ARGENTINE REPUBLIC
Presidency of the Nation

Ministry of Agriculture, Livestock and Fisheries
National Institute of Seeds

Different facets of plant varieties

INTELLECTUAL PROPERTY ▪ VEGETABLE VARIETIES BIOTECHNOLOGY
PHYTOGENETIC RESOURCES ▪ COMMERCE OF SEEDS

PART I. Intellectual property rights on vegetable varities
The breeder´s Right

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Ministry of Agriculture, Livestock and Fisheries
Presidency of the Nation
200 YEARS BICENTENNIAL ARGETINEAN

National Authorities

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Graphic design: Undique Comunication
www.undiquecomunicacion.com.ar

Edited by the National Institute of Seeds,
Printed in Buenos Aires, Argentina, September 2010
Constantino DE ADA S.A. printers, Mar del Plata, Buenos Aires

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1. Introduction

The Board of the NATIONAL SEEDS INSTITUTE entrusted to the Intellectual Property Rights and Phytogenetic Creations Coordination Unit, under my supervision, within the scope of the actions concerning them, the task of coordinating activities in relation to the legal, administrative, and institutional aspects of plant-related intellectual property rights and the planning and developing of information activities, training, and research regarding this matter. Also the drafting of a publication composed of several sections focused on the intellectual property rights system in connection with breeder-rights and patents, agricultural biotechnology and the national and international seeds trade. Said publication would be edited in different stages.

The Intellectual Property Rights and Phytogenetic Creations Thematic Coordination Unit was created by means of INASE Resolution No 99 on May 26, 2009 within the scope of the Board of the INASE and continued performing the tasks and activities being developed by the Legal Affairs Bureau, since the creation of the INASE in 1991, and by the Intellectual Property Rights Department of such Bureau since 2006, both under my supervision, in relation to intellectual property rights and genetic resources

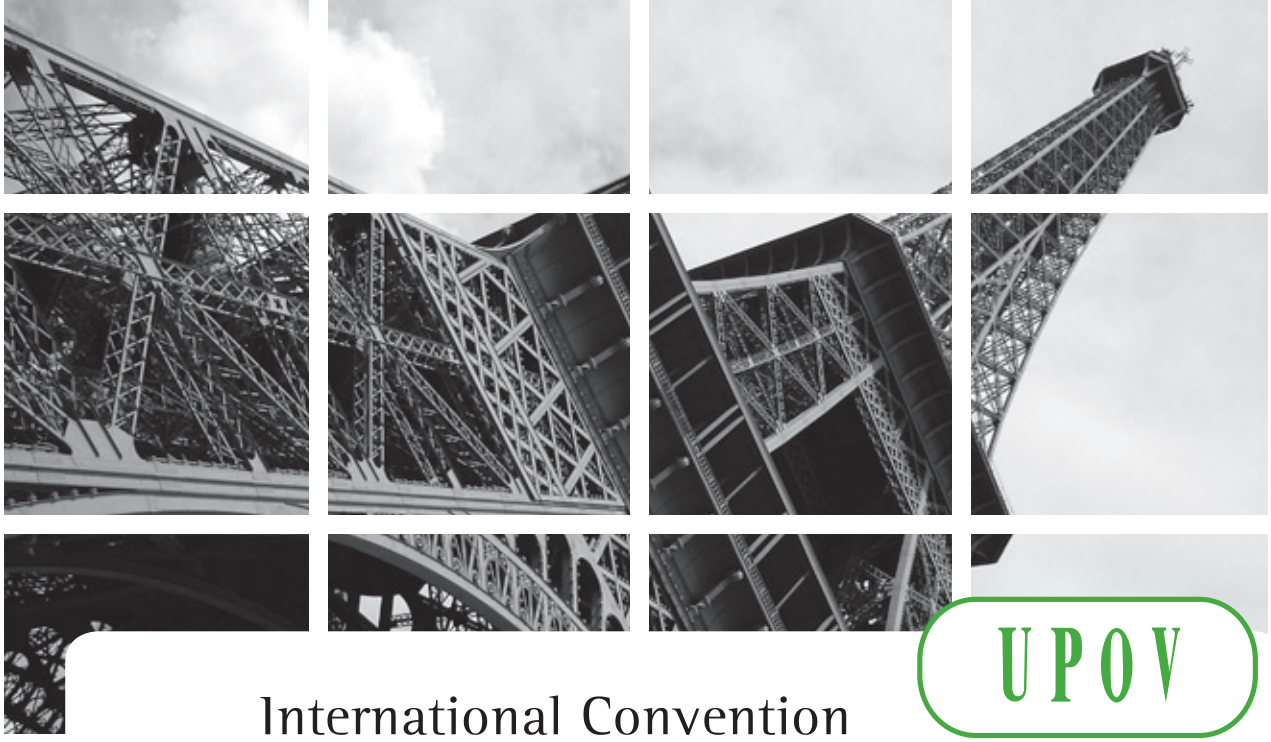
By means of Decree No 2125, dated December 21, 2009 I was appointed as Thematic Coordinator of the Intellectual Property Rights and Phytogenetic Creations Unit of the NATIONAL SEEDS INSTITUTE, a decentralized entity within the scope of the MINISTRY OF AGRICULTURE, LIVESTOCK AND FISHERIES, being also part of the Coordination Unit, Dr. María Laura Villamayor.

The first step taken in relation with this work was gathering the different presentations and publications made by the Coordination members during their intervention as representatives of INASE, in different national and international forums. This material shall be expanded further with works and speeches concerning the subject matters entrusted to the different areas of INASE and to the offices, bodies and entities dealing with the issue of the breeder's right and intellectual property of plant varieties and other related subjects in Argentina and in the world.

As established by the Board of INASE, the purpose of this publication is to disclose to the society in general, and the involved sectors in particular, INASE´s position and the different approaches and points of view on this subject. Considering all of the abovementioned, this publication is intended to be only the beginning of a greater knowledge which will be provided by new social actors who will increase and improve the work already done.

