

# 50 years protecting Intellectual Property Rights for breeders



International community of breeders of asexually reproduced ornamental and fruit plants

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## All parts of the production and trade chain can be held liable for infringements of Plant Breeders' Rights

*On the occasion of an enforcement seminar organized by the Community Plant Variety Office (CPVO) in Hamburg, Germany, the Secretary General of CIOPORA, Dr. Edgar Krieger, reminds the growers and traders of protected plant material, that the entire chain can be held liable for infringements of Plant Breeders' Rights.*

A huge industry in Europe and world-wide is active in the production and trade of horticultural products, such as flowers, pot-plants, bedding plants, fruits or trees. One aspect which is highly important for this entire industry, but is underestimated or even ignored to a huge extent, is the Intellectual Property protection for plant innovations, such as plant breeders' rights, plant patents, patents or trademarks.

Edgar Krieger: "One reason behind the limited legal understanding lies in the size of the players in the business, particularly at the growers' side: Most of them are small and medium sized enterprises, and the knowledge of legal aspects in such companies is often underdeveloped. In-house-lawyers are rare and external expertise often is sought only if legal problems have started already. Therefore, education is of utmost importance. Unfortunately, during the horticulturist education and even in many degree programs for horticultural studies no lessons on IP are offered. This is not without danger, as ignorance is no excuse when it comes to infringements of IP rights."

Using the example of Germany, Krieger stresses that according to rulings of the German Supreme Court each part of the production and trade-chain can be held liable for PBR infringements.

Propagators and growers are obliged to check the existence of IP rights and must make sure that their goods do not infringe such rights. Krieger calls this the "*compliance-check*". Such compliance check includes in any case that growers check if the propagators, who supply cuttings or plants to them, do have a valid license of the title holder of the variety.

An enterprise trading with goods is obliged to carefully check (not only to ask) with its supplier whether such necessary compliance-check has been carried out. If the trader does not check with his supplier, he has to do the check himself. This particularly holds true for dealers who purchase goods from abroad, since especially in such case it is possible that the producer of the goods or other members of the trade chain did not see any cause to check the goods with regard to domestic IP rights. A dealer must not put a product into circulation unless he can reasonably assume that the necessary compliance check has been carried out at least once. Krieger explains: "The trade cannot absolve itself from responsibility by referring to a putative reliable supplier. In case of doubt the trade has its own obligation to make a compliance check."

Intermediaries, such as auctions, have to undertake all technically possible and reasonable steps to prevent infringements. Flora Holland, one of the largest flower auctions in the world, recently has set-up a program in order to support breeders in their fight against infringements of IP rights. This is a good and necessary first step, as the auctions play a major role in the distribution of horticultural products.

As mentioned before, in any case it is necessary to check whether the propagator has a valid license-contract with the title-holder. But even such check gives no guarantee for the final products being legal. For a propagator it is easy to propagate more than what is covered by his license contract, and for a grower it is easy to self-propagate without prior authorization of the title holder. Even in these cases the trade is liable when it brings such illegal products onto the market. In order to safe itself, the trade should immediately discontinue business with suppliers, who supply illegal products to them.

Still many players in the business do not respect or do not care about IP-protection. This is all the more annoying as the royalties for the propagation of plant material do form only a small part in the overall costs of production and trade of the final horticultural products. Using the example of apples, Krieger demonstrates that the portions of royalties in the growers' expenses are as low as 0.33 – 1.5 %. Another example shows the considerable input/output ratio of breeding work: In high-performance apple varieties the one-time input of 6,600 EUR royalties per hectare results in a growers' income of 430,000 EUR and an overall sales-price for the harvested apples of 2,500,000 EUR during the life-time of the apple trees. Compared to the overall sales price of the apples, the royalty is only 0.25%.

All parts of the production and trade chain significantly benefit from the work of the breeders, and it should be self-evident that the breeder is granted a fair return on his investment.

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CIOPORA is the International Association of Breeders of Vegetatively Reproduced Ornamental and Fruit Varieties. Breeders of such crops hold ca. 2/3 of all PVR titles in the world. Since 50 years CIOPORA represents them in all matters of Intellectual Property Protection.

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