

# **IP Key China Enforcement seminar**

## **IP Key中国执法研讨会**

**December 2, 2020**

**2020年12月2日**

**Practical tools to overcome infringement in Ornamentals**

**解决观赏性植物品种侵权的实用工具**

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**Royalty** Administration International®  
RAI

A close-up photograph of two hands shaking in a firm grip. The hands are positioned over a globe, which shows parts of North and South America. The hand on the left is wearing a red string bracelet. The background is a soft-focus view of the globe's continents and oceans.

# **Global Licensing Royalty Collection & Monitoring**

**全球许可、收取许可  
使用费、监控**



## **Agenda 议程:**

- 1.RAI Organization RAI组织简介**
- 2.RAI Services Performed RAI提供的服务**
- 3.License Agreements 许可协议**
- 4.Controlling Methods 控制方法**
- 5.Activities + experiences in China 在华工作及经验**
- 6.Conclusions 结论**

# 1. Royalty Administration International® 组织简介

- Founded 1984 成立于1984年
- Worldwide active in **IP** in mainly **vegetative** propagated species;  
活跃于全球植物**知识产权**领域, 关注**营养**繁殖品种;
- Cut flowers, pot plants, annuals, perennials, bulbs, tubers, shrubs, woody ornamentals, vegetables, fruits and berries
- 切花、盆花、一年生植物、多年生植物、鳞茎植物、块茎植物、灌木、木本观赏植物、蔬菜、水果及浆果
- Independent service company protecting the IP Rights of breeders  
保护育种者知识产权的独立服务公司
- No production, sales, distribution, or promotional activities  
无生产、销售、分销或推广活动
- Not exclusive to any plant breeder, crop/species, region or service  
不专属于任何植物育种者、作物/品种、地区或服务
- Representing several breeders and/or crops in one visit increases the controlling results !!  
代表多家育种者和/或多种作物, 为每次走访提高管理成效!
- 4 offices; Netherlands, USA, Colombia and Japan
- 4个办事处: 荷兰、美国、哥伦比亚、日本



## 2. RAI Services Performed RAI 提供的服务

- Servicing/Representing approximately 325 Breeders  
服务/代表约325家育种者
- Working with 300 different species  
涵盖300个品种
- IP applications 知识产权申请:  
Plant Breeder Rights + Plant Patents + Trademarks:  
植物育种者权利+植物专利+商标:
  - 600 - 650 new IP applications / year  
每年600-650件新申请
  - In 40 different countries  
40个国家/地区
  - Maintaining over 10.000 IP titles (annual fees !)  
维护1万余项知识产权权属 (年费! )
  - Follow up on application problems / DUS issues  
跟进申请问题 / DUS (特异性、一致性和稳定性测试) 问题
  - Webportal for breeders for their IP information  
供育种者提交知识产权信息的网络门户
  - Advising breeders in their IP strategy  
为育种者提供知识产权策略咨询服务

## 2. RAI Services Performed RAI 提供的服务

### Worldwide Licensing + Monitoring 全球许可+监控

- Monitor License Agreements + Exhibits - 3.500 in total  
监控许可协议 + 附表 - 总计3500份
- Issuing Royalty Report Forms - 7.000 / year  
签发许可使用费报告表 - 7000份/年
- Webportal for online royalty reporting  
许可使用费报告网络门户
- Royalty invoicing + Royalty Collection + Payout to breeders  
许可使用费开票 + 收取许可使用费 + 支付育种者
- Controlling / Monitoring / Grower visits - 4.500 / year  
控制/监控/走访种植者 - 4500次/年
- Follow up infringements - up to court cases  
跟进侵权事件 - 可诉至法院
- Service to Breeder is tailor made  
向育种者提供定制服务
- Support to Breeder and to Licensee  
支持育种者及被许可方



### 3 License Agreements 许可协议

- Testing Agreements 测试协议
  - Controlled testing of new varieties 新品种控制测试
- Propagation/Distribution Agreements 繁殖/分销协议
  - Selling Plant material; URC, RC, Liner, Pre-Finished, etc.
  - 销售植物材料；无根扦插、有根扦插、同批苗木、预处理植物等
- Self-Propagation Agreements 自繁协议
  - Cutting Propagation for own finished plant production only
  - 扦插繁殖仅用于自有成品植物的生产
- Non Propagation Agreements for finished product growers
- 成品种植者非繁殖协议
- Tip-cutting Agreements - no motherplants allowed
- 切尖协议 — 不允许母本植株
- Root and Sell agreements
- 植物根及销售协议