>> Dra. Carmen Gianni
Coordinator
Intellectual Property Rights and Phytogenetic Creations Thematic Coordination Unit
NATIONAL SEEDS INSTITUTE
MINISTER OF AGRICULTURE, LIVESTOCK AND FISHERY
REPUBLIC OF ARGENTINA

2. National and International Rules



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International Convention
for the Protection of new Varieties of Plants

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INTERNATIONAL UNION FOR THE PROTECTION OF PLANT VARIETIES

Convention Act of 1978
of December 2, 1961, as revised at Geneva on November 10, 1972, and on October 23, 1978

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The contracting parties,

Considering that the International Convention for the Protection of New Varieties of Plants of December 2, 1961, amended by the Additional Act of November 10, 1972, has proved a valuable instrument for international cooperation in the field of the protection of the rights of the breeders,

Reaffirming the principles contained in the Preamble to the Convention to the effect that:

a) they are convinced of the importance attaching to the protection of new varieties of plants not only for the development of agriculture in their territory but also for safeguarding the interests of breeders,
b) they are conscious of the special problems arising from the recognition and protection of the rights of breeders and particularly of the limitations that the requirements of the public interest may impose on the free exercise of such a right,
c) they deem it highly desirable that these problems, to which very many States rightly attach importance, should be resolved by each of them in accordance with uniform and clearly defined principles,

Considering that the idea of protecting the rights of breeders has gained general acceptance in many States which have not yet acceded to the Convention,

Considering that certain amendments in the Convention are necessary in order to facilitate the joining of the Union by these States,

Considering that some provisions concerning the administration of the Union created by the Convention require amendment in the light of experience,

Considering that these objectives may be best achieved by a new revision of the Convention,

Have agreed as follows:

Article 1: Purpose of the Convention; Constitution of a Union; Seat of the Union

1) The purpose of this Convention is to recognise and to ensure to the breeder of a new plant variety or to his successor in title (both hereinafter referred to as "the breeder") a right under the conditions hereinafter defined.
2) The States parties to this Convention (hereinafter referred to as "the member States of the Union") constitute a Union for the Protection of New Varieties of Plants.
3) The seat of the Union and its permanent organs shall be at Geneva.

Article 2: Forms of Protection

1) Each member State of the Union may recognise the right of the breeder provided for in this Convention by the grant either of a special title of protection or of a patent. Nevertheless, a member State of the Union whose national law admits of protection under both these forms may provide only one of them for one and the same botanical genus or species.
2) Each member State of the Union may limit the application of this Convention within a genus or species to varieties with a particular manner of reproduction or multiplication, or a certain end-use.

Article 3: National Treatment; Reciprocity

1) Without prejudice to the rights specially provided for in this Convention, natural and legal persons resident or having their registered office in one of the member States of the Union shall, in so far as the recognition and protection of the right of the breeder are concerned, enjoy in the other member States of the Union the same treatment as is accorded or may hereafter be accorded by the respective laws of such States to their own nationals, provided that such persons comply with the conditions and formalities imposed on such nationals.
2) Nationals of member States of the Union not resident or having their registered office in one of those States shall likewise enjoy the same rights provided that they fulfil such obligations as may be imposed on them for the purpose of enabling the varieties which they have bred to be examined and the multiplication of such varieties to be checked.
3) Notwithstanding the provisions of paragraph (1) and paragraph (2), any member State of the Union applying this Convention to a given genus or species shall be entitled to limit the benefit of the protection to the nationals of those member States of the Union which apply this Convention to that genus or species and to natural and legal persons resident or having their registered office in any of those States.

Article 4: Botanical Genera and Species Which Must or May be Protected

1) This Convention may be applied to all botanical genera and species.
2) The member States of the Union undertake to adopt all measures necessary for the progressive application of the provisions of this Convention to the largest possible number of botanical genera and species.
3)*a)* Each member State of the Union shall, on the entry into force of this Convention in its territory, apply the provisions of this Convention to at least five genera or species.
b) Subsequently, each member State of the Union shall apply the said provisions to additional genera or species within the following periods from the date of the entry into force of this Convention in its territory:

(i) within three years, to at least ten genera or species in all;
(ii) within six years, to at least eighteen genera or species in all;
(iii) within eight years, to at least twenty-four genera or species in all.
c) If a member State of the Union has limited the application of this Convention within a genus or species in accordance with the provisions of Article 2(2), that genus or species shall nevertheless, for the purposes of subparagraph (a) and subparagraph (b), be considered as one genus or species.
4) At the request of any State intending to ratify, accept, approve or accede to this Convention, the Council may, in order to take account of special economic or ecological conditions prevailing in that State, decide, for the purpose of that State, to reduce the minimum numbers referred to in paragraph (3), or to extend the periods referred to in that paragraph, or to do both.
5) At the request of any member State of the Union, the Council may, in order to take account of special difficulties encountered by that State in the fulfilment of the obligations under paragraph (3)(b), decide, for the purposes of that State, to extend the periods referred to in paragraph (3)(b).

Article 5: Rights Protected; Scope of Protection

1) The effect of the right granted to the breeder is that his prior authorisation shall be required for
- the production for purposes of commercial marketing
- the offering for sale
- the marketing

Vegetative propagating material shall be deemed to include whole plants. The right of the breeder shall extend to ornamental plants or parts thereof normally marketed for purposes other than propagation when they are used commercially as propagating material in the production of ornamental plants or cut flowers.
2) The authorisation given by the breeder may be made subject to such conditions as he may specify.
3) Authorisation by the breeder shall not be required either for the utilisation of the variety as an initial source of variation for the purpose of creating other varieties or for the marketing of such varieties. Such authorisation shall be required, however, when the repeated use of the variety is necessary for the commercial production of another variety.
4) Any member State of the Union may, either under its own law or by means of special agreements under Article 29, grant to breeders, in respect of certain botanical genera or species, a more extensive right than that set out in paragraph (1), extending in particular to the marketed product. A member State of the Union which grants such a right may limit the benefit of it to the nationals of member States of the Union which grant an identical right and to natural and legal persons resident or having their registered office in any of those States.

