**）（《基本法规》第14条）

Covering varieties belonging to a limited list of 21 agricultural crops in well-defined circumstances and classified into four categories: 涵盖在得到清晰界定时，属于21种农作物有限清单内的品种，分为四类：

- fodder plants, cereals, potatoes, oil and fibre plants 饲料植物、谷类、马铃薯、油料和纤维植物
- Small farmers shall not be required to pay any remuneration to the holder 小农户无需向权利人支付报酬
- Other farmers shall be required to pay an equitable remuneration to the holder 其他类型的农户必须向权利人支付公平报酬



# 4. PVR Enforcement discipline 植物品种权执法原则

## A. Basic Regulation 基本法规

- Infringement of PVRs - Art. 94 (1a)
- 植物品种权侵权 — 第94(1a)条
- Wrongful use of denomination - Art. 94 (1b) and (1c)
- 命名错误 — 第94(1b)和(1c)条
- Remedies 救济:
- Compensation (damages) 赔偿 (损害赔偿金)
- Order injunction (cease and desist) 禁止令 (停止警告)
- Other provisions 其他规定:
- Reasonable compensation for acts carried out during provisional protection period - Art. 95
- 为临时保护期内实施的行为做出合理补偿 — 第95条
- Claims on entitlement - Art. 98 权属主张 — 第98条
- Acknowledgement (EDV) - Art. 99 确认 (实质性衍生品种) — 第99条



- The right holders enforce their rights before **National Courts in the MS**
- 权利人在**成员国国家级法院**执行自有权利
- National procedural law (civil and criminal) apply
- 适用国家诉讼程序法（民事和刑事）
- National courts competent to hear infringement cases (Art. 101 BR):
- 国家级主管法院审理侵权案件（《基本法规》第101条）：
  - Domicile of defendant 被告住所
  - Domicile of plaintiff 原告住所
  - Where the Office is located 办公室所在地
  - Where the damage occurred 损害发生地



## B. Enforcement Directive 执法指令

- **Directive 2004/48/EC** on the enforcement of Intellectual Property Rights
- 关于知识产权执法的**2004/48/EC指令**
- Harmonisation of: 协调如下内容:
  - civil and administrative law measures 民事和行政法律措施;
  - procedures and 程序;
  - Remedies 救济。
- No effects on national criminal procedures or penalties on IPR infringement:
- 不影响知识产权侵权的国家级刑事程序或处罚:
  - Proposal for Directive harmonizing criminal law with respect to IP infringements, on 26 April 2006
  - 关于协调知识产权侵权相关刑事程序指令的提议 (2006年4月26日)
  - The legislator has hesitated to adopt the proposal (EP and the Council)
  - 立法机构对采纳该提议有所保留 (欧洲议会、欧盟理事会)



# Contents 内容

Contains provisions *inter alia* on 包含如下条款:

- General obligations – Art. 3  
一般义务 — 第3条
- Evidence and preserving evidence – Arts 6, 7  
证据及保全证据 — 第6条、第7条
- Right of information - Art. 8  
信息权 — 第8条
- Provisional and precautionary measures – Art. 9  
临时及预防措施 — 第9条
- Corrective measures – Art. 10  
纠正措施 — 第10条
- Injunctions – Article 11  
禁止令 — 第11条
- Damages and Legal costs – Arts 13, 14  
损害赔偿金及法律费用 — 第13条、第14条
- Publication of judicial decisions – Art. 15  
刊登司法裁决 — 第15条



# Measures to preserve evidence: discovery

## 证据保全措施：开示

- **Judicial description order**, with or without the taking of **samples**
  - **司法描述命令**，有或者无**取样**
  - Physical **seizure** of: 物证**扣押**:
    - the infringing goods **侵权商品**
    - the materials and documents used in the production and/or distribution of these goods (accounting, financial and commercial docs.) **生产和/或分销所用的材料及文件（会计、财务和商务文件）**
- ! Those measures 这些措施:
- shall be taken, if necessary, **without** the **other party** having been **heard**, in particular where any delay is likely to cause **irreparable harm** 必要时，即使**尚未**听取**对方陈述时**也要予以实施，特别是在延误可能造成**不可挽回伤害**的情形下
  - may be subject to the lodging by the title holder of **adequate security** or an equivalent assurance intended to ensure compensation for any prejudice suffered by the defendant.
  - 可能需要权利人提供**充分担保**或者同等保证，以确保补偿被告所遭受的损害





