

Legislation Seminar: Plant Variety Rights
Amendments
中欧植物新品种保护法律法规更新研讨会

Developments on EDV Explanatory Notes
实质性派生品种解释性文件：最新进展

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Organized by IP Key China, CPVO, MARA, NFGA

May 6, 2022

组织方：IP Key中国、欧盟植物品种局、中国农业农村部、国家林业和草原局
2022年5月6日



International Union for the Protection of New Varieties of Plants



UPOV MISSION STATEMENT

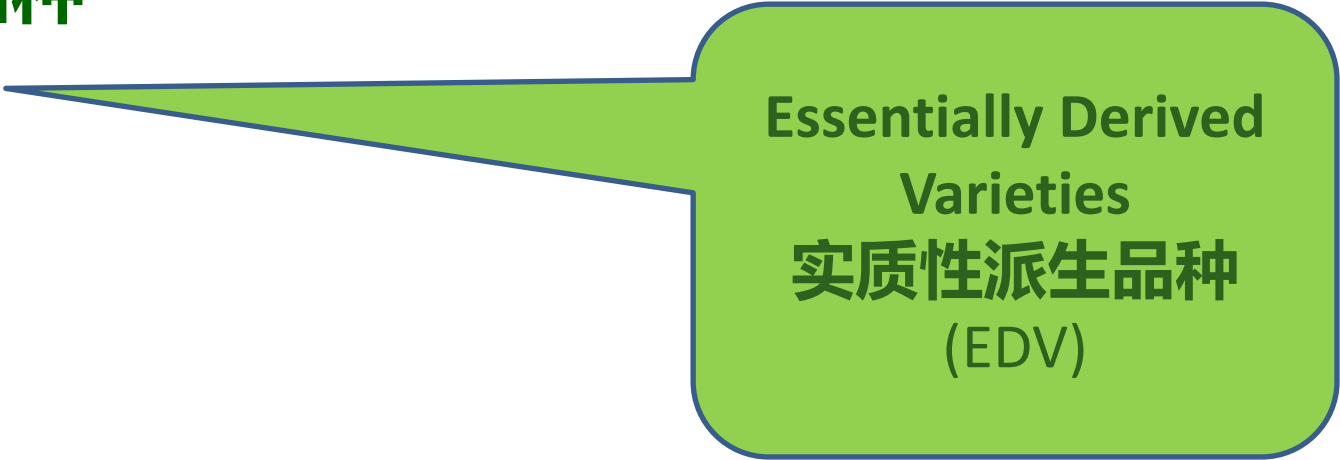
UPOV使命声明

“To provide and promote an effective system of plant variety protection, with the aim of encouraging the development of new varieties of plants, for the benefit of society”

“建立建设有效的植物品种保护体系，鼓励开发植物新品种，造福社会”

Scope of breeders' rights 育种者权利适用范围

- a) Acts covered 活动
- b) Material covered 材料
- c) Varieties covered 品种



Essentially Derived
Varieties
实质性派生品种
(EDV)

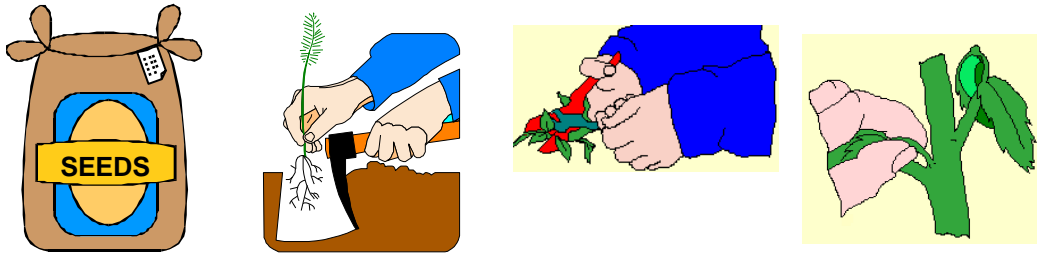
PBR: authorization of breeder required for the following acts in respect of the propagating material of protected variety

**植物育种者权利：
育种者对受保护品种繁殖材料进行下列活动需获授权**

- Production or reproduction (multiplication) **生产或繁殖（扩繁）**
- Conditioning for the purpose of propagation **为繁殖而进行的种子处理**
- Offering for sale **提供销售**
- Selling or marketing **售出或其他市场销售**
- Exporting **出口**
- Importing **进口**
- Stocking for any of the above purposes **用于上述目的的原种制作**

MATERIAL COVERED 权利范围内材料

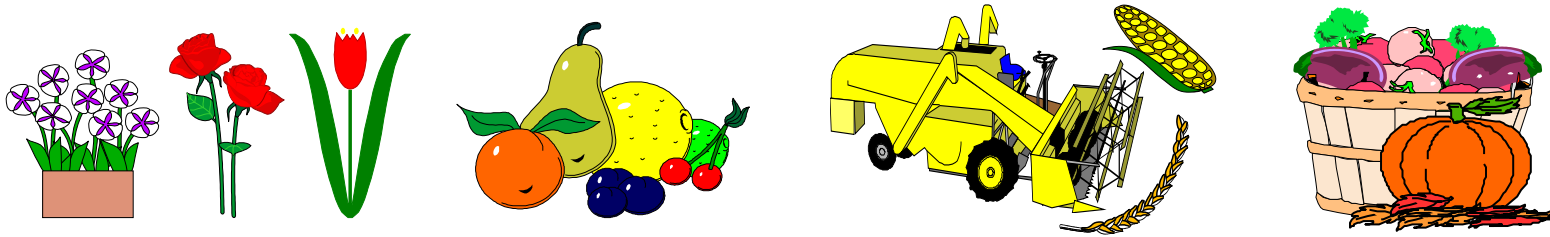
- All propagating material 所有繁殖材料



- Harvested material under certain conditions 某些条件下的收获材料
- Certain products (optional) 某些产品 (非强制)

MATERIAL COVERED 权利范围内材料

- All propagating material 所有繁殖材料
- Harvested material 收获材料



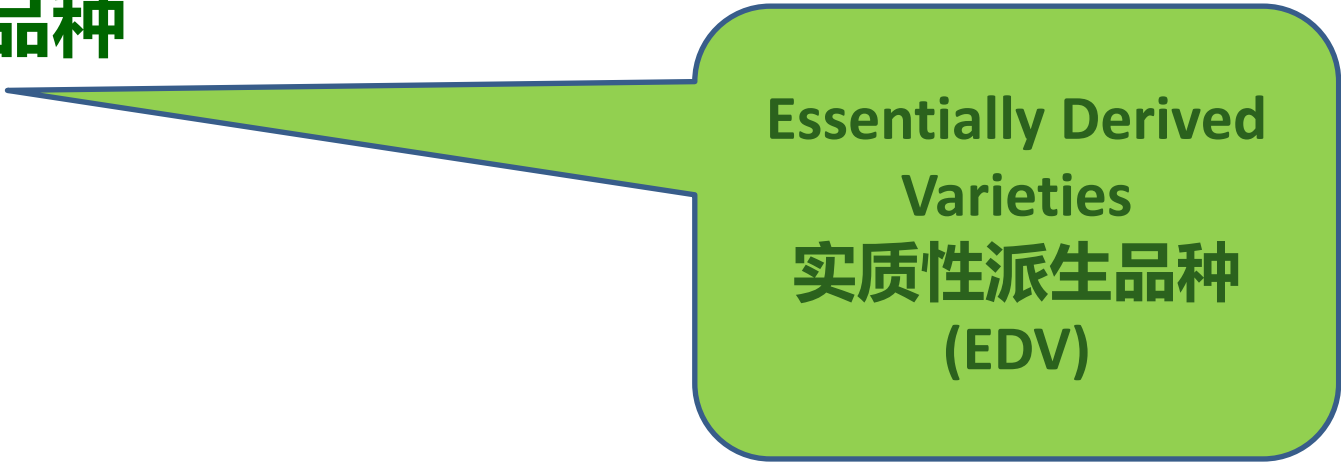
if obtained through **unauthorized use** of propagating material **unless**,
reasonable **opportunity** for breeder to **exercise their right**