Article 6: Conditions Required for Protection

1) The breeder shall benefit from the protection provided for in this Convention when the following conditions are satisfied:
a) Whatever may be the origin, artificial or natural, of the initial variation from which it has resulted, the variety must be clearly distinguishable by one or more important characteristics from any other variety whose existence is a matter of common knowledge at the time when protection is applied for. Common knowledge may be established by reference to various factors such as: cultivation or marketing already in progress, entry in an official register of varieties already made or in the course of being made, inclusion in a reference collection, or precise description in a publication. The characteristics which permit a variety to be defined and distinguished must be capable of precise recognition and description.
b) At the date on which the application for protection in a member State of the Union is filed, the variety
(i) must not or, where the law of that State so provides, must not for longer than one year have been offered for sale or marketed, with the agreement of the breeder, in the territory of that State, and
(ii) must not have been offered for sale or marketed, with the agreement of the breeder, in the territory of any other State for longer than six years in the case of vines, forest trees, fruit trees and ornamental trees, including, in each case, their rootstocks, or for longer than four years in the case of all other plants. Trials of the variety not involving offering for sale or marketing shall not affect the right to protection. The fact that the variety has become a matter of common knowledge in ways other than through offering for sale or marketing shall also not affect the

right of the breeder to protection.
c) The variety must be sufficiently homogeneous, having regard to the particular features of its sexual reproduction or vegetative propagation.
d) The variety must be stable in its essential characteristics, that is to say, it must remain true to its description after repeated reproduction or propagation or, where the breeder has defined a particular cycle of reproduction or multiplication, at the end of each cycle.
e) The variety shall be given a denomination as provided in Article 13.
3) Provided that the breeder shall have complied with the formalities provided for by the national law of the member State of the Union in which the application for protection was filed, including the payment of fees, the grant of protection may not be made subject to conditions other than those set forth above.

Article 7: Official Examination of Varieties; Provisional Protection

1) Protection shall be granted after examination of the variety in the light of the criteria defined in Article 6. Such examination shall be appropriate to each botanical genus or species.
2) For the purposes of such examination, the competent authorities of each member State of the Union may require the breeder to furnish all the necessary information, documents, propagating material or seeds.
3) Any member State of the Union may provide measures to protect the breeder against abusive acts of third parties committed during the period between the filing of the application for protection and the decision thereon.

Article 8: Period of Protection

The right conferred on the breeder shall be granted for a limited period. This period may not be less than fifteen years, computed from the date of issue of the title of protection. For vines, forest trees, fruit trees and ornamental trees, including, in each case, their rootstocks, the period of protection may not be less than eighteen years, computed from the said date.

Article 9: Restrictions in the Exercise of Rights Protected

1) The free exercise of the exclusive right accorded to the breeder may not be restricted otherwise than for reasons of public interest.
2) When any such restriction is made in order to nsure the widespread distribution of the variety, the member State of the Union concerned shall ake all measures necessary to ensure that the reeder receives equitable remuneration.

Article 10: Nullity and Forfeiture of the Rights Protected

1) The right of the breeder shall be declared null and void, in accordance with the provisions of the national law of each member State of the Union, if it is established that the conditions laid down in Article 6(1)(a) and Article 6(1)(b) were not effectively complied with at the time when the title of protection was issued.
2) The right of the breeder shall become forfeit when he is no longer in a position to provide the competent authority with reproductive or propagating material capable of producing the variety with its characteristics as defined when the protection was granted.
3) The right of the breeder may become forfeit if:
a) after being requested to do so and within a prescribed period, he does not provide the competent authority with the reproductive or propagating material, the documents and the information deemed necessary for checking the variety, or he does not allow inspection of the measures which have been taken for the maintenance of the variety; or
b) he has failed to pay within the prescribed period such fees as may be payable to keep his rights in force.
4) The right of the breeder may not be annulled or become forfeit except on the grounds set out in this Article.

Article 11: Free Choice of the Member State in Which the First Application is Filed; Application in Other Member States; Independence of Protection in Different Member States

1) The breeder may choose the member State of the Union in which he wishes to file his first application for protection.
2) The breeder may apply to other member States of the Union for protection of his right without waiting for the issue to him of a title of protection

by the member State of the Union in which he filed his first application.
3) The protection applied for in different member States of the Union by natural or legal persons entitled to benefit under this Convention shall be independent of the protection obtained for the same variety in other States whether or not such States are members of the Union.

Article 12: Right of Priority

1) Any breeder who has duly filed an application for protection in one of the member States of the Union shall, for the purpose of filing in the other member States of the Union, enjoy a right of priority for a period of twelve months. This period shall be computed from the date of filing of the first application. The day of filing shall not be included in such period.
2) To benefit from the provisions of paragraph (1), the further filing must include an application for protection, a claim in respect of the priority of the first application and, within a period of three months, a copy of the documents which constitute that application, certified to be a true copy by the authority which received it.
3) The breeder shall be allowed a period of four years after the expiration of the period of priority in which to furnish, to the member State of the Union with which he has filed an application for protection in accordance with the terms of paragraph (2), the additional documents and material required by the laws and regulations of that State. Nevertheless, that State may require the additional documents and material to be furnished within an adequate period in the case where the application whose priority is claimed is rejected or withdrawn.
4) Such matters as the filing of another application of the publication or use of the subject of the application, occurring within the period provided for in paragraph (1), shall not constitute grounds for objection to an application filed in accordance with the foregoing conditions. Such matters may not give rise to any right in favour of a third party or to any right of personal possession.

