

Plant Breeder's Rights (PBR)

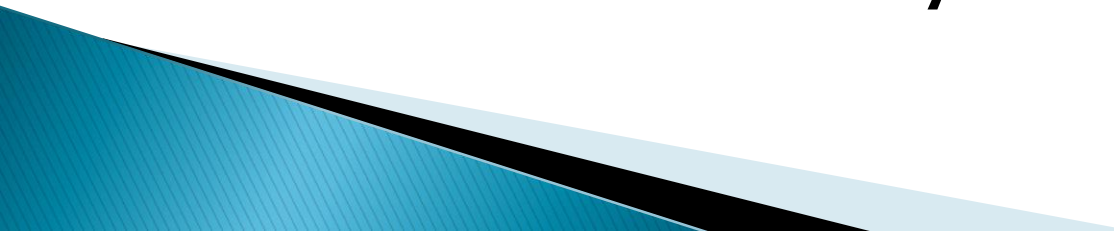
Julia Borys



INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS (UPOV)

- ▶ **The International Union for the Protection of New Varieties of Plants (UPOV) is an intergovernmental organization based in Geneva, Switzerland.**
- ▶ **UPOV was established in 1961 by the International Convention for the Protection of New Varieties of Plants (the “UPOV Convention”).**
(revisions of the Convention in 1972, 1978 and 1991)

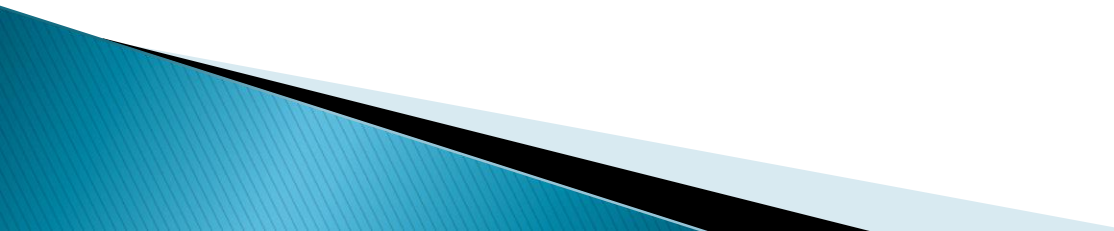
UPOV

- ▶ **The UPOV Convention provides the basis for members to encourage plant breeding by granting breeders of new plant varieties an intellectual property right: the breeder's right.**
 - ▶ **The mission of UPOV is 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.**
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- ▶ **As of November 26, 2015, UPOV has 74 members; fifteen States and one intergovernmental organization have initiated the procedure for acceding to the UPOV Convention and 23 States and one intergovernmental organization have been in contact with the Office of the Union for assistance in the development of laws based on the UPOV Convention.**
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UPOV

- ▶ **The UPOV Convention specifies the acts that require the breeder's authorization in respect of the propagating material of a protected variety and, under certain conditions, in respect of the harvested material.**
- ▶ **Under the UPOV Convention, the breeder's right is only granted where the variety is (i) new, (ii) distinct, (iii) uniform, (iv) stable and has a suitable denomination**

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- ▶ The breeder's right does not extend to acts done (i) privately and for non-commercial purposes, (ii) for experimental purposes and (iii) for the purpose of breeding other varieties.
- ▶ The UPOV Convention provides the basis for UPOV members to encourage plant breeding by granting breeders of new plant varieties an intellectual property right: the breeder's right. In order to obtain protection, the breeder needs to file individual applications with the authorities of UPOV members entrusted with the task of granting breeders' rights.

UPOV

- ▶ The UPOV Report on the Impact of Plant Variety Protection (http://www.upov.int/about/en/pdf/353_upov_report.pdf) demonstrated that in order to enjoy the full benefits which plant variety protection is able to generate, both implementation of the UPOV Convention and membership of UPOV are important.