由**未经授权使用**受保护品种的繁殖材料而获得的收获材料，应得到育种者授权，但育种者对繁殖材料已有合理**机会行使其权利**的情况例外

- **Certain products (optional) 某些产品 (非强制)**

Scope of breeders' rights 育种者权利适用范围

- a) Acts covered 活动
- b) Material covered 材料
- c) Varieties covered 品种



Essentially Derived
Varieties
实质性派生品种
(EDV)

Guidance on Essentially Derived Varieties (EDV) 实质性派生品种指南

1. Varieties covered by the breeder's right 育种者权利范围内品种
2. Essentially Derived Varieties 实质性派生品种
 - a) Purpose and concept 目的和概念
 - b) Protection of EDVs 实质性派生品种的保护
 - c) Protection of Initial Variety (IV) 原始品种的保护
 - d) UPOV guidance UPOV指南

Scope of the Breeder's Right (1991 Act)

育种者权利适用范围 (1991年文本)

Article 14 Scope of the Breeder's Right

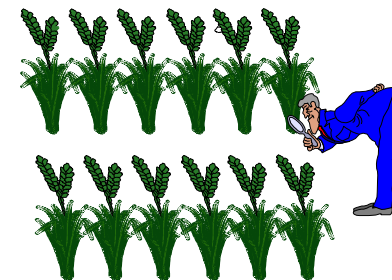
第十四条 育种者权利适用范围

- (1) [*Acts in respect of the propagating material*] 【与繁殖材料有关的活动】
- (2) [*Acts in respect of the harvested material*] 【有关收获材料的活动】
- (3) [*Acts in respect of certain products*] 【与某些产品有关的活动】
- (4) [*Possible additional acts*] 【可追加的活动】
- (5) [*Essentially derived and certain other varieties*] 【实质性派生和某些其他品种】
 - (a) The provisions of paragraphs (1) to (4) shall also apply in relation to:
(a) 上述一至四款的规定也适用于下列各项:

VARIETIES COVERED (Art. 14(5) (a) 1991 Act)

品种 (1991年文本第十四条第五款第 (一) 项)

(ii) varieties which are **not clearly distinguishable** in accordance with Article 7 from the protected variety
与受保护品种**没有明显区别** (根据第七条规定) 的品种



(iii) varieties whose production requires the **repeated use of the protected variety** e.g. *hybrids produced using a protected variety* 需要**反复利用受保护品种**进行生产的品种
例如, 利用受保护品种生产的杂交种

(i) varieties which are **essentially derived** from the protected variety, where the protected variety is not itself an **essentially derived variety**
受保护品种的**实质性派生品种**, 而受保护品种本身不是**实质性派生品种**



Guidance on Essentially Derived Varieties (EDV)

关于实质性派生品种的指南

1. Varieties covered by the breeder's right 育种者权利范围内的品种
2. Essentially Derived Varieties 实质性派生品种
 - a) Purpose and concept 目的和概念
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Essentially Derived Varieties 实质性派生品种

PURPOSE 目的

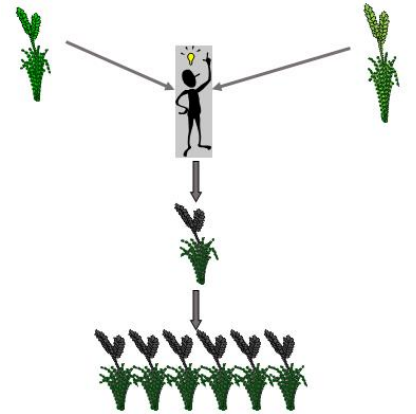
to ensure sustainable plant breeding development by:

- providing effective protection for the breeder

and

- encouraging cooperation between breeders and developers of new technologies such as genetic modification

为育种者提供有效的保护并鼓励育种者和新技术开发者开展合作（例如遗传改性）从而确保植物育种的可持续发展。



Scope of the Breeder's Right (1991 Act)

育种者权利适用范围 (1991年文本)

Article 14 Scope of the Breeder's Right

第十四条 育种者权利适用范围

- (1) [*Acts in respect of the propagating material*] 【与繁殖材料有关的活动】
- (2) [*Acts in respect of the harvested material*] 【有关收获材料的活动】
- (3) [*Acts in respect of certain products*] 【与某些产品有关的活动】
- (4) [*Possible additional acts*] 【可追加的活动】
- (5) [*Essentially derived and certain other varieties*] 【实质性派生和某些其他品种】

Breeder's exemption 育种者豁免

Article 15 Exceptions to the Breeder's Right 第十五条 育种者权利的例外

(1) [*Compulsory exceptions*] The breeder's right shall not extend to 【强制性例外】 育种者权利不适用于下列各项

(i) acts done privately and for non-commercial purposes 私人的非商业性活动

(ii) acts done for experimental purposes and 试验性活动

(iii) acts done for the purpose of breeding other varieties, and, **except where the provisions of Article 14(5) apply**, acts referred to in Article 14(1) to (4) in respect of such other varieties. 为培育其他品种的活动和该其他品种按第十四条一至四款规定的有关活动，**依照第十四条五款实施的除外。**

[...]

Article 14 Scope of the Breeder's Right

第十四条育种者权利适用范围

(1) [*Acts in respect of the propagating material*] 【与繁殖材料有关的活动】

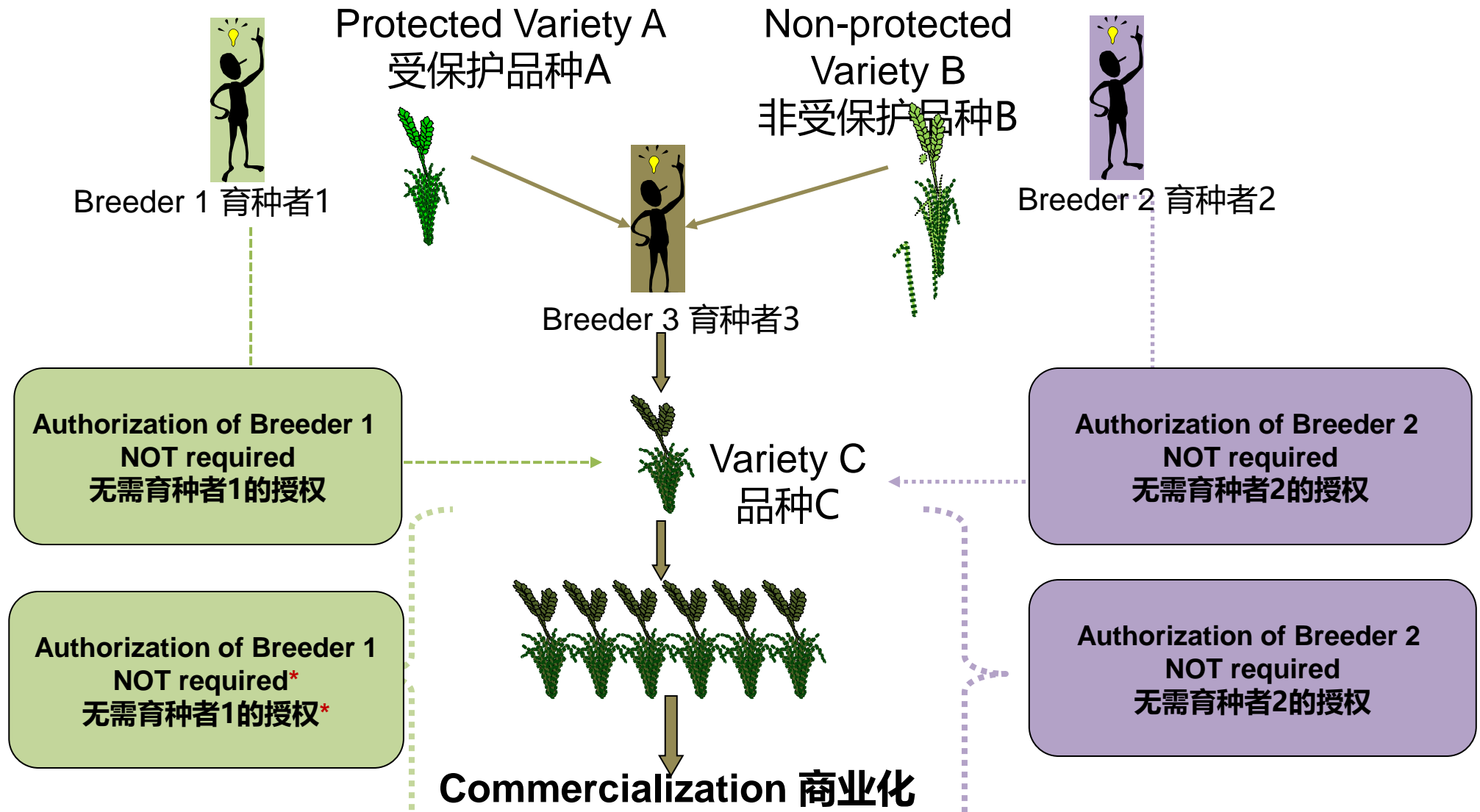
(2) [*Acts in respect of the harvested material*] 【有关收获材料的活动】