Article 13: Variety Denomination

1) The variety shall be designated by a denomination destined to be its generic designation. Each member State of the Union shall ensure that subject to paragraph (4) no rights in the designation registered as the denomination of the variety shall hamper the free use of the denomination in connection with the variety, even after the expiration of the protection.
2) The denomination must enable the variety to be identified. It may not consist solely of figures except where this is an established practice for designating varieties. It must not be liable to mislead or to cause confusion concerning the characteristics, value or identity of the variety or the identity of the breeder. In particular, it must be different from every denomination which designates, in any member State of the Union, an existing variety of the same botanical species or of a closely related species.
3) The denomination of the variety shall be submitted by the breeder to the authority referred to in Article 30(1)(b). If it is found that such denomination does not satisfy the requirements of paragraph (2), that authority shall refuse to register it and shall require the breeder to propose another denomination within a prescribed period. The denomination shall be registered at the same time as the title of protection is issued in accordance with the provisions of Article 7.
4) Prior rights of third parties shall not be affected. If, by reason of a prior right, the use of the denomination of a variety is forbidden to a person who, in accordance with the provisions of paragraph (7), is obliged to use it, the authority referred to in Article 30(1)(b) shall require the breeder to submit another denomination for the variety.
5) A variety must be submitted in member States of the Union under the same denomination. The authority referred to in Article 30(1)(b) shall register the denomination so submitted, unless it considers that denomination unsuitable in its State. In the latter case, it may require the breeder to submit another denomination.
6) The authority referred to in Article 30(1)(b) shall ensure that all the other such authorities are informed of matters concerning variety denominations, in particular the submission, registration and cancellation of denominations. Any authority referred to in Article 30(1)(b) may address its observations, if any, on the registration of a denomination to the authority which communicated that denomination.
7) Any person who, in a member State of the Union, offers for sale or markets reproductive or vegetative propagating material of a variety protected in that State shall be obliged to use the denomination of that variety, even after the expira-

tion of the protection of that variety, in so far as, in accordance with the provisions of paragraph (4), prior rights do not prevent such use.
8) When the variety is offered for sale or marketed, it shall be permitted to associate a trade mark, trade name or other similar identification with a registered variety denomination. If such an indication is so associated, the denomination must nevertheless be easily recognizable.

Article 14: Protection Independent of Measures Regulating Production, Certification and Marketing

1) The right accorded to the breeder in pursuance of the provisions of this Convention shall be independent of the measures taken by each member State of the Union to regulate the production, certification and marketing of seeds and propagating material.
2) However, such measures shall, as far as possible, avoid hindering the application of the provisions of this Convention.

Article 15: Organs of the Union

The permanent organs of the Union shall be:
(a) the Council;
(b) the Secretariat General, entitled the Office of the International Union for the Protection of New Varieties of Plants.

Article 16: Composition of the Council; Votes

1) The Council shall consist of the representatives of the member States of the Union. Each member State of the Union shall appoint one representative to the Council and one alternate.
2) Representatives or alternates may be accompanied by assistants or advisers.
3) Each member State of the Union shall have one vote in the Council.

Article 17: Observers in Meetings of the Council

1) States not members of the Union which have signed this Act shall be invited as observers to meetings of the Council.
2) Other observers or experts may also be invited to such meetings.

Article 18: President and Vice-Presidents of the Council

1) The Council shall elect a President and a first Vice-President from among its members. It may elect other Vice-Presidents. The first Vice-President shall take the place of the President if the latter is unable to officiate.
2) The President shall hold office for three years.

Article 19: Sessions of the Council

1) The Council shall meet upon convocation by its President.
2) An ordinary session of the Council shall be held annually. In addition, the President may convene the Council at his discretion; he shall convene it, within a period of three months, if one-third of the member States of the Union so request.

Article 20: Rules of Procedure of the Council; Administrative and Financial Regulations of the Union

The Council shall establish its rules of procedure and the administrative and financial regulations of the Union.

Article 21: Tasks of the Council

Las atribuciones del Consejo serán las siguientes:
The tasks of the Council shall be to:
(a) study appropriate measures to safeguard the interests and to encourage the development of the Union;
(b) appoint the Secretary-General and, if it finds it necessary, a Vice Secretary-General and determine the terms of appointment of each;
(c) examine the annual report on the activities of the Union and lay down the programme for its future work;
(d) give to the Secretary-General, whose functions are set out in Article 23, all necessary directions for the accomplishment of the tasks of the Union;
(e) examine and approve the budget of the Union and fix the contribution of each member State of the Union in accordance with the provisions of Article 26;

(f) examine and approve the accounts presented by the Secretary-General;
(g) fix, in accordance with the provisions of Article 27, the date and place of the conferences referred to in that Article and take the measures necessary for their preparation; and
(h) in general, take all necessary decisions to ensure the efficient functioning of the Union.

Article 22: Majorities Required for Decisions of the Council

Any decision of the Council shall require a simple majority of the votes of the members present and voting, provided that any decision of the Council under Article 4(4), Article 20, Article 21(e), Article 26(5)(b), Article 27(1), Article 28(3) or Article 32(3) shall require three-fourths of the votes of the members present and voting. Abstentions shall not be considered as votes.

Article 23: Tasks of the Office of the Union; Responsibilities of the Secretary-General; Appointment of Staff

1) The Office of the Union shall carry out all the duties and tasks entrusted to it by the Council. It shall be under the direction of the Secretary-General.
2) The Secretary-General shall be responsible to the Council; he shall be responsible for carrying out the decisions of the Council. He shall submit the budget for the approval of the Council and shall be responsible for its implementation. He shall make an annual report to the Council on his administration and a report on the activities and financial position of the Union.
3) Subject to the provisions of Article 21(b), the conditions of appointment and employment of the staff necessary for the efficient performance of the tasks of the Office of the Union shall be fixed in the administrative and financial regulations referred to in Article 20.

Article 24: Legal Status

1) The Union shall have legal personality.
2) The Union shall enjoy on the territory of each member State of the Union, in conformity with the laws of that State, such legal capacity as may be necessary for the fulfilment of the objectives of the Union and for the exercise of its functions.
3) The Union shall conclude a headquarters agreement with the Swiss Confederation.

Article 25: Auditing of the Accounts

The auditing of the accounts of the Union shall be effected by a member State of the Union as provided in the administrative and financial regulations referred to in Article 20. Such State shall be designated, with its agreement, by the Council.

Article 26: Finances

1) The expenses of the Union shall be met from:
- the annual contributions of the member States of the Union;
- payments received for services rendered;
- miscellaneous receipts.