UPOV


The introduction of the UPOV system of plant variety protection and UPOV membership were found to be associated with:

- (a) *increased breeding activities,*
- (b) *greater availability of improved varieties,*
- (c) *increased number of new varieties,*
- (d) *diversification of types of breeders (e.g. private breeders, researchers),*

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- (e) *increased number of foreign new varieties,*
- (f) *encouraging the development of a new industry competitiveness on foreign markets, and*
- (g) *improved access to foreign plant varieties and enhanced domestic breeding programs.*

How are new plant varieties of benefit to society?

- ▶ **New varieties of plants with features such as improved yield, high quality and resistance to plant pests and diseases are a key element in increasing productivity and product quality in agriculture, horticulture and forestry, whilst minimizing the pressure on the natural environment. Many inputs need to be combined with such varieties in order to deploy their full potential. The tremendous progress in agricultural productivity in various parts of the world is largely based on improved varieties.**
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Why do farmers and growers need new plant varieties?

The importance and scale of the contribution of plant breeding can be illustrated by the example of Rapeseed.

Originally, only the oil component of rapeseed provided a useful product, as a lubricant for steam engines. It was only when breeders started to work on the crop that it attained major importance for agriculture.

Why do farmers and growers need new plant varieties?

Firstly, breeders reduced the glucosinolate content so that the meal could be used for feeding animals. As a following step, breeding was employed to reduce the erucic acid content so that rapeseed could be used as a source of edible oil for human consumption. More recently, efforts are continuing, and breeders are working to develop high oleic and low linoleic acid varieties with nutritional benefits for consumers.

What is Plant Variety Protection?

The UPOV Convention provides the basis for members to encourage plant breeding by granting breeders of new plant varieties an intellectual property right: the breeder's right.



What is Plant Variety Protection?

In the case of a variety protected by a breeder's right, the authorization of the breeder is required to propagate the variety for commercial purposes.

The breeder's right is granted by the individual UPOV members.

Why Plant Variety Protection?

- ▶ **Plant breeding is long and expensive**

Plant varieties can be easily and quickly reproduced


Breeders need protection to recover investment

Conditions for PBR

Plant Breeder's Right is granted – at the request of the breeder or the breeder's representative – if a variety:

- ▶ is distinct, uniform and stable
- ▶ fulfils the novelty criterion
- ▶ has suitable denomination
- ▶ fulfils administration requirements and
- ▶ fees are paid

Distinctness, Uniformity and Stability of Variety

- ▶ The variety shall be deemed to be **distinct** if it is clearly distinguishable from any other variety whose existence is a matter of common knowledge at the date of filing an application.
 - ▶ The variety shall be deemed to be **uniform** if, subject to the variation that may be expected from particular features of its propagation, it is sufficiently uniform in its relevant characteristics.
 - ▶ The variety shall be deemed to be **stable** if its relevant characteristics remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each such a cycle.
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Novelty of Variety

- ▶ A variety shall be deemed **new** if, at the date of application for the grant of an exclusive right its breeder has not sold or otherwise disposed of to others, for commercial purposes, of its propagating material or harvested material or has not given written consent to it:
- ▶ 1) within the territory of BiH- earlier than one year before the abovementioned date;
- ▶ 2) in other states:
 - a) earlier than six years – in the case of trees or of vines,
 - b) earlier than four years – in the case of other varieties – before the date of application for the grant of an exclusive right.

Denomination of Variety

- ▶ Explanatory notes on variety denominations under the UPOV Convention
- ▶ Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights

Exceptions to the Breeder's Right

Compulsory

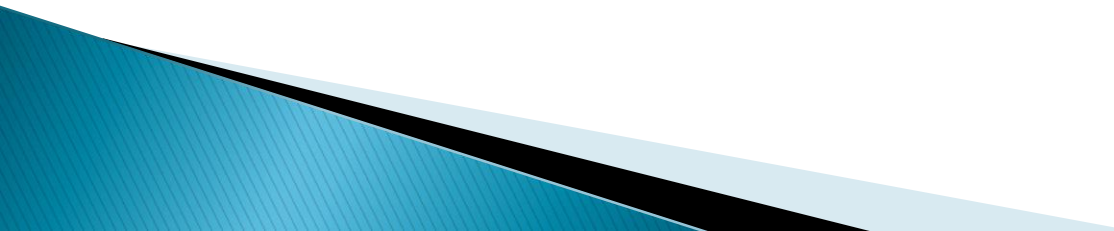
- ▶ Breeding other varieties ("breeder's exemption")
- ▶ Acts done for experimental purposes
- ▶ Acts done privately & for non-commercial purposes

Optional

- ▶ Farm saved seed

Scope of PBR

Breeder's Right comprises the following acts in respect of propagating material of the protected variety:

- ▶ **production or reproduction (multiplication)**
 - ▶ **conditioning for the purpose of propagation**
 - ▶ **offering for sale**
 - ▶ **selling or other marketing**
 - ▶ **exporting**
 - ▶ **importing**
 - ▶ **stocking**
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Scope of PBR

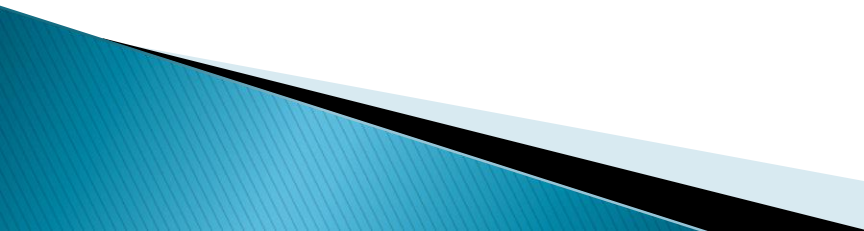
The PBR also covers:

- ▶ **harvested material or products produced directly from that material, if the breeder had no possibility of exercising of his right to seed material of the protected variety**
- ▶ **seed material of ornamental and fruit plants, if it is reused for commercial purposes as:**
- ▶ **reproduction material for the propagation of ornamental plants, or cut flower, or seed material of trees, shrubs and perennials**

Scope of PBR

The PBR also covers:

▶ **varieties:**

- derived, discovered or developed from a protected initial variety which is not a derived variety,
 - which are not clearly distinct from the protected variety,
 - in case of which the production of seed material requires repeated use of the protected variety
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Provisional PBR

- ▶ **A breeder who submitted an application for the grant of PBR shall enjoy a provisional PBR since the date of publication of information on that application**

The provisional PBR expires on the date of entry into force of the decision on the grant or on the refusal of the grant of PBR.

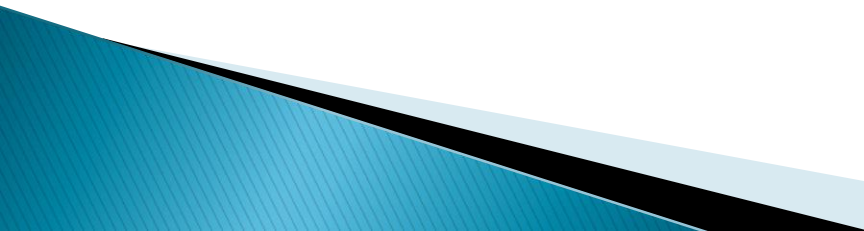
Duration of PBR

The PBR protection is granted for:

- ▶ **25 years – for vine, trees and potato varieties**
- ▶ **20 years – for varieties of remaining species**

There is no possibility to prolong the PBR protection period.

Enforcement of PVPs

- ▶ The breeder of the protected variety enforcing his rights to the variety should consider as follows:
 - ▶ the description of his variety established according to the version of protocol used in DUS test
 - ▶ the place where the DUS test was carried out
 - ▶ existence the standard (reference) sample of the protected variety
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Enforcement of PVPs

- ▶ **Plant material in question should be grown side by side with standard sample of the protected variety and assessed according to the protocol used for the preparation of the variety description**

Thank you very much