(3) [*Acts in respect of certain products*] 【与某些产品有关的活动】

(4) [*Possible additional acts*] 【可追加的活动】

(5) [*Essentially derived and certain other varieties*] 【实质性派生和某些其他品种】

Breeder's exemption 育种者豁免



* Except for 例外:

(i) varieties which are essentially derived from the protected variety, where the protected variety is not itself an essentially derived 受保护品种的实质性派生品种, 而受保护品种本身不是实质性派生品种;

(ii) varieties which are not clearly distinguishable in accordance with Article 7 from the protected variety and 与受保护品种没有明显区别 (根据第七条规定) 的品种

(iii) varieties whose production requires the repeated use of the protected variety. 需要反复利用受保护品种进行生产的品种

Essentially Derived Varieties 实质性派生品种

Article 14 Scope of the Breeder's Right 第十四条 育种者权利适用范围

(5)[*Essentially derived and certain other varieties*] 【实质性派生和某些其他品种】

(a) [...]

(b) For the purposes of subparagraph (a)(i), a variety shall be deemed to be **essentially derived from** another variety ("**the initial variety**") when: 出现下列情况时，一品种被看作（一）项（1）中所述从另一品种（“**原始品种**”）**实质性派生的品种**：

(i) it is **predominantly derived from the initial variety**, or from a variety that is itself predominantly derived from the initial variety, **while retaining the expression of the essential characteristics** that result from the genotype or combination of genotypes of the initial variety, **原始品种实质性派生**或从本身就是该原始品种的实质性派生品种产生的实质性派生的品种，**同时又保留表达**由原始品种基因型或基因型组合产生的**基本特性**；

(ii) it is **clearly distinguishable** from the initial variety and **与原始品种有明显区别**；且

(iii) **except for the differences which result from the act of derivation, it conforms to the initial variety in the expression of the essential characteristics** that result from the genotype or combination of genotypes of the initial variety **除派生引起的性状有所差异外，在表达**由原始品种基因型或基因型组合产生的**基本特性方面与原始品种相同**。

Essentially Derived Varieties – Art. 14(5)(c) of the 1991 Act 实质性派生品种—1991年文本第十四条第五款第（三）项

May be obtained for example by: 获得方式列举:

- **selection** of a natural or induced **mutant** 选择天然或诱变株
- **selection** of a **somaclonal variant** 选择体细胞无性变异株
- **selection** of a **variant individual** from plants of the initial variety 从原始品种中选择变异个体
- **back-crossing** 回交
- transformation by **genetic engineering** 经遗传工程转化

PREVIEW 内容前瞻

1. Varieties covered by the breeder's right 育种者权利范围内的品种
2. Essentially Derived Varieties 实质性派生品种 (EDV)
 - a) Purpose and concept 目的和概念
 - b) Protection of EDVs 实质性派生品种的保护
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Essentially Derived Varieties 实质性派生品种

Can EDVs be protected in their own right?

EDV的自身权利是否可以得到保护?

- same criteria for protection
- 保护标准相同

Can EDVs be commercially exploited?

是否可以商业利用EDV?