# Right of information 信息权

The competent judicial Authorities may order that **information on the origin and distribution networks** of the goods or services which infringe an IPR be **provided by the infringer** and/or any **other person** who: 主管司法机关可能会命令侵权人和/或满足如下条件的其他人提供侵权商品或服务的原产地和分销网络信息：

- a) was found in possession of the infringing goods on a commercial scale; 以商业规模占用侵权商品；
- b) was found to be using the infringing services on a commercial scale; 以商业规模使用侵权服务；
- c) was found to be providing on a commercial scale services used in infringing activities; 以商业规模提供侵权活动所用的服务；



# Provisional and precautionary measures

## 临时及预防措施

An **interlocutory injunction** intended to: **临时禁止令**的目的:

- **prevent** any **imminent infringement** of an IPR or; **预防知识产权即发侵权**; 或者
- **forbid** provisionally the **continuation** of the alleged infringements or; **临时禁止**被诉侵权行为的**继续**; 或者
- to make such **continuation subject to** the lodging of **guarantees** intended to ensure the compensation of the right-holder; **要求提供旨在确保权利人得到补偿的担保**, 才能**继续**相关行为;

An **order of seizure or delivery up** of the goods suspected of infringing an IPR so as to **prevent their entry into or movement** within the channels of commerce

对疑似侵权商品发出**扣押或上缴令**, **防止商品进入商业渠道**, 或在商业渠道内**流通**



# Judicial decision on the merits 根据案情作出司法裁决

## Corrective measures 纠正措施:

- a) **Recall** from the channels of commerce; 从商业渠道召回;
- b) **Definitive removal** from the channels of commerce; 从商业渠道彻底清除;
- c) **Destruction** of infringing goods; 销毁侵权商品;

**! Proportionality** between the seriousness of the infringement and the remedies ordered as well as the interests of third parties 侵权行为的严重性与司法命令的救济以及第三方权益之间要遵守**相称原则**

- **Injunctions** aimed at prohibiting the continuation of the infringement
- **禁止令**旨在禁止侵权行为的继续
- **Damages** taking into account all the relevant consequences:
- 确定**损害赔偿金**要考虑所有相应后果:
  - any **loss and lost profit** of the right-holder 权利人的**损失和利润损失**
  - any unfair profit of the infringer 侵权人的**不正当获利**
  - the **moral prejudice** caused to the right-holder 对权利人造成的**精神损害**
  - **Publication** of the judgment on specialised magazines/newspapers 在专门期刊/报纸上刊登判决



# 5. The role of the CPVO 欧洲植物品种局的作用

- The role of the Office is, and should be, limited.  
作用有限且应当有限。
- An active role could jeopardize the impartiality of the Office.  
主动介入可能有损其公正性。


## Art. 91 BR 《基本法规》第91条

- The CPVO, Examination Offices, Courts and Authorities should give assistance to each other by:
- 欧洲植物品种局、检验办公室、法院和主管机关应该通过下列方式，互相协助：
  - Communicating information 传达信息
  - Provide access to administrative files 提供管理资料
  - Provide samples of protected varieties 提供受保护品种的样品
  - Allow access to growing facilities at testing sites. 允许进入测试地点及其种植设施



## 6. Experiences in different EU Member States 欧盟成员国的经验





Training of law enforcement agencies, judges and prosecutors  
培训执法机构、法官和检察官；

Training for police investigators and for customs officials  
培训警方调查员和海关人员

Need for inter-agency cooperation  
需要机构间合作；

Cooperation with the private sector is a cornerstone of the success of any training  
与社会合作是培训成功的基石





