



CPVO

Community Plant Variety Office

Enforcement and dealing with infringement cases

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IPKey SEA Support to the accession of SEA countries to UPOV 1991 – 18.1.2022



Outline

- PBR Protection discipline under UPOV 91
- Enforcement under UPOV 91
- The European experience and the role of the CPVO
- Practical examples



PBR Protection discipline under UPOV 91



Scope of PBRs under UPOV 91

The authorization of the holder is required in respect of the following acts [Art. 14]:



Production or
reproduction



Conditioning for
the purpose of
propagation



Offering for sale,
selling or other
marketing



Exporting and
Importing



Stocking for any
of the above
mentioned
purposes





What is infringement?

Whenever a person carries out one of the acts requiring the right holder's authorisation, without such authorisation, the action can be qualified as an infringement of the PBR

- **E.g.:** Company X obtains a sample of the protected variety Z. It multiplies the protected variety Z, and exports it to Country Y, without asking to the right holder the permission to do so.



Enforcement under UPOV 91



Enforcement

Art. 30 UPOV 91 (Implementation of the convention)

1. Each Contracting Party shall [...]
 - i. Provide for appropriate legal remedies for effective enforcement of breeders' rights

→ Breeders are responsible for enforcing their rights





Risks

- Plant varieties can be easily and quickly reproduced: nature is a perfect copying machine
- Hard to differentiate between illegitimate and legitimate propagating material
- Difficult to obtain evidence of infringing material
- Not perceived as health hazard like for pharmaceuticals
- PVR infringement often linked to a cluster of other offences





Consequences

Developing a new variety is a long and expensive process.
Need IP protection and effective enforcement measures as:

- Losing investment in the development of a variety
- Losing revenues of licensing
- Discourages further investment in innovation
- Hazardous for plant and human health

Explanatory Notes on PBR Enforcement adopted by the UPOV Council



UPOV/EXN/ENF List of enforcement measures

- Civil measures
- Customs measures
- Administrative measures
- Criminal measures
- Measures resulting from alternative dispute settlement mechanisms
- Specialized courts



Explanatory Notes - scope

The UPOV Explanatory notes provide a guide to UPOV Members to identify and implement their own Enforcement system.

The Notes can provide guidance on the type of measures available but the single Member States are responsible of ensuring an effective enforcement system involving:

- Police authorities
- Custom authorities
- Judicial authorities



The European experience and the role of the CPVO



Enforcement in the EU



The right holders **enforce** the rights in front of National courts



Applicable **national** procedural law (civil and criminal)



National courts competent to hear **infringement** cases (Art. 101 BR)

The role of the CPVO (Art. 91 BR)



Mainly enforcement authorities and national courts are in charge of dealing with the right holders' initiatives to enforce their rights.

The CPVO, and other entities involved, should give assistance to each other by

- Communicating information
- Open files
- Provide samples
- Allow access to growing facilities



Practical examples

Illegal propagation of Cherry Tomatoes



The Fiscal authority is with the breeders a major victim of illegal propagation of cherry tomatoes in Sicily (Italy)



Source AIB (Anti-Infringement Bureau for Intellectual Property Rights on Plant Material)
(Suvery 2014)



Reproduction and commercialisation



Illegal reproduction of protected plant varieties



Illegal commercialisation of protected plant varieties using denomination of other protected varieties



Trade name
of the
variety



Information on
the rose in
every box



Information on the
variety in every
bouquet

Bouquet





Example of Spain



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



SEPRONA activities



Source GESLIVE



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