2)*a)* The share of each member State of the Union in the total amount of the annual contributions shall be determined by reference to the total expenditure to be met from the contributions of the member States of the Union and to the number of contribution units applicable to it under paragraph (3). The said share shall be computed according to paragraph (4).
b) The number of contribution units shall be expressed in whole numbers or fractions thereof, provided that such number shall not be less than one-fifth.
3)*a)* As far as any State is concerned which is a member State of the Union on the date on which this Act enters into force with respect to that State, the number of contribution units applicable to it shall be the same as was applicable to it, immediately before the said date, according to the Convention of 1961 as amended by the Additional Act of 1972.
b) As far as any other State is concerned, that State shall, on joining the Union, indicate, in a declaration addressed to the Secretary-General, the number of contribution units applicable to it.
c) Any member State of the Union may, at any time, indicate, in a declaration addressed to the Secretary-General, a number of contribution units different from the number applicable to it under subparagraph (a) or subparagraph (b). Such declaration, if made during the first six months of a calendar year, shall take effect from the beginning of the subsequent calendar year; otherwise it shall take effect from the beginning of the second calendar year which follows the year in which the

declaration was made.
4)*a)* For each budgetary period, the amount corresponding to one contribution unit shall be obtained by dividing the total amount of the expenditure to be met in that period from the contributions of the member States of the Union by the total number of units applicable to those States.
b) The amount of the contribution of each member State of the Union shall be obtained by multiplying the amount corresponding to one contribution unit by the number of contribution units applicable to that State.
5)*a)* A member State of the Union which is in arrears in the payment of its contributions may not, subject to paragraph (b), exercise its right to vote in the Council if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. The suspension of the right to vote does not relieve such State of its obligations under this Convention and does not deprive it of any other rights thereunder.
b) The Council may allow the said State to continue to exercise its right to vote if, and as long as, the Council is satisfied that the delay in payment is due to exceptional and unavoidable circumstances.

Article 27: Revision of the Convention

1) This Convention may be revised by a conference of the member States of the Union. The convocation of such conference shall be decided by the Council.
2) The proceedings of a conference shall be effective only if at least half of the member States of the Union are represented at it. A majority of five-sixths of the member States of the Union represented at the conference shall be required for the adoption of a revised text of the Convention.

Article 28: Languages Used by the Office and in Meetings of the Council

1) The English, French and German languages shall be used by the Office of the Union in carrying out its duties.
2) Meetings of the Council and of revision conferences shall be held in the three languages.
3) If the need arises, the Council may decide that further languages shall be used.

Article 29: Special Agreements for the Protection of New Varieties of Plants

Member States of the Union reserve the right to conclude among themselves special agreements for the protection of new varieties of plants, in so far as such agreements do not contravene the provisions of this Convention.

Article 30: Implementation of the Convention on the Domestic Level; Contracts on the Joint Utilisation of Examination Services

1) Each member State of the Union shall adopt all measures necessary for the application of this Convention; in particular, it shall:
a) provide for appropriate legal remedies for the effective defence of the rights provided for in this Convention;
b) set up a special authority for the protection of new varieties of plants or entrust such protection to an existing authority;
c) ensure that the public is informed of matters concerning such protection, including as a minimum the periodical publication of the list of titles of protection issued.
2) Contracts may be concluded between the competent authorities of the member States of the Union, with a view to the joint utilisation of the services of the authorities entrusted with the examination of varieties in accordance with the provisions of Article 7 and with assembling the necessary reference collections and documents.
3) It shall be understood that, on depositing its instrument of ratification, acceptance, approval or accession, each State must be in a position, under its own domestic law, to give effect to the provisions of this Convention.

Article 31: Signature

This Act shall be open for signature by any member State of the Union and any other State which was represented in the Diplomatic Conference adopting this Act. It shall remain open for signature until October 31, 1979.

Article 32: Ratification, Acceptance or Approval; Accession

1) Any State shall express its consent to be bound by this Act by the deposit of:
a) its instrument of ratification, acceptance or ap-

proval, if it has signed this Act; or
b) its instrument of accession, if it has not signed this Act.
2) Instruments of ratification, acceptance, approval or accession shall be deposited with the Secretary-General.
3) Any State which is not a member of the Union and which has not signed this Act shall, before depositing its instrument of accession, ask the Council to advise it in respect of the conformity of its laws with the provisions of this Act. If the decision embodying the advice is positive, the instrument of accession may be deposited.

Article 33: Entry into Force; Closing of Earlier Texts

1) This Act shall enter into force one month after the following two conditions are fulfilled:
a) the number of instruments of ratification, acceptance, approval or accession deposited is not less than five; and
b) at least three of the said instruments are instruments deposited by States parties to the Convention of 1961.
2) With respect to any State which deposits its instrument of ratification, acceptance, approval or accession after the conditions referred to in paragraph (1)(a) and paragraph (1)(b) have been fulfilled, this Act shall enter into force one month after the deposit of the instrument of the said State.
3) Once this Act enters into force according to paragraph (1), no State may accede to the Convention of 1961 as amended by the Additional Act of 1972.

Article 34: Relations Between States Bound by Different Texts

1) Any member State of the Union which, on the day on which this Act enters into force with respect to that State, is bound by the Convention of 1961 as amended by the Additional Act of 1972 shall, in its relations with any other member State of the Union which is not bound by this Act, continue to apply, until the present Act enters into force also with respect to that other State, the said Convention as amended by the said Additional Act.
2) Any member State of the Union not bound by this Act ("the former State") may declare, in a notification addressed to the Secretary-General, that it will apply the Convention of 1961 as amended by the Additional Act of 1972 in its relations with any State bound by this Act which becomes a member of the Union through ratification, acceptance or approval of or accession to this Act ("the latter State"). As from the beginning of one month after the date of any such notification and until the entry into force of this Act with respect to the former State, the former State shall apply the Convention of 1961 as amended by the Additional Act of 1972 in its relations with any such latter State, whereas any such latter State shall apply this Act in its relations with the former State.