# Example of Spain 西班牙实例



Training programs to **SEPRONA** on infringement of Plant Variety Rights. SEPRONA is a specialised police dealing with ocular inspection of the fields to collect samples and subsequent technical genetic examinations

**自然保护署**植物品种权侵权培训计划。自然保护署是一支专业警察队伍，处理现场目测、收集样品，并进行后续技术性基因检验



# Examples: Legal proceedings in Spain (source: Geslive)

## 实例：西班牙法律程序（资料来源：Geslive）

### 检查次数 Inspections



### LEGAL PROCEEDINGS 法律程序

	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	Total 合计
Regulatory Offences 违规案例数	11	17	34	40	31	8	7	1	3	3	9	25	19	52	176	19	3	4	462
Proceedings at Court 法院案例数	22	28	12	6	29	39	26	23	41	26	13	6	14	17	42	70	60	56	530



# SEPRONA activities (source Geslive)

## 自然保护署的工作 (资料来源: Geslive)



# What lesson do we learn?

## 我们吸取了哪些经验?

Adequate training to enforcement agencies is essential

需要对执法机构开展充分培训

Practical enforcement of PVR on fresh products greatly depends on effective variety identification methods and determination of legal origin of final products (fruits, flowers)  
植物新品种权的执法实践在很大程度上取决于有效的品种识别方法以及确定最终产品（水果、花卉）的法律原产地

Seed sector, farmers and officials should work together

种子行业、农户和执法人员应互相配合

Communication and education are essential tools to improve social perception and appreciation of plant breeders work and benefits and, thus, wide awareness of PVRs

沟通教育可提高社会对植物育种工作及其作用的认知与感谢，提升对植物品种权的意识

Implementing effective identification systems to guarantee legal origin on fresh products coming to the markets could be an essential tool

有必要执行有效的识别体系，保证新进入市场产品的法律原产地





# 7. Examples and Case-law 实例及判例

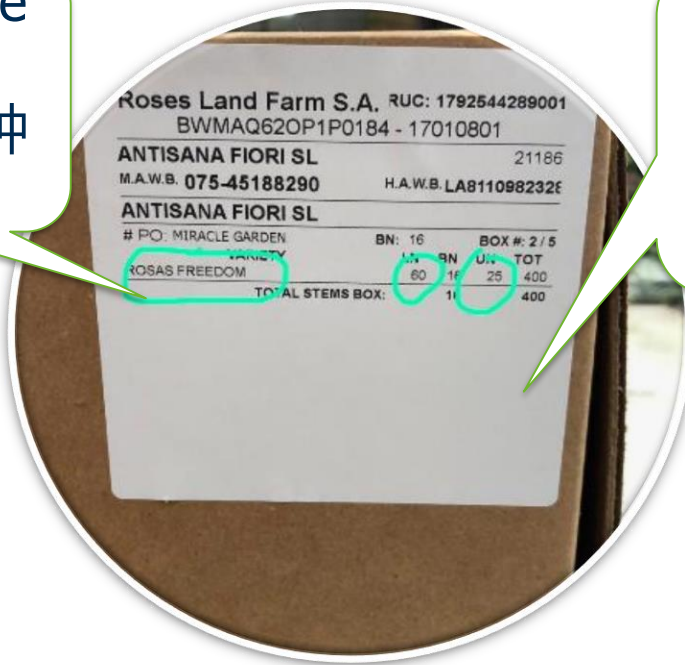
- Illegal reproduction of protected plant varieties 非法繁殖受保护植物品种



- Illegal commercialization of protected plant varieties using denomination of other protected varieties and TM infringement 使用其他受保护品种的名称，非法商业化受保护植物品种、商标侵权



