

PROTECTION OF PLANT-RELATED INNOVATIONS

Concerns and current debates

B. Le Buanec
Isf Senior Adviser
Workshop on IP and Plant Breeding
Edinburgh, June 3, 2008

The Legal Framework

- Protection of plant varieties
 - Plant Breeders' Rights
 - Patents
- Protection of biotechnological inventions by patent

Concerns

The implementation of the farm saved seed provision



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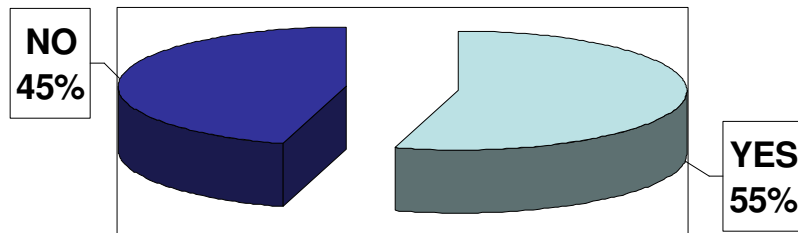
The 1991 Act

Exceptions to the Breeder's Right

Optional exception:

- Each contracting party may, within reasonable limits and subject to the safeguarding of the legitimate interest of the breeder, restrict the breeder's right in order to permit farmers to use, on their own farm, farm saved seeds

Does the law provide for reasonable limits and the safeguarding of the legitimate interests of the breeder?
(11 countries members of the 1991 Act)



The 1991 Act

- The protection is extended to the harvested material obtained through the unauthorized use of propagating material
- Each contracting party may extend the protection to the products made directly from the harvested material
- Unless, in both cases, the breeder has had a reasonable opportunity to exercise his right in relation to the propagating material

Concerns

- Lack of clarity in the definition of harvested material.
- No extension to product made directly from the harvested material.



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The 1991 Act

The essentially derived varieties

- The authorization of the breeder is required for the exploitation of essential derived varieties (edv) of a protected variety. A variety is an edv when:
 - It is predominantly derived from the initial variety
 - It conforms to the initial variety (iv) in the expression of its essential characteristics that results from the genotype or the combination of genotypes of the iv

Current debates

Essential derivation

- .What threshold as a trigger point
- .Can the use of information be considered as « predominant » derivation



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The 1991 Act

Exceptions to the Breeder's Right (1)

Compulsory exceptions:

- Acts done privately and for non-commercial purposes
- Acts done for experimental purposes
- Acts done for the purpose of breeding other varieties and, except if the new variety is essentially derived, exploitation of that new variety

Current debates

Breeders exception

- .New techniques have accelerated the breeding Process
- .Should the breeders exception be adapted?



The current debate

Access to plant varieties for further breeding

- During the past twenty years breeding methods have evolved drastically, allowing faster results due in particular to the following four factors: the development of greenhouses facilities, the generalization of counter-seasons nurseries facilitated by the new transportation capabilities, the haplo-diploidisation, and the more recent development of so-called molecular breeding, which uses molecular markers to trace genes and QTL. While not refusing the breeder's exception principle, some companies, mainly based in the USA at the moment, are considering a possible limitation during a certain period to give a minimum time to the breeder to benefit from his innovation

Current debates

Breeders exception

The coexistence of patent and plant breeders right



ISF position

For plant varieties, the type of protection that is currently available varies according to the technical, legal and socio-economic status of the various countries. In all the countries, where plant varieties are protectable, a UPOV or UPOV-like system is available. There are a few countries where protection through utility patents is also possible. ISF considers that both systems are legitimate. If a country envisages the adoption of a *sui generis* system to protect plant varieties ISF recommends that this *sui generis* system , as a minimum, conform to the requirements of the 1991 Act of the UPOV Convention.

Coexistence of PBR and Patents

"...further clarification is needed as regards the use of transgenic varieties containing patented elements and protected by Breeder's Right for further breeding. ISF is strongly attached to the breeder's exception provided for in the UPOV Convention and is concerned that the extension of the protection of a gene sequence to the relevant plant variety itself could extinguish this exception. Therefore ISF considers that a commercially available variety protected only by Breeder's Rights and containing patented elements should remain freely available for further breeding. If a new plant variety, not an essentially derived variety resulting from that further breeding, is outside the scope of the patent's claims, it may be freely exploitable by its developer. On the contrary, if the new developed variety is an e.d.v. or if it is inside the scope of the patent's claims, a consent from the owner of the initial variety or of the patent must be obtained".

Current debate

- Exclusion of essentially biological processes from patent protection.

ISF considers that a non-microbiological process for the production of plants in the meaning of the development of a new variety should not be excluded from patentability if it contains, as a further step or as a part of the steps of crossing and selection, a process representing a technical teaching, material to the process and solving a material problem

I thank you for your attention