## 3.1 Royalty Collection 收取许可使用费

- Royalty payment per plant, pot, cutting, m2, etc.
- 按每植株、每盆、每扦插、每平方米等支付许可使用费
- Licensee reports the quantities to RAI per month, quarter, half-year, year or season
- 被许可方每月、季度、半年、年或者季节向RAI报告总量
- Webportal for licensees to enter their reports online
- 供被许可方在线提交报告的网络门户
- Breeders have direct access to report info
- 育种者可直接访问报告信息
- Invoicing to licensees and non-licensees
- 向被许可方及非被许可方开票
- Collection of royalty payment from licensees and non-licensees
- 向被许可方及非被许可方收取许可使用费
- Disbursement of the royalties to the Breeder
- 向育种者偿付许可使用费



## 4. Controlling Methods 控制方法



# Presence is the best protection of your Genetics

## “去现场” 是对植物遗传资源的最好保护





## 4. Controlling Methods 控制方法

- 1. Licensees 被许可方
- 2. Non-licensees control 非被许可方控制
- 3. Combined crop control 结合作物控制
- 4. Collection of Information 收集信息
- 5. Legal Actions 法律行动
- 6. Auditing 审核

## 4. Controlling Methods 控制方法

### 4.1. Licensees 被许可方:

- Announced or unannounced on-site visit  
- 通知现场检查或突击现场检查
- Counting mother stock + rooting + finished plant production  
- 清点母本+生根+成品植物产量
- Check correctness of royalty reporting  
- 核查许可使用费报告正确与否
- Check variety names, labelling, tagging, container type, etc.  
- 核查品种名称、标签、标记、容器类型等
- Check on all production locations  
- 核查所有生产地点
- Check catalogues, websites, marketplaces, exhibitions, etc.  
- 核查产品名录、网站、市场、展会等
- Follow-up on any delinquent reporting and/or payment  
- 跟进付款拖欠报告问题和/或付款进度
- EE stock deliveries from breeder  
- 检查育种方核心母本



## 4. Controlling methods 控制方法

- 4.2. control at non-licensees 非被许可方控制：
  - Actual + complete delivery info from Breeder + Propagator Distributors makes a control successful
  - 综合育种方+繁殖方+分销方的实际完整交付信息可实现成功控制
  - Unannounced on-site visits to growers to check proper use of cuttings + check no illegal propagation is performed
  - 对种植方进行突击现场检查，核查是否恰当使用扦插+核查是否进行非法繁殖
  - Each breeder applies his own infringement sanctions
  - 各育种方实施侵权制裁
  - RAI search for any other variety they represent
  - RAI搜寻其他代理品种

## 4. Controlling methods 控制方法

### 4.3. Combined crop control 结合作物控制

- Multiple breeder controlling in EU: 欧盟多育种者控制法:

- Pelargonium's - 7 x 天竺葵 – 7 x
- Garden mums/Belgium mums - 10 x 菊花 – 10 x
- Bed & Bedding Plants - Fleuroselect – 10 x 花坛植物 – 国际观赏植物组织 (Fleuroselect) – 10 x

- For crops which are widely spread, many users, several breeders/suppliers per crop, multiple supplier to one grower, varieties hard to identify, easy to propagate, etc.
- 对于广泛传播的作物，存在如下问题：使用者众多，每种作物对应多家育种者/供应商，一家种植者对多家供应商，品种难以识别，易于繁殖等
- Effective in new UPOV countries - create IP awareness
- 针对新加入UPOV的地区—培养知识产权意识
- All delivery info in hand at visit
- 审核时应准备好全部交付信息
- Standard and uniform invoicing for infringements
- 针对侵权活动采用标准统一发票
- Financially self supportive!! 费用自理!



## 4.4. Collection of Information 收集信息:

Local Markets 本地市场

Auctions 拍卖会



Social media 社交媒体



Exhibition check  
展会检查



Catalogues / price lists  
产品名录/价格清单

## 4. Controlling methods 控制方法



### ■ 4.4. Collection of Information 收集信息:

- Internet - website - catalogue - publications - Social media  
互联网 - 网站 - 产品名录 - 出版物 - 社交媒体
- Auction + local markets => source of production  
拍卖会 + 本地市场 => 生产来源
- Exhibitions + Trade fairs  
展会 + 贸易展
- Social control - licensees, growers, suppliers, etc.  
社会控制 - 被许可方、种植者、供应商等
- Collection delivery information from suppliers  
从供应商收集交付信息
- Collection samples of end product for variety identification  
收集最终产品样品, 确定品种
  - => DNA fingerprinting and/or flowering test
  - => DNA指纹验证和/或开花测试