Requires the authorization of the PBR holder of the

INITIAL VARIETY and the PBR holder of the EDV

需要原始品种育种权利人和EDV育种权利人的授权

YES

可以

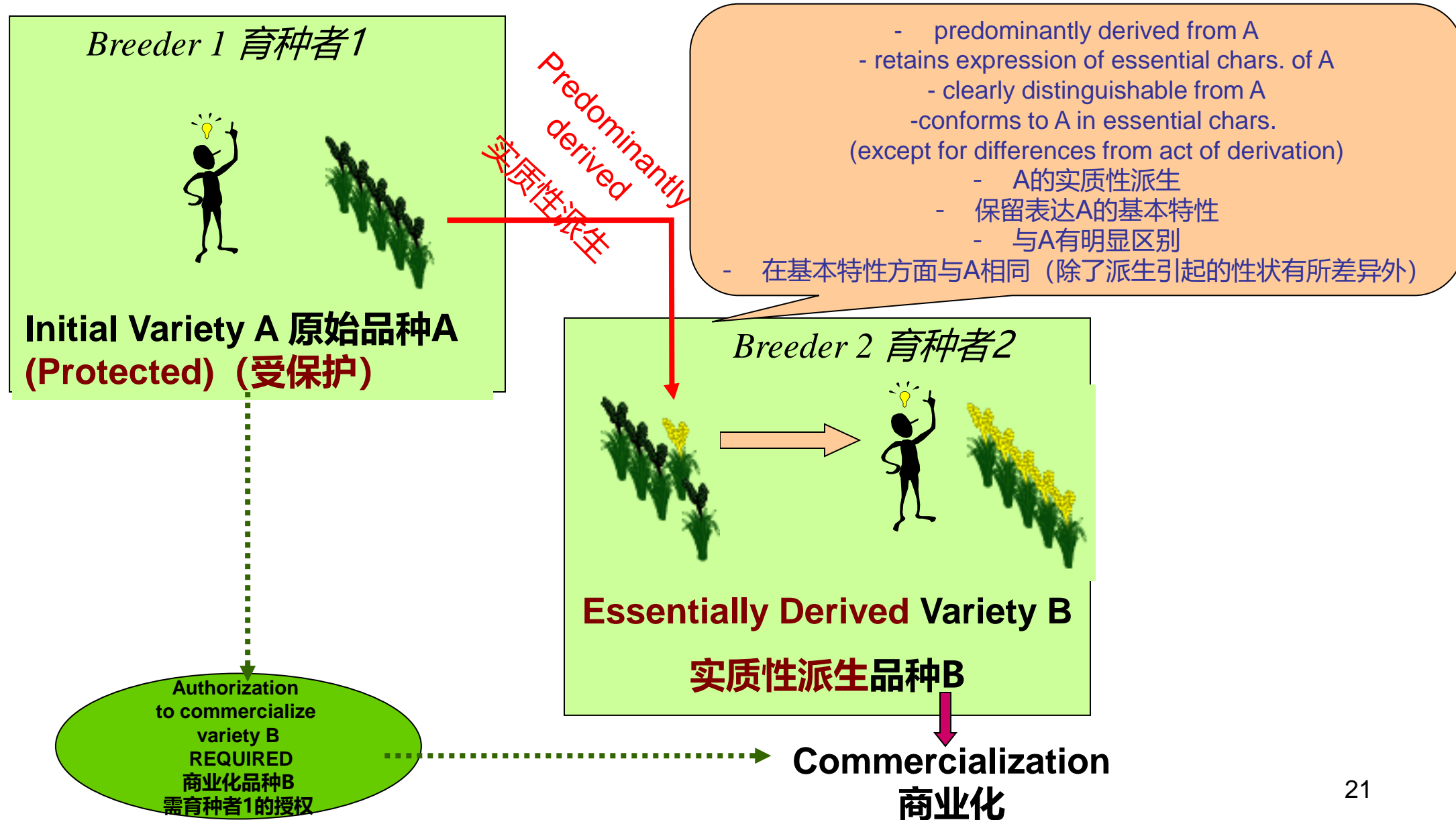
AUTHORIZATION NEEDED

需要授权

PREVIEW 内容前瞻

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Essentially Derived Varieties 实质性派生品种



Essentially Derived Varieties 实质性派生品种

Article 14 Scope of the Breeder's Right 第十四条 育种者权利适用范围

(5)[*Essentially derived and certain other varieties*] 【实质性派生和某些其他品种】

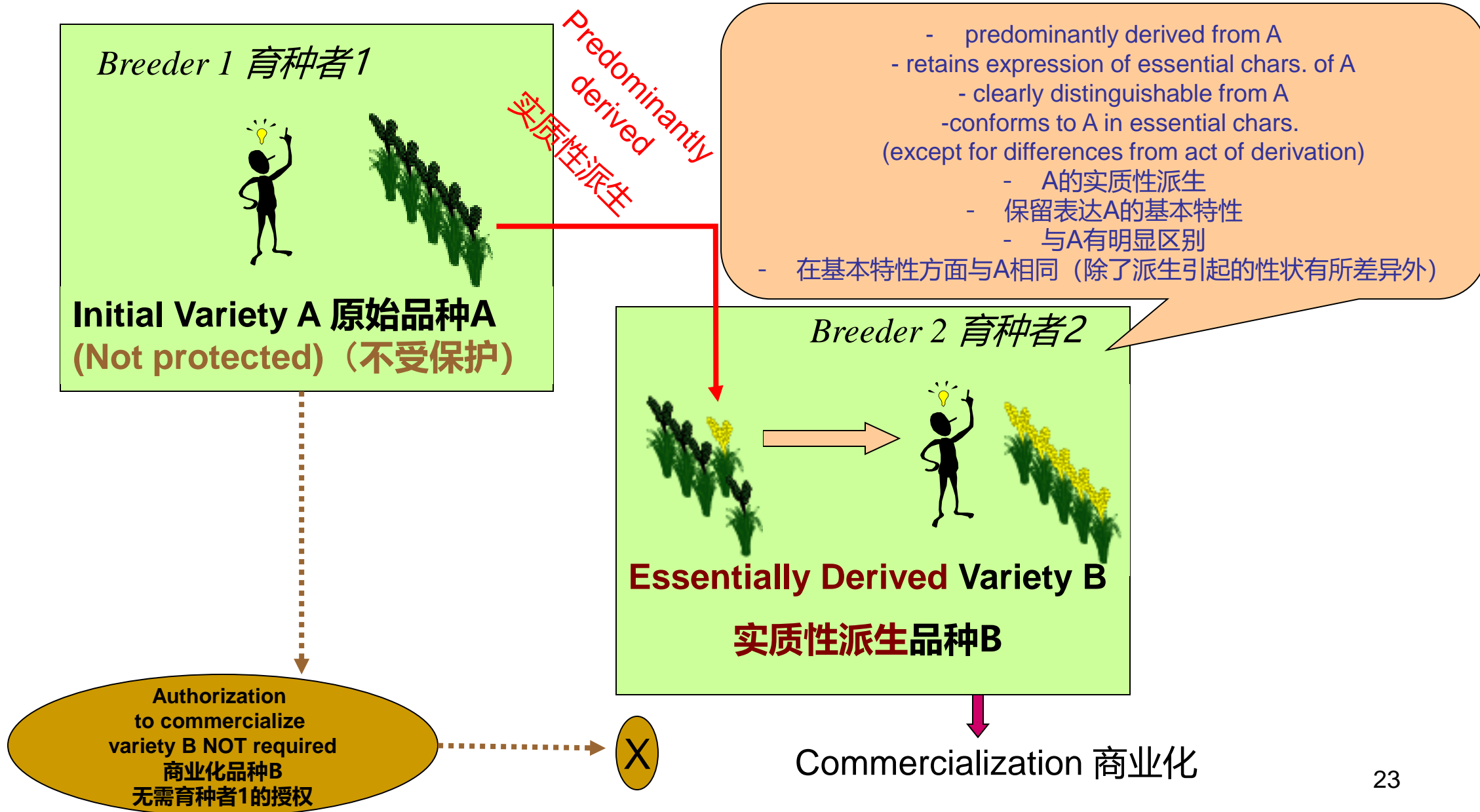
(a) [...]

(b) For the purposes of subparagraph (a)(i), a variety shall be deemed to be essentially derived from **another variety** (“the initial variety”) **when** 出现下列情况时，一品种被看作（一）项（1）中所述从**另一品种**（“原始品种”）实质性派生的品种



does **NOT** say another **PROTECTED** variety
不说另一**受保护品种**

Essentially Derived Varieties 实质性派生品种



Scope of the Breeder's Right (1991 Act)

育种者权利适用范围 (1991年文本)

Article 14 Scope of the Breeder's Right 第十四条 育种者权利适用范围

(5)[*Essentially derived and certain other varieties*] 【实质性派生和某些其他品种】

(a) **The provisions of paragraphs (1) to (4)*** shall also apply in relation to **上述一至四款的规定***也适用于下列各项:

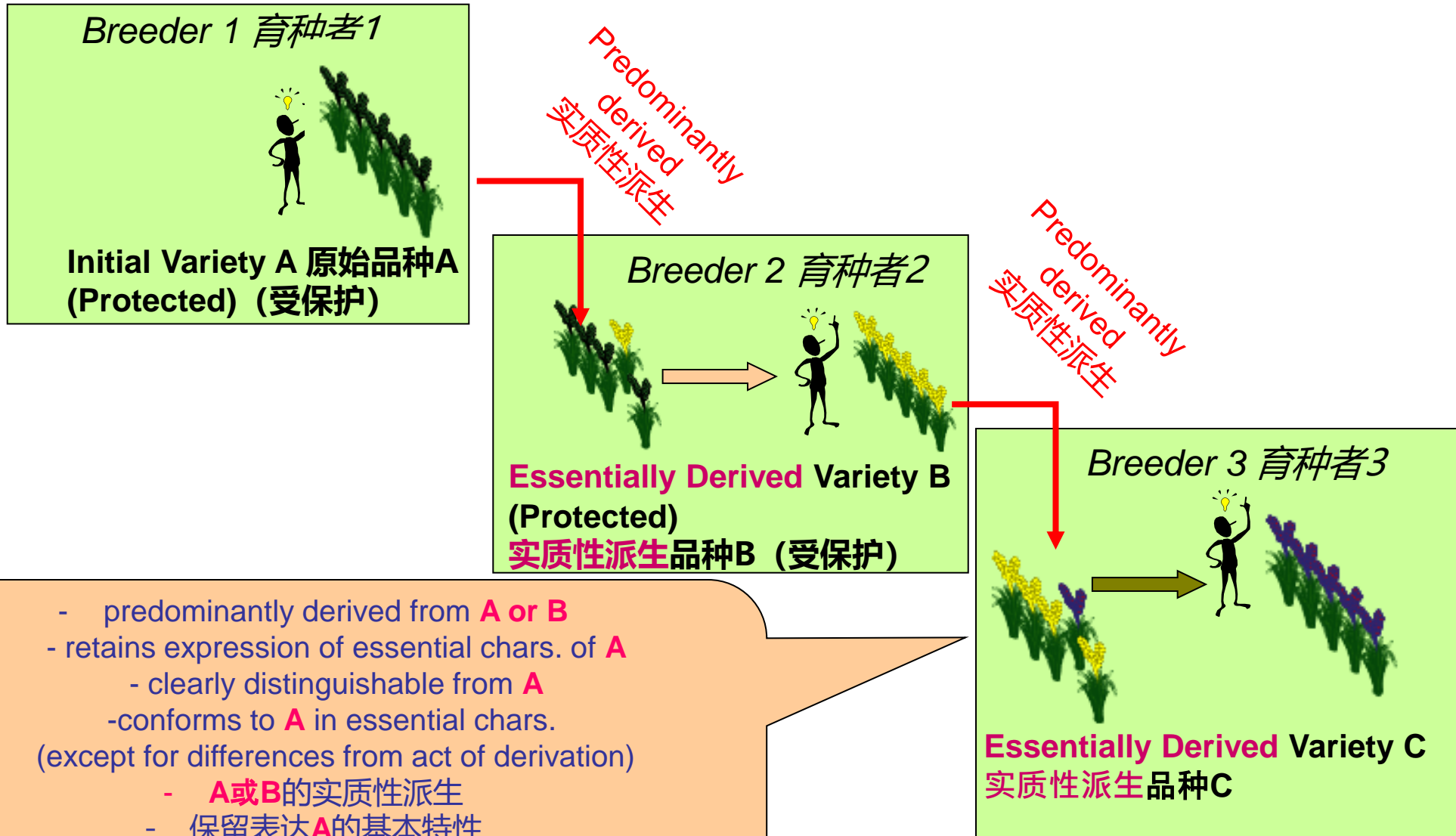
(i) varieties which are essentially derived from the protected variety, **where the protected variety is not itself an essentially derived variety** 受保护品种的实质性派生品种, **而受保护品种本身不是实质性派生品种**