Article 35: Communications Concerning the Genera and Species Protected; Information to be Published

1) When depositing its instrument of ratification, acceptance or approval of or accession to this Act, each State which is not a member of the Union shall notify the Secretary-General of the list of genera and species to which, on the entry into force of this Act with respect to that State, it will apply the provisions of this Convention.
2) The Secretary-General shall, on the basis of communications received from each member State of the Union concerned, publish information on:
a) the extension of the application of the provisions of this Convention to additional genera and species after the entry into force of this Act with respect to that State;
(b) any use of the faculty provided for in Article 3(3);
(c) the use of any faculty granted by the Council pursuant to Article 4(4) or Article 4(5);
(d) any use of the faculty provided for in Article 5(4), first sentence, with an indication of the nature of the more extensive rights and with a specification of the genera and species to which such rights apply;
(e) any use of the faculty provided for in Article 5(4), second sentence;
(f) the fact that the law of the said State contains a provision as permitted under Article 6(1)(b)(i), and the length of the period permitted;
(g) the length of the period referred to in Article 8 if such period is longer than the fifteen years and the eighteen years, respectively, referred to in that Article.

Article 36: Territories

1) Any State may declare in its instrument of ratification, acceptance, approval or accession, or may inform the Secretary-General by written notification any time thereafter, that this Act shall be applicable to all or part of the territories designated in the declaration or notification.
2) Any State which has made such a declaration or given such a notification may, at any time, notify the Secretary-General that this Act shall cease to be applicable to all or part of such territories.
3)*a)* Any declaration made under paragraph (1) shall take effect on the same date as the ratification, acceptance, approval or accession in the instrument of which it was included, and any notification given under that paragraph shall take effect three months after its notification by the Secretary-General.
b) Any notification given under paragraph (2) shall take effect twelve months after its receipt by the Secretary-General.

Article 37: Exceptional Rules for Protection Under Two Forms

1) Notwithstanding the provisions of Article 2(1), any State which, prior to the end of the period during which this Act is open for signature, provides for protection under the different forms referred to in Article 2(1) for one and the same genus or species, may continue to do so if, at the time of signing this Act or of depositing its instrument of ratification, acceptance or approval of or accession to this Act, it notifies the Secretary-General of that fact.
2) Where, in a member State of the Union to which paragraph (1) applies, protection is sought under patent legislation, the said State may apply the patentability criteria and the period of protection of the patent legislation to the varieties protected thereunder, notwithstanding the provisions of Article 6(1)(a), Article 6(1)(b) and Article 8.
3) The said State may, at any time, notify the Secretary-General of the withdrawal of the notification it has given under paragraph (1). Such withdrawal shall take effect on the date which the State shall indicate in its notification of withdrawal.

Article 38: Transitional Limitation of the Requirement of Novelty

Notwithstanding the provisions of Article 6, any member State of the Union may, without thereby creating an obligation for other member States of the Union, limit the requirement of novelty laid down in that Article, with regard to varieties of recent creation existing at the date on which such State applies the provisions of this Convention for the first time to the genus or species to which such varieties belong.

Article 39: Preservation of Existing Rights

This Convention shall not affect existing rights under the national laws of member States of the Union or under agreements concluded between such States.

Article 40: Reservations

No reservations to this Convention are permitted.

Article 41: Duration and Denunciation of the Convention

1) This Convention is of unlimited duration.
2) Any member State of the Union may denounce this Convention by notification addressed to the Secretary-General. The Secretary-General shall promptly notify all member States of the Union of the receipt of that notification.
3) The denunciation shall take effect at the end of the calendar year following the year in which the notification was received by the Secretary-General.
4) The denunciation shall not affect any rights acquired in a variety by reason of this Convention prior to the date on which the denunciation becomes effective.

Article 42: Languages; Depositary Functions

1) This Act shall be signed in a single original in the French, English and German languages, the French text prevailing in case of any discrepancy among the various texts. The original shall be deposited with the Secretary-General.
2) The Secretary-General shall transmit two certified copies of this Act to the Governments of all States which were represented in the Diplomatic Conference that adopted it and, on request, to the Government of any other State.
3) The Secretary-General shall, after consultation with the Governments of the interested States

which were represented in the said Conference, establish official texts in the Arabic, Dutch, Italian, Japanese and Spanish languages and such other languages as the Council may designate.

4) The Secretary-General shall register this Act with the Secretariat of the United Nations.

5) The Secretary-General shall notify the Governments of the member States of the Union and of the States which, without being members of the Union, were represented in the Diplomatic Conference that adopted it of the signatures of this Act, the deposit of instruments of ratification, acceptance, approval and accession, any notification received under Article 34(2), Article 36(1), Article 37(1) and Article 37(3) or Article 41(2) and any declaration made under Article 36(1).

International Convention
for the Protection of Plant Varieties

INTERNATIONAL CONVENTION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

Act of 1991

of December 2, 1961, as Revised at Geneva on November 10, 1972, on October 23, 1978, and on March 19, 1991

LIST OF ARTICLES

Chapter I:
Definitions

Article 1: Definitions

For the purposes of this Act:

(i) "this Convention" means the present (1991) Act of the International Convention for the Protection of New Varieties of Plants;

(ii) "Act of 1961/1972" means the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as amended by the Additional Act of November 10, 1972;

(iii) "Act of 1978" means the Act of October 23, 1978, of the International Convention for the Protection of New Varieties of Plants;

(iv) "breeder" means

- the person who bred, or discovered and developed, a variety,
- the person who is the employer of the aforementioned person or who has commissioned the latter's work, where the laws of the relevant Contracting Party so provide, or
- the successor in title of the first or second aforementioned person, as the case may be;

v) "breeder's right" means the right of the breeder provided for in this Convention;

(vi) "variety" means a plant grouping within a single botanical taxon of the lowest known rank, which grouping, irrespective of whether the conditions for the grant of a breeder's right are fully met, can be

- defined by the expression of the characteristics resulting from a given genotype or combination of genotypes,
- distinguished from any other plant grouping by the expression of at least one of the said characteristics and
- considered as a unit with regard to its suitability for being propagated unchanged;

vii) "Contracting Party" means a State or an intergovernmental organization party to this Convention;

(viii) "territory," in relation to a Contracting Party, means, where the Contracting Party is a State, the territory of that State and, where the Contracting Party is an intergovernmental organization, the territory in which the constituting treaty of that intergovernmental organization applies;

(ix) "authority" means the authority referred to in Article 30(1)(ii);

(x) "Union" means the Union for the Protection of New Varieties of Plants founded by the Act of 1961 and further mentioned in the Act of 1972, the Act of 1978 and in this Convention;

(xi) "member of the Union" means a State party to the Act of 1961/1972 or the Act of 1978, or a Contracting Party.