Trade name  
of the  
variety 品种  
商品名



Information on  
the rose in  
every box  
每箱内都有玫  
瑰花信息



Bouquet 花束



Information on the  
variety in every  
bouquet  
每束内都有品种信息





# Experience shows that: 经验表明:



- Nature is a perfect copying machine:
- 大自然是完美的复印机:
- Copying is cheap, with little capital investment,
- 复制成本低, 基本无需资本投入
- Difficult to distinguish if no distinction between legally and illegally produced harvested products,
- 如果合法与非法收获产品之间无差异, 则很难区分
- Illegality does not bother consumers,
- 非法性本身并不影响消费者
- Not perceived as health hazard like for pharmaceuticals,
- 不会像药品一样能感知到健康危害
- PBR infringement often linked to a cluster of other offences.
- 植物育种者权利侵权往往与一系列其他犯罪行为共同发生



# However... 但是...

- Vegetative reproduction, although cheap, is risky because it can be infected by pests
- 营养繁殖尽管成本低，但因为可能遭到虫害感染，所以有风险
- Respect hygiene rules is important 遵守卫生规则很重要
- Outbreak of Pepino Mosaic virus in Sicily: a successful pathogen that rapidly evolved from emerging to endemic in tomato crops.  
西西里岛爆发凤果病毒；病原体在番茄作物中兴风作浪，迅速从新生病毒转为流行性病毒



# Challenges linked to proving infringement of PVRs 与证明植物品种权侵权相关的挑战

- Example of tomatoes: illegal tomato reproduction has the same DNA of the protected variety,
- 番茄示例：非法繁殖的番茄与受保护品种有同样的DNA
- Difficulties linked to the searching of evidence of illegal tomato reproduction,
- 搜集非法番茄繁殖证据的难点
- For expensive seeds the illegal vegetative reproduction becomes attractive.
- 在种子价格高昂时，非法营养繁殖更易诱人为非



# Methods for variety-identification testing usually consist in the following

## 品种识别测试方法通常包含以下方面

- Morphological comparisons carried out by an independent expert appointed by the Court including visual analysis and taking of measurements of the compared varieties;
- 法院指定一名独立专家开展形貌对比，包括对各品种进行视觉分析和测量；
- Growing tests carried out by the same authority that has conducted the DUS technical examination of the PVR application (visual morphological testing); and
- 由对植物品种权申请（视觉形态测试）进行DUS技术检验的同一单位进行种植测试；以及
- Variety-identification DNA analysis.
- 品种识别的DNA分析。



# A Landmark case from the Court of Milan – 2012

## *lactuca sativa* 'Ballerina'

## 米兰法院的标志性判例 — 2012年生菜 “Ballerina”

- **Rijk Zwaan** wins landmark case against illegal reproduction against the Italian company Agriseeds who has illegally reproduced (act of conditioning) the seeds of the protected lettuce CPVR 'Ballerina';
- 被告为意大利公司Agriseeds的标志性案件最终判决原告**Rijk Zwaan**胜诉。被告被判非法繁殖受欧盟植物品种权保护的“Ballerina”的种子（种子处理行为）；
- Total amount of damages granted by Court to plaintiff: € **205.701,00** plus interests, costs and legal expenses for € **30.000,00**.
- 法院判决被告赔偿**205,701.00欧元**，同时另需支付**30,000.00欧元**利息、成本损失和法律费用。



# The case 案件


- Rijk Zwaan has been fighting infringement of '**Ballerina**' RZ since 2005, when sales representatives from Rijk Zwaan Italia noticed a similar-looking variety in the market: '**Criolla**', sold by Agriseeds. Rijk Zwaan suspected that 'Ballerina', which is protected by a CPVR, was being reproduced without permission and sold under a different name. After Rijk Zwaan's own DNA tests had confirmed this suspicion, the company initiated legal proceedings against Agriseeds on 23 June 2006.
- Rijk Zwaan从2005年开始抗击侵犯“**Ballerina**”品种的行为。当时，Rijk Zwaan销售代表发现Agriseeds在市场上销售外观类似的品种，名为“**Criolla**”。Rijk Zwaan怀疑受欧盟植物品种权保护的“Ballerina”被他人擅自繁殖，且被冠以其他名称上市销售。Rijk Zwaan自行完成DNA测试，对此进行了确认，并于2006年6月23日针对Agriseeds启动法律程序。