Article 14 *Scope of the Breeder's Right

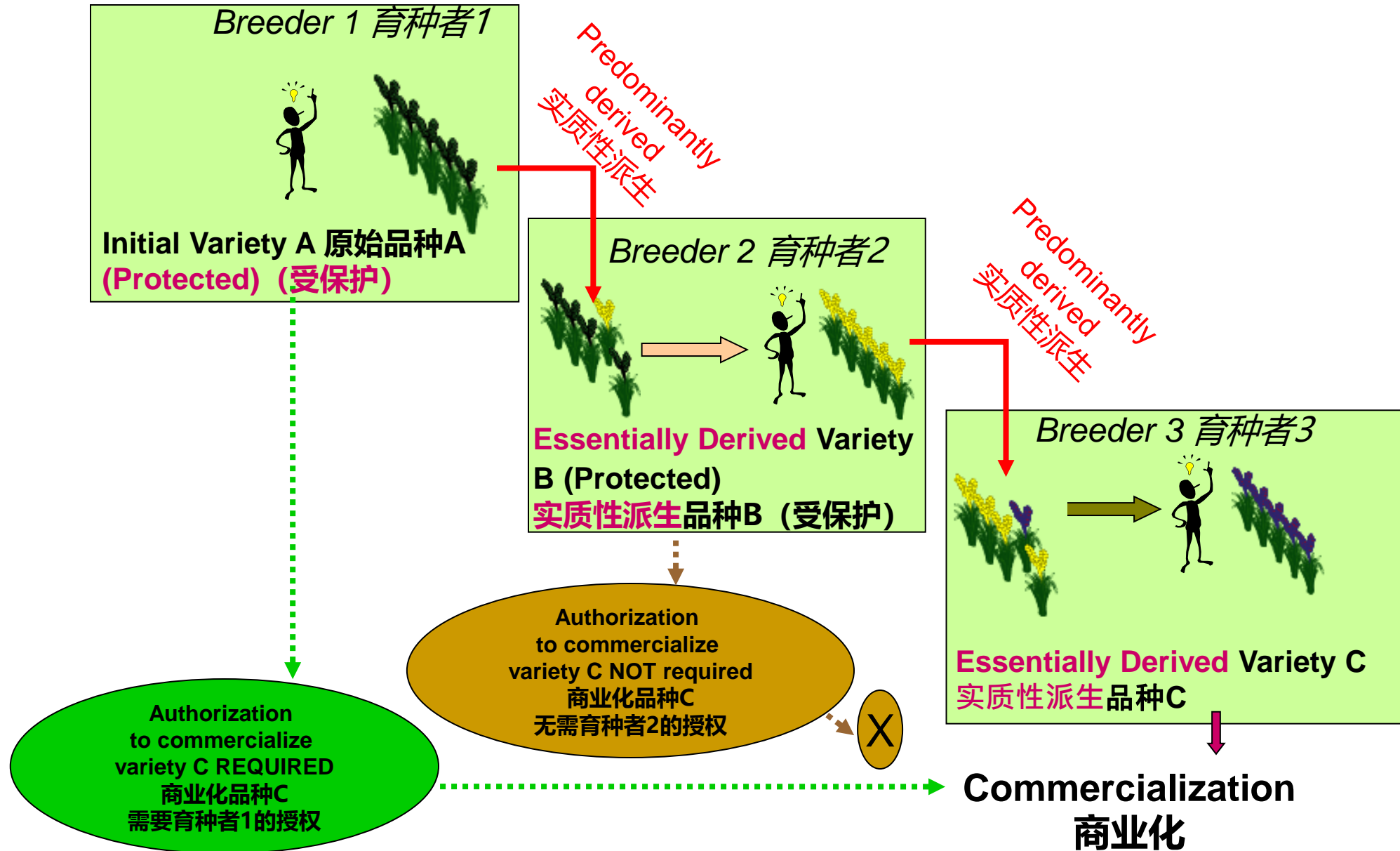
第十四条 *育种者权利适用范围

- (1) [*Acts in respect of the propagating material*] 【与繁殖材料有关的活动】
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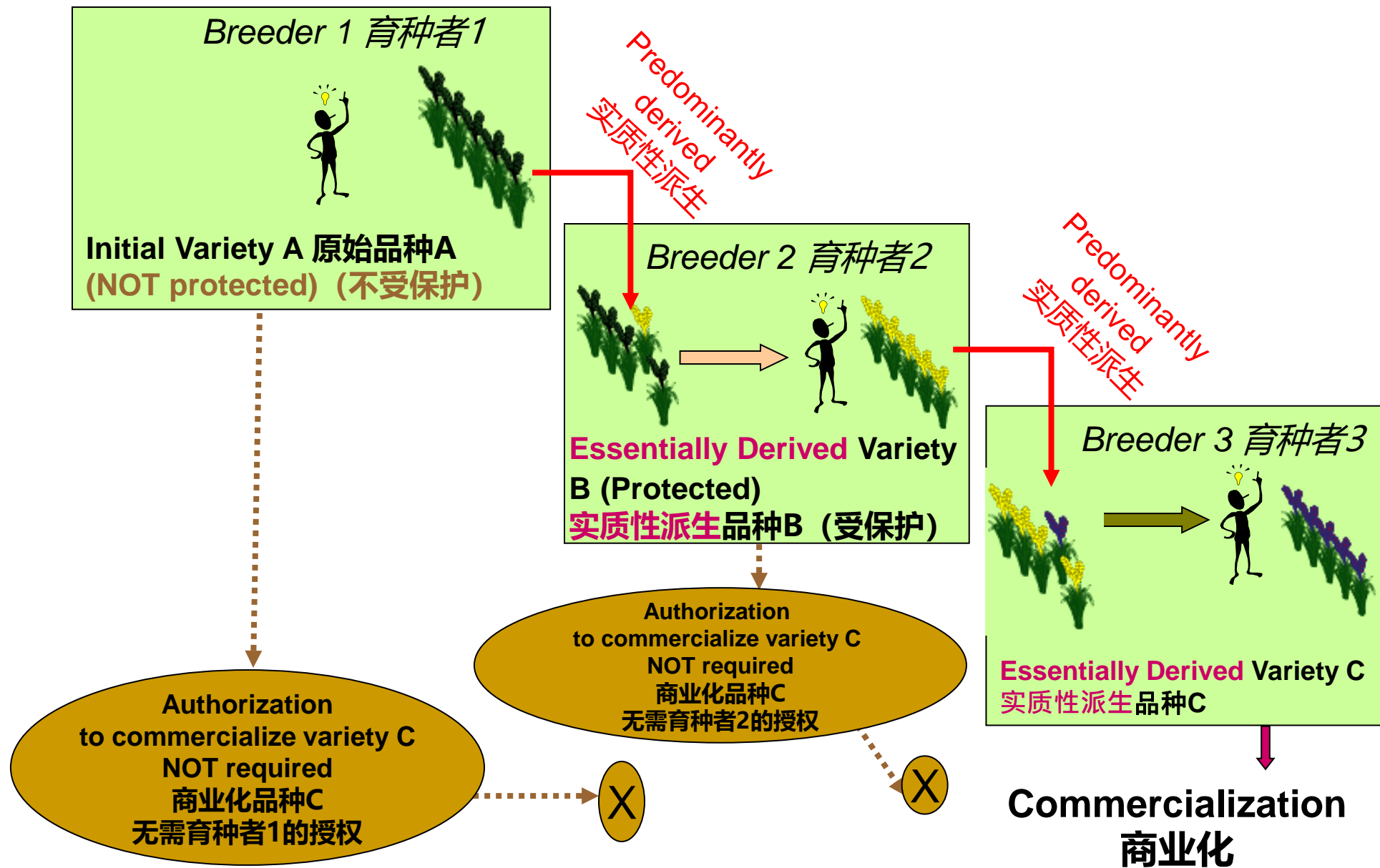
Essentially Derived Varieties 实质性派生品种



Essentially Derived Varieties 实质性派生品种



Essentially Derived Varieties 实质性派生品种



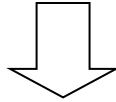
Essentially Derived Varieties 实质性派生品种

Initial Variety A 原始品种A

(**PROTECTED**) (**受保护**)

bred and protected by Breeder 1

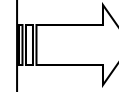
由育种者1培育和保护



Essentially Derived Variety B 实质性派生品种B

bred and **protected** by Breeder 2 由育种者2培育和**保护**

- predominantly derived from A A的实质性派生
- retains expression of essential characteristics of A 保留表达A的基本特性
- clearly distinguishable from A 与A有明显区别
- conforms to A in essential characteristics (except for differences from act of derivation) 在基本特性方面与A相同 (除了派生引起的性状有所差异外)

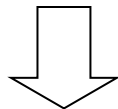


Commercialization:
authorization of

Breeders 1 and 2 required

商业化:

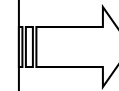
需要育种者1和2的授权



Essentially Derived Variety C 实质性派生品种C

bred and **protected** by Breeder 3 由育种者3培育和**保护**

- predominantly derived from **A or B** **A或B**的实质性派生
- retains expression of essential characteristics of **A** 保留表达**A**的基本特性
- clearly distinguishable from **A** 与**A**有明显区别
- conforms to **A** in essential characteristics (except for differences from act of derivation) 在基本特性方面与**A**相同 (除了派生引起的性状有所差异外)



Commercialization
authorization of

Breeders 1 and 3 required
(authorization of **Breeder 2** not required)

商业化:

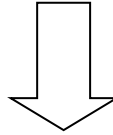
需要育种者1和3的授权
(**无需育种者2的授权**)

Essentially Derived Varieties 实质性派生品种

Initial Variety A 原始品种A

(**NOT PROTECTED**) (**不受保护**)

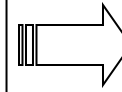
bred and protected by *Breeder 1* 由育种者1培育和保护



Essentially Derived Variety B 实质性派生品种B

bred and **protected** by *Breeder 2* 由育种者2培育和**保护**

- predominantly derived from A A的实质性派生
- retains expression of essential characteristics of A 保留表达A的基本特性
- clearly distinguishable from A 与A有明显区别
- conforms to A in essential characteristics (except for differences from act of derivation) 在基本特性方面与A相同 (除了派生引起的性状有所差异外)

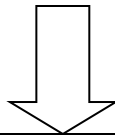


Commercialization

authorization of **Breeder 2 required**
(authorization of **Breeder 1 not** required)

商业化:

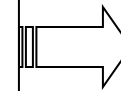
需要育种者2的授权
(**无需育种者1的授权**)



Essentially Derived Variety C 实质性派生品种C

bred and **protected** by *Breeder 3* 由育种者3培育和**保护**

- predominantly derived from **A or B** **A或B**的实质性派生
- retains expression of essential characteristics of **A** 保留表达**A**的基本特性
- clearly distinguishable from **A** 与**A**有明显区别
- conforms to **A** in essential characteristics (except for differences from act of derivation) 在基本特性方面与**A**相同 (除了派生引起的性状有所差异外)



Commercialization

authorization of **Breeder 3 required**
(authorization of **Breeder 1 and 2 not** required)

商业化:

需要育种者3的授权
(**无需育种者1和2的授权**)

Seminar on the Impact of Policy on Essentially Derived Varieties (EDVs) on Breeding Strategy in 2019

实质性派生品种政策对育种策略影响问题研讨会（2019年）



UPOV EDV Seminar – Summary

UPOV EDV研讨会—概要

- Evidence that the current UPOV guidance does not reflect the practice amongst breeders in the understanding of essentially derived varieties (EDV).
- 证据：现有UPOV指南无法体现育种者在实质性派生品种方面的理解和实践。
- *Evolution of breeding techniques has created new opportunities/incentives for predominately deriving varieties from initial varieties, more rapidly and at a lower cost.*
- *育种技术的发展为更为快速、低成本地从原始品种实质性派生品种创造了新机遇/激励。*
- Clear indication from presentations and discussions that the understanding and implementation of the EDV concept influences breeding strategy – therefore, it is *important that UPOV guidance is tuned to maximize benefits to society in terms of maximizing progress in breeding.*
- 相关演示文件和讨论清楚表明，对EDV概念的理解和实施会影响育种策略——因此，*要重视UPOV指南的修订工作，尽可能推动育种进步、造福社会。*

Essentially Derived Varieties 实质性派生品种

Seminar on the
Impact of Policy on Essentially Derived Varieties (EDVs) on Breeding Strategy
实质性派生品种政策对育种策略影响问题研讨会