## 4. Controlling methods 控制方法

### 4.5. Legal actions 法律行动



Sampling of illegal Seed import at the airport.  
在机场对非法进口种子进行抽检



Confiscation of illegal flowers at growers.  
在种植园没收非法花卉

## 4. Controlling methods 控制方法



### ■ 4.5. Legal actions 法律行动:

- RAI: preparation, support and coordination of legal actions.  
RAI: 准备、支持、协调法律行动
- Lawyer warning letter on illegal activities 针对非法活动发出律师警告函
- Bailiff actions to collect and secure evidence of illegal propagation 法警行动, 收集和保护非法繁殖活动证据
- Official seizure and/or inspection by court order 根据法院命令正式扣押和/或检查
  - Sampling => DNA fingerprinting/flowering test  
抽样 => DNA指纹验证/开花测试
- Juridical actions by court 法院的司法行动  
Requires very good preparation and timing: 要求准备充分、把握时机:
  - Expensive + unpredictable result + time consuming !!  
成本高+结果无法预测+耗时!
  - Damages relationship licensee/grower  
损害与被许可方/种植者的关系
  - Publication against illegal propagation  
公开宣传, 打击非法繁殖活动



## 4. Controlling methods 控制方法



- 4.6. Auditing books - Checking: 审核账簿 – 核查:
  - Quantities delivered + sold in period ⇔ correct reporting
  - 交付数量+期间销售数量⇔正确报告
  - Royalty level per variety applied
  - 每个品种适用的许可使用费水平
  - Incorrect naming of varieties 品种命名错误
  - Unauthorized export 未经授权出口
  - Follow-up on any delinquent reporting 跟进付款拖欠报告
  - Invoicing + collecting delinquent royalty + penalty + audit costs
  - 开票+收取拖欠的许可使用费+罚款+审核成本
  - Largest single case catch ever \$ 700,000
  - 单案最大涉案金额为70万美元

# 5. Activities and experiences in China by RAI

## RAI在华工作及经验

- Licensing companies in China since 2007, cut-flowers, potted plants, bedding plants, Tissue culture.
- 2007年开始许可中国公司，涉及切花、盆栽、花坛植物、组织培养
- First PVR applications in 2003, recent years strong increasing numbers to  $\pm$  50 new applications of Ornamentals in 2020
- 2003年首次申请植物品种权利，近年来快速增加，2020年观赏性植物新申请增加到约50项
- Active support to increase knowledge and awareness on PVR and licensing by participating at different workshops/seminars
- 参与各种工作组/研讨会，积极支持提高对植物品种权利及许可活动的认识 and 意识





## 5.1 Experiences China 在华经验

- Licensing and enforcement in ornamentals requires strong legislation (UPOV-91)
- 观赏植物的许可及执法需要强有力的立法支持（1991年《国际植物新品种保护公约》）
- Term 'Illegal' does not apply to all situations at this moment
- 目前，“非法”一词并不适用于所有情况
- Licensing focus on larger companies 许可活动应关注大公司：
  - better communication 沟通更顺畅
  - respecting the relationship because both parties have an interest 互利互惠，重视彼此关系
  - committed for long term relationship 承诺维持长期关系
- Insufficient PVR legislation makes partner choice crucial
- 由于植物品种权利立法不足，所以合作方选择是关键考虑因素

## 5.2 Challenges China 在华挑战

- Acceptance + implementation of new PVR-law (UPOV '91)  
植物品种权利新立法的认可与实施 (1991年《国际植物新品种保护公约》)
- Increasing the numbers of PVR applications  
植物品种权利申请数量不断增加
- Gaining experience with the legal system and enforcement possibilities + results  
在法律体系及执法方面获取经验  
探索可能性+追求结果
- Improve the possibility to receive royalty payments from China  
提高从中国收取许可使用费的可能性
- Clarification of Tax obligations (National and regional) for Chinese licensees  
澄清中国被许可方的纳税义务 (中央和地方层面)
- Spreading knowledge on PVR related matters in China, to improve the market possibilities for new genetics  
在中国宣传植物品种权利相关信息, 拓展新遗传资源的市场机遇
- Starting China office RAI? 在中国开设办事处?



## 6 Conclusion 结论

- IP innovations are beneficial for the entire Industry 知识产权创新有利于整个行业
- IP innovations are costly and time consuming IP创新耗资耗时
- Royalties support innovation 收取许可使用费有利于创新
- Being present on the site is the best prevention 现场检查是最好的侵权预防措施
- Together we are stronger against illegal activities 联合多方力量，可更有效对抗非法活动
- Implementation new PVR law China very important 在中国实施新植物品种权利保护条例非常重要
- Positive reputation and behavior gives access to more genetics 正面声誉和行为是获取更多品种遗传资源的敲门砖
- Use strict and clear systems 建立并运用严格清晰的体系
- Maintain a level playing field - fair competition 维护公平的竞争环境

**Structured IP policy + active controlling creates income and future for Breeders and Producers !!**

**结构化知识产权政策+积极控制，为育种者和生产者创造收入及未来！**



*Worldwide watching your rights*  
**在全世界为您的权利值守**



**Thank you**  
**谢谢**