# The preliminary measures phase

## 初步措施阶段

- A petition for saisie-description *inaudita altera parte*, followed by taking of samples and a seizure of commercial and accountant documentation has been granted by the Court of Milan
- 首先，在不听取对方当事人陈述的情况下进行侵权申诉，请求法院采集样品，扣押商业与账目文件。申诉请求被米兰法院批准。
-  Intermediate processing considered infringing activity, 中间环节亦被认定为涉嫌侵权
- Seizure executed also against a Spanish company accused of illegally conditioning the seeds pursuant to Art. 38 et seq. of Council Regulation (EC) No 44/2001 (*Juzgados de Igualada*)
- 依据欧洲理事会(EC)44/2001号法规，还针对涉嫌非法处理种子的一家西班牙公司执行了扣押令
- Injunction granted 颁布禁止令
- Damage award: unjustified profit of € 205,701 increased of monetary re-evaluation, interests, legal costs and costs of the court experts involved by selling 'Criolla' seeds.
- 裁定：被告需赔偿出售“Criolla”种子不当所得共205,701欧元，以及相关欧元转换增值、利息、诉讼成本、法院专家费用



# Rosa KNOCK OUT ® 'Radrazz'

Milan Tribunal – decision No 189/2020  
of 13/01/2020

米兰裁判所 — 180/2020号裁决 (2020年1月13日)



# Rosa KNOCK OUT ® 'Meigadraz'



## Rights infringed 侵权行为

- Reproduction – further propagation 复制-进一步繁殖
- Distribution/commercialization right 侵犯分销/商业化权利
- Infringement of plaintiff's EU Trademark 侵犯原告欧盟商标权

## Measures adopted and sanctions 采取的措施及制裁

- Precautionary measures 预防措施:
  - Destruction of the infringing material 销毁侵权材料
  - Injunction + penalties 禁止令+罚款
  - Removal of advertisement from social media 删除社交媒体广告
- Damages – 15.000 € 损害赔偿金15,000欧元
- Judicial costs – 15.000 € 司法费用15,000欧元



# 'Snack' Tomato - CPVR

Criminal case

“Snack” 番茄—欧盟植物品种权利  
刑事案件

Ragusa Tribunal – decision No 1434/2019  
of 20/11/2019

拉古萨裁判所—1434/2019号裁决（2019年11月20日）





## Art. 517 ter Penal Code 《刑法典》第517条

- production and commercialisation of goods infringing industrial property rights
- 生产和商业化 “侵犯工业产权的商品”
- No proof of the legitimate purchase of the reproducing material
- 无法证明繁殖材料通过合法途径采购而得
- Technical examination of the variety found on the premises → “genotype completely overlapping and not distinct from “Snack”
- 对现场发现的品种进行技术检验 → 基因型完全重叠，与原品种 “Snack” 无差异



# Sanctions 制裁

- 1 year imprisonment (suspended)
- 1年有期徒刑（缓刑）
- Fine - 15.000 €
- 罰款15,000欧元
- Damages to civil parties - 70.000 €
- 民事赔偿70,000欧元
- Judicial costs - 15.876 €
- 司法费用15,876欧元





# CPVO case-law database

## 欧盟植物品种局判例数据库

- A collection of cases from EU MS on PVRs is available for consultation under the link below:
- 点击下方链接，查看欧盟成员国植物品种权侵权案件汇编：
- <https://cpvo.europa.eu/en/pvr-case-law-database>



Thank you for your attention !

谢谢!





# CPVO

Community Plant Variety Office



## Visitors address:

Community Plant Variety Office  
3 boulevard Maréchal Foch  
FR – 49000 ANGERS



## @Contact:

- > TEL : ( +33 ) ( 0 ) 2 - 41 . 25 . 64 . 00
- > E-mail : [cpvo@cpvo.europa.eu](mailto:cpvo@cpvo.europa.eu)
- > Webmaster : [webmaster@cpvo.europa.eu](mailto:webmaster@cpvo.europa.eu)