Chapter II:
General obligations of the contracting parties

Article 2: Basic Obligation of the Contracting Parties

Each Contracting Party shall grant and protect breeders' rights.

Article 3: Genera and Species to be Protected

1) [States already members of the Union] Each Contracting Party which is bound by the Act of 1961/1972 or the Act of 1978 shall apply the provisions of this Convention,

(i) at the date on which it becomes bound by this Convention, to all plant genera and species to which it applies, on the said date, the provisions of the Act of 1961/1972 or the Act of 1978 and,

(ii) at the latest by the expiration of a period of five years after the said date, to all plant genera and species.

(2) [New members of the Union] Each Contracting Party which is not bound by the Act of 1961/1972 or the Act of 1978 shall apply the provisions of this Convention,

(i) at the date on which it becomes bound by this Convention, to at least 15 plant genera or species and,

(ii) at the latest by the expiration of a period of 10 years from the said date, to all plant genera and species.

Article 4: National Treatment

1) [Treatment] Without prejudice to the rights specified in this Convention, nationals of a Contracting Party as well as natural persons resident and legal entities having their registered offices within the territory of a Contracting Party shall, insofar as the grant and protection of breeders' rights are concerned, enjoy within the territory of each other Contracting Party the same treatment as is accorded or may hereafter be accorded by the laws of each such other Contracting Party to its own nationals, provided that the said nationals, natural persons or legal entities comply with the conditions and formalities imposed on the nationals of the said other Contracting Party.

2) ["Nationals"] For the purposes of the preceding paragraph, "nationals" means, where the Contract-

ing Party is a State, the nationals of that State and, where the Contracting Party is an intergovernmental organization, the nationals of the States which are members of that organization.

Chapter III:
Conditions for the grant of the breeder's right

Article 5: Conditions of Protection

1) [Criteria to be satisfied] The breeder's right shall be granted where the variety is
(i) new,
(ii) distinct,
(iii) uniform and
(iv) stable.

(2) [Other conditions] The grant of the breeder's right shall not be subject to any further or different conditions, provided that the variety is designated by a denomination in accordance with the provisions of Article 20, that the applicant complies with the formalities provided for by the law of the Contracting Party with whose authority the application has been filed and that he pays the required fees.

Article 6: Novelty

1) [Criteria] The variety shall be deemed to be new if, at the date of filing of the application for a breeder's right, propagating or harvested material of the variety has not been sold or otherwise disposed of to others, by or with the consent of the breeder, for purposes of exploitation of the variety
(i) in the territory of the Contracting Party in which the application has been filed earlier than one year before that date and
(ii) in a territory other than that of the Contracting Party in which the application has been filed earlier than four years or, in the case of trees or of vines, earlier than six years before the said date.
(2) [Varieties of recent creation] Where a Contracting Party applies this Convention to a plant genus or species to which it did not previously apply this Convention or an earlier Act, it may consider a variety of recent creation existing at the date of such extension of protection to satisfy the condition of novelty defined in paragraph (1) even where the sale or disposal to others described in that paragraph took place earlier than the time limits defined in that paragraph.
(3) ["Territory" in certain cases] For the purposes of paragraph (1), all the Contracting Parties which are member States of one and the same intergovernmental organization may act jointly, where the regulations of that organization so require, to assimilate acts done on the territories of the States members of that organization to acts done on their own territories and, should they do so, shall notify the Secretary-General accordingly.

Article 7: Distinctness

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 time of the filing of the application. In particular, the filing of an application for the granting of a breeder's right or for the entering of another variety in an official register of varieties, in any country, shall be deemed to render that other variety a matter of common knowledge from the date of the application, provided that the application leads to the granting of a breeder's right or to the entering of the said other variety in the official register of varieties, as the case may be.

Article 8: Uniformity

The variety shall be deemed to be uniform if, subject to the variation that may be expected from the particular features of its propagation, it is sufficiently uniform in its relevant characteristics.

Article 9: Stability

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 cycle.

Chapter IV:
Application for the grant of the breeder's right

Article 10: Filing of Applications

1) [Place of first application] The breeder may choose the Contracting Party with whose authority he wishes to file his first application for a breeder's right.
(2) [Time of subsequent applications] The breeder may apply to the authorities of other Contracting Parties for the grant of breeders' rights without waiting for the grant to him of a breeder's right by the authority of the Contracting Party with which the first application was filed.
(3) [Independence of protection] No Contracting Party shall refuse to grant a breeder's right or limit its duration on the ground that protection for the same variety has not been applied for, has been refused or

has expired in any other State or intergovernmental organization.

Article 11: Right of Priority

(1) [The right; its period] Any breeder who has duly filed an application for the protection of a variety in one of the Contracting Parties (the "first application") shall, for the purpose of filing an application for the grant of a breeder's right for the same variety with the authority of any other Contracting Party (the "subsequent application"), enjoy a right of priority for a period of 12 months. This period shall be computed from the date of filing of the first application. The day of filing shall not be included in the latter period.
(2) [Claiming the right] In order to benefit from the right of priority, the breeder shall, in the subsequent application, claim the priority of the first application. The authority with which the subsequent application has been filed may require the breeder to furnish, within a period of not less than three months from the filing date of the subsequent application, a copy of the documents which constitute the first application, certified to be a true copy by the authority with which that application was filed, and samples or other evidence that the variety which is the subject matter of both applications is the same.
(3) [Documents and material] The breeder shall be allowed a period of two years after the expiration of the period of priority or, where the first application is rejected or withdrawn, an appropriate time after such rejection or withdrawal, in which to furnish, to the authority of the Contracting Party with which he has filed the subsequent application, any necessary information, document or material required for the purpose of the examination under Article 12, as required by the laws of that Contracting Party.
(4) [Events occurring during the period] Events occurring within the period provided for in paragraph (1), such as the filing of another application or the publication or use of the variety that is the subject of the first application, shall not constitute a ground for rejecting the subsequent application. Such events shall also not give rise to any third-party right.

