

50 years protecting Intellectual Property Rights for breeders



International community of breeders of asexually reproduced ornamental and fruit plants

Hamburg, 21st June 2011

Secretary General of CIOPORA urges the EU to provide for clear definitions of protected plant material and for protection of processed products

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, urged the EU to provide for effective protection of plant innovations.

For almost a year now the European Plant Variety Right system has been under evaluation, in order to find out the potential shortcomings of the system and ways to improve it. The Secretary General of CIOPORA, Dr. Edgar Krieger, used the opportunity of a speech at the latest enforcement seminar of the CPVO to address the issue of the “scope of protection”; the question, which material is protected under the Plant Variety Right, being one of the key questions in the entire law.

Different to the UPOV Conventions the European Plant Variety Right law does not use the term “propagating material”, but the term “*variety constituents*” to describe the protected material. The definition of “variety constituents” is rather clear in the law: variety constituents are “*entire plants or parts of plants as far as such parts are capable of producing entire plants*” (Article 5 (3) of the Regulation 2100/94). This definition provides a sufficiently broad scope of protection for vegetatively reproduced ornamental and fruit varieties. However, no common understanding of the term “variety constituents” exists. Particularly in the literacy the term “variety constituents” still is interpreted by some authors as being “propagating material”, which in the opinion of some is a far narrower concept. Krieger: “It is not acceptable that one of the key terms of the European Plant Variety Right law is not clear.”

Another loophole in the European Plant Variety Right legislation is the limited and conditional protection of harvested material and the complete lack of protection of processed material. This is not only of theoretical relevance, but has significant practical implications: in 2009 the value of the EU-imports of edible fruits and nuts amounted to 12 billion EUR. Most of this harvested material is produced in countries which are either UPOV 1978 members or Non-UPOV-members, which provide limited or no protection for plant varieties. Another example is about fruit juice, where more than 70% of all imports to Germany origin from Non-UPOV or UPOV 1978 countries. Krieger explains: “Breeders must be able to exert their EU Breeders’ Rights to harvested material and processed material when this material is imported to the EU, otherwise no control can be exercised over goods produced from illegal plant material. This is not only unfair towards breeders, it is also unfair towards propagators and growers in the EU, who comply with the law and pay royalties when using protected varieties.”

The request of CIOPORA is: The European legislator has to provide for clear rules and for effective protection for plant varieties. Honest players in the business respect the law anyway. Unclear rules and loopholes in the protection are to the benefit of malicious infringers only, and both, breeders, propagators and growers suffer from unfair competition from this side.

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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