October 2019
2019年10月

**Working Group on Essentially
Derived Varieties (WG-EDV)
实质性派生品种工作组**

to draft a **revision** of the **Explanatory Notes
on Essentially Derived Varieties**
for consideration by the
Administrative and Legal Committee (CAJ).
起草**修订关于实质性派生品种的解释性文
件**并交管理和法律委员会审议

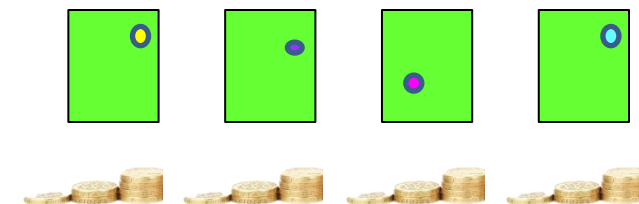
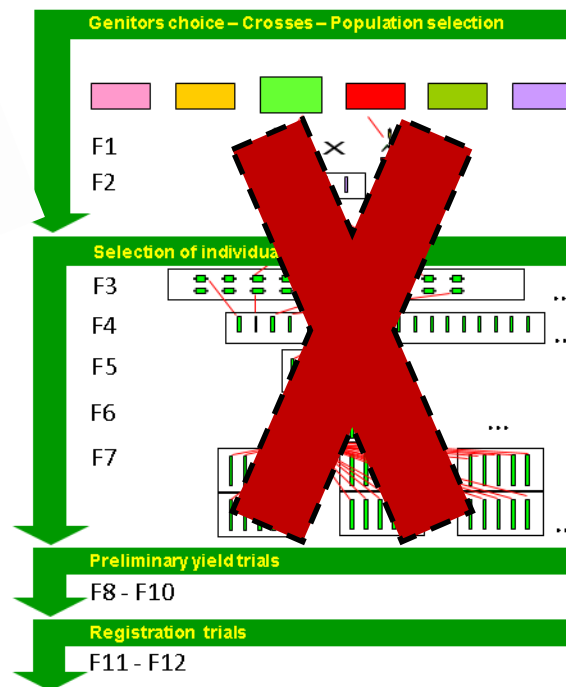
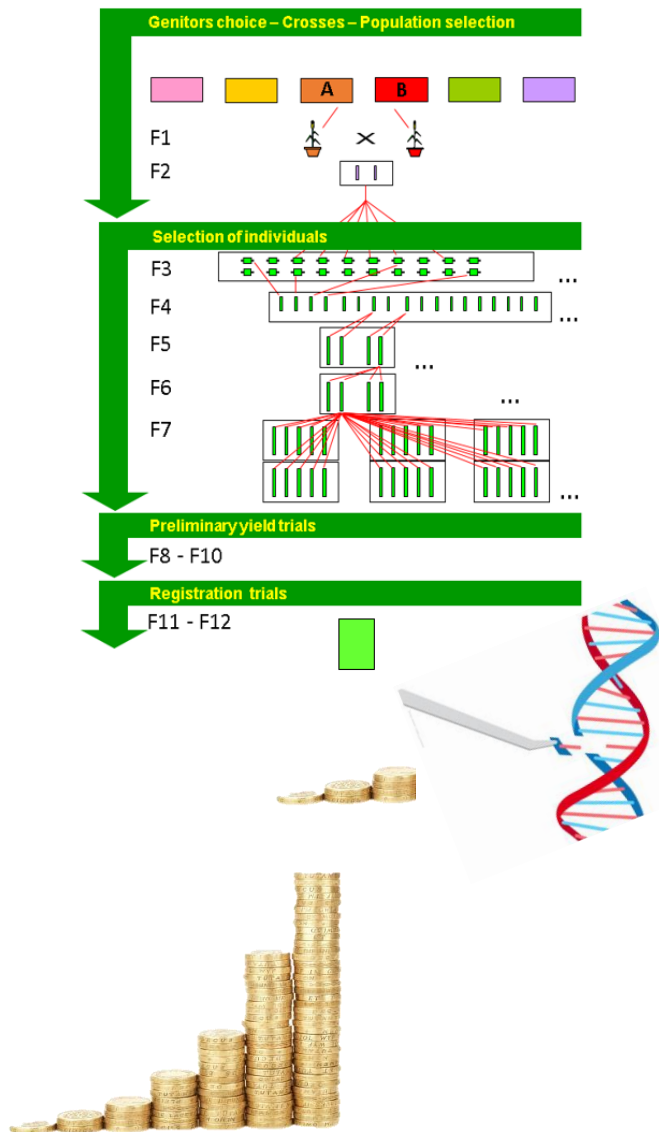
**...plus EDV information session...
.....以及召开EDV报告会**

Policy objectives in the revision of document UPOV/EXN/EDV/2 ToRs for the WG-EDV 修订UPOV/EXN/EDV/2文件的政策目标

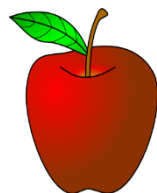
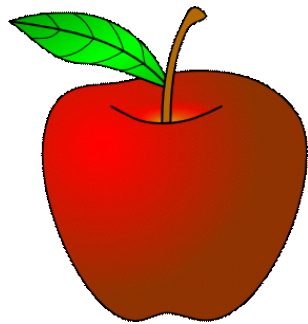
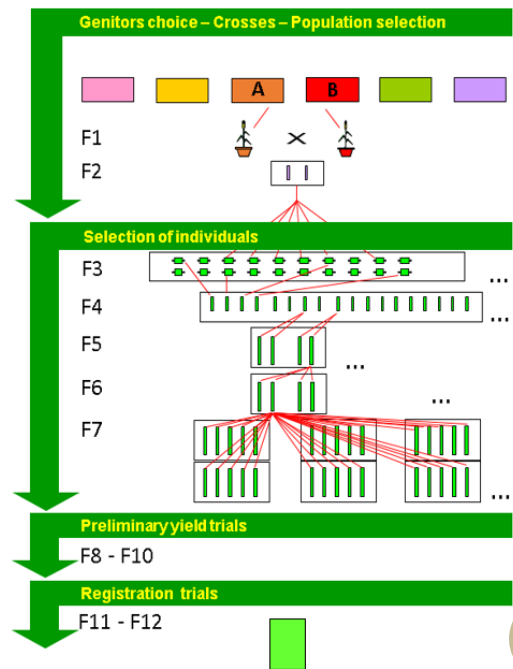
In drafting the revision of document UPOV/EXN/EDV/2, the WG-EDV to consider
起草修订UPOV/EXN/EDV/2文件时，EDV工作组有如下考虑因素：

(i) the **outcome of the 2019 Seminar** on the Impact of Policy on Essentially Derived Varieties (EDVs) on Breeding Strategy **2019年研讨会（EDV政策对育种策略影响问题）成果：**

- Evidence that the current **UPOV guidance does not reflect the practice amongst breeders** in the understanding of essentially derived varieties 证据：现有**UPOV指南无法体现育种者在实质性派生品种方面的理解和实践。**
- **Evolution of breeding technologies** has created new opportunities/incentives for predominantly **deriving varieties from initial varieties, more rapidly and at a lower cost** 育种技术的发展为更为**快速、低成本地从原始品种实质性派生品种**创造了新机遇/激励。
- Clear indication from presentations and discussions that the understanding and implementation of the **EDV concept influences breeding strategy** – therefore, it is important that UPOV guidance is tuned to maximize **benefits to society** in terms of maximizing progress in breeding 相关演示文件和讨论清楚表明，**对EDV概念的理解和实施会影响育种策略**——因此，要重视UPOV指南的修订工作，尽可能推动育种进步、造福社会。



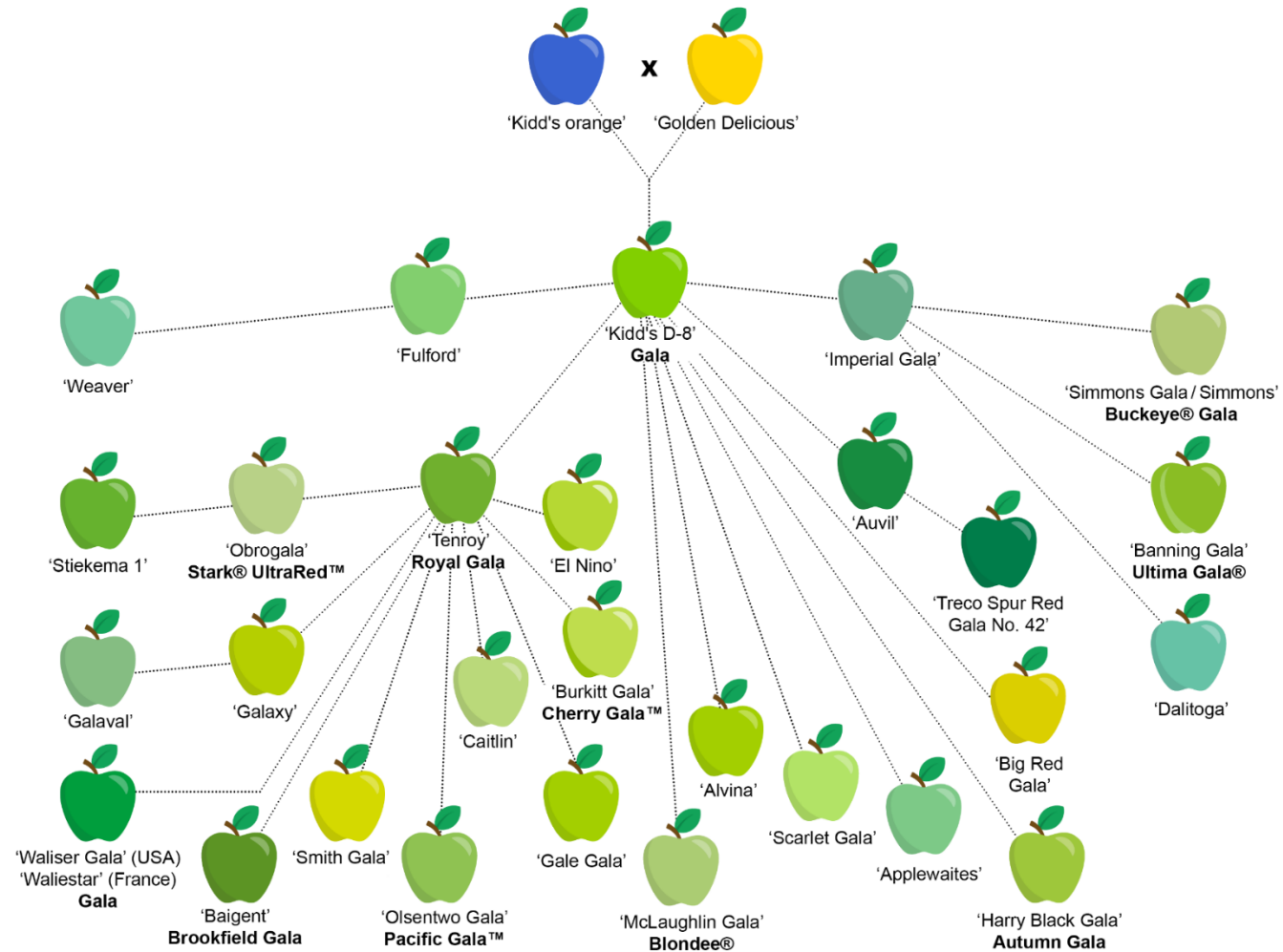
**Unless EDV
除非为实质性派生品种**



Mono-parental EDV example in Apple

苹果中的“单一亲本实质性派生品种示例”

A subset of naturally-occurring mutations of Kidd's D-8 apple (marketed as 'Gala')
天然变异Kidd's D-8苹果的子集（商品名“佳丽果”）



Background 背景

- Process started by the Administrative and Legal Committee (CAJ) in **2018**, EDV Seminar in 2019, CAJ established WG-EDV and WG-EDV met 4 times 2019-**2021**:
- **2018年**，管理和法律委员会（CAJ）启动修订程序；2019年，召开实质性派生品种研讨会；CAJ成立EDV工作组；2019-**2021**年，工作组共召开四次会议。

The WG-EDV agreed the following timeline:

<u>February 4, 2021</u>	Second Meeting of the WG-EDV (by virtual means): <ul style="list-style-type: none">- Joint presentation by breeders' organizations and discussion in relation to issues for consideration. (presentation to be posted at least 1 week in advance of the second meeting)
<u>April/May 2021</u> [date to be decided]	Third Meeting of the WG-EDV (by virtual means): <ul style="list-style-type: none">- consideration by the WG-EDV of a preliminary draft text for revision of UPOV/EXN/EDV/2 (to be posted at least 4 weeks before the third meeting)
<u>June/July 2021</u> [date to be decided]	Consideration of UPOV/EXN/EDV/3/Draft 1 by correspondence (6 weeks for comments)
<u>October 2021</u> [date to be decided]	Fourth Meeting of the WG-EDV (at the fringes of the CAJ session) <ul style="list-style-type: none">- consideration of UPOV/EXN/EDV/3/Draft 2 (to be posted 6 weeks before the fourth meeting in English)"

EDV工作组约定如下时间线:

2021年2月4日	工作组第二次会议（网络会议）： -育种者组织联合进行文件演示，讨论了相关事项供审议（演示文件最晚会前一周发布）
2021年4月/5月【日期待定】	工作组第三次会议（网络会议）： -工作组审议文件UPOV/EXN/EDV/2修订版的初步草稿文本（最晚会前四周发布）
2021年6月/7月【日期待定】	以通信方式审议UPOV/EXN/EDV/3/草稿1（六周意见征询）
2021年10月【日期待定】	工作组第四次会议（在管理和法律委员会会议间隙） -审议UPOV/EXN/EDV/3/草稿2（会前六周发布英文草稿）

Latest developments on the Revision of the Explanatory Notes on EDV

实质性派生品种解释性文件修订稿的最新进展

- The **CAJ on October 27, 2021**, approved the proposed revision of document UPOV/EXN/EDV/2 “Explanatory Notes on Essentially Derived Varieties under the 1991 Act of the UPOV Convention”.
- **2021年10月27日，CAJ**批准对文件UPOV/EXN/EDV/2 “关于《国际植物新品种保护公约》 1991 年文本项下实质性派生品种解释性文件” 的拟议修订。
- The **Council, on October 29, 2021**, agreed that a draft of document UPOV/EXN/EDV/3 (Document UPOV/EXN/EDV/3 Draft 3), as approved by the CAJ, be circulated for approval by the Consultative Committee and adoption by the Council by correspondence (see document C/55/18 “Report”, paragraph 47).
- **2021年10月29日，UPOV理事会**同意分发经CAJ批准的文件UPOV/EXN/EDV/3草稿，由咨询委员会和理事会分别以通信方式批准和通过（见文件C55/18/ “报告” 第47段）。
- **Document UPOV/EXN/EDV/3 Draft 3** and a document **with relevant information** on developments during the procedure by correspondence will be posted on the UPOV website and will part of the agenda of the **Consultative Committee on October 27 and the Council on October 28, 2022**.
- **文件UPOV/EXN/EDV/3第三稿**和包含修订程序进度**相关信息**的文件将于UPOV网站发布，并进入**咨询委员会2022年10月27日和理事会2022年10月28日**会议议程。