Article 12: Examination of the Application

Any decision to grant a breeder's right shall require an examination for compliance with the conditions under Articles 5 to 9. In the course of the examination, the authority may grow the variety or carry out other necessary tests, cause the growing of the variety or the carrying out of other necessary tests, or take into account the results of growing tests or other trials which have already been carried out. For the purposes of examination, the authority may require the breeder to furnish all the necessary information, documents or material.

Article 13: Provisional Protection

Each Contracting Party shall provide measures designed to safeguard the interests of the breeder during the period between the filing or the publication of the application for the grant of a breeder's right and the grant of that right. Such measures shall have the effect that the holder of a breeder's right shall at least be entitled to equitable remuneration from any person who, during the said period, has carried out acts which, once the right is granted, require the breeder's authorization as provided in Article 14. A Contracting Party may provide that the said measures shall only take effect in relation to persons whom the breeder has notified of the filing of the application.

Chapter V:
The rights of the breeder

Article 14: Alcance del derecho de obtentor

1) [Acts in respect of the propagating material] (a) Subject to Articles 15 and 16, the following acts in respect of the propagating material of the protected variety shall require the authorization of the breeder:
(i) production or reproduction (multiplication),
(ii) conditioning for the purpose of propagation,
(iii) offering for sale,
(iv) selling or other marketing,
(v) exporting,
(vi) importing,
(vii) stocking for any of the purposes mentioned in (i) to (vi), above.
(b) The breeder may make his authorization subject to conditions and limitations.
(2) [Acts in respect of the harvested material] Subject to Articles 15 and 16, the acts referred to in items (i) to (vii) of paragraph (1)(a) in respect of harvested material, including entire plants and parts of plants, obtained through the unauthorized use of propagating material of the protected variety shall require the authorization of the breeder, unless the breeder has had reasonable opportunity to exercise his right in relation to the said propagating material.
(3) [Acts in respect of certain products] Each Contracting Party may provide that, subject to Articles 15 and 16, the acts referred to in items (i) to (vii) of paragraph (1)(a) in respect of products made directly from harvested material of the protected variety falling within the provisions of paragraph (2) through the unauthor-

ized use of the said harvested material shall require the authorization of the breeder, unless the breeder has had reasonable opportunity to exercise his right in relation to the said harvested material.
(4) [Possible additional acts] Each Contracting Party may provide that, subject to Articles 15
and 16, acts other than those referred to in items (i) to (vii) of paragraph (1)(a) shall also require the authorization of the breeder.
(5) [Essentially derived and certain other varieties] (a) The provisions of paragraphs (1) to (4) shall also apply in relation to
(i) varieties which are essentially derived from the protected variety, where the protected
variety is not itself an essentially derived variety,
(ii) varieties which are not clearly distinguishable in accordance with Article 7 from the
protected variety and
(iii) varieties whose production requires the repeated use of the protected variety.
(b) For the purposes of subparagraph (a)(i), a variety shall be deemed to be essentially derived from another variety ("the initial variety") when
(i) it is predominantly derived from the initial variety, or from a variety that is itself predominantly derived from the initial variety, while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety,
(ii) it is clearly distinguishable from the initial variety and
(iii) except for the differences which result from the act of derivation, it conforms to the initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety.
(c) Essentially derived varieties may be obtained for example by the selection of a natural or induced mutant, or of a somaclonal variant, the selection of a variant individual from plants of the initial variety, backcrossing, or transformation by genetic engineering.

Article 15: Exceptions to the Breeder's Right

1) [Compulsory exceptions] The breeder's right shall not extend to
(i) acts done privately and for non-commercial purposes,
(ii) acts done for experimental purposes and
(iii) acts done for the purpose of breeding other varieties, and, except where the provisions of Article 14(5) apply, acts referred to in Article 14(1) to (4) in respect of such other varieties.
(2) [Optional exception] Notwithstanding Article 14, each Contracting Party may, within reasonable limits and subject to the safeguarding of the legitimate interests of the breeder, restrict the breeder's right in relation to any variety in order to permit farmers to use for propagating purposes, on their own holdings, the product of the harvest which they have obtained by planting, on their own holdings, the protected variety or a variety covered by Article 14(5) (a)(i) or (ii).

Article 16: Exhaustion of the Breeder's Right

1) [Exhaustion of right] The breeder's right shall not extend to acts concerning any material of the protected variety, or of a variety covered by the provisions of Article 14(5), which has been sold or otherwise marketed by the breeder or with his consent in the territory of the Contracting Party concerned, or any material derived from the said material, unless such acts
(i) involve further propagation of the variety in question or
(ii) involve an export of material of the variety, which enables the propagation of the variety, into a country which does not protect varieties of the plant genus or species to which the variety belongs, except where the exported material is for final consumption purposes.
(2) [Meaning of "material"] For the purposes of paragraph (1), "material" means, in relation to a variety,
(i) propagating material of any kind,
(ii) harvested material, including entire plants and parts of plants, and
(iii) any product made directly from the harvested material.
(3) ["Territory" in certain cases] For the purposes of paragraph (1), all the Contracting Parties which are member States of one and the same intergovernmental organization may act jointly, where the regulations of that organization so require, to assimilate acts done on the territories of the States members of that organization to acts done on their own territories and, should they do so, shall notify the Secretary-General accordingly.

Article 17: Restrictions on the Exercise of the Breeder's Right

1) [Public interest] Except where expressly provided in this Convention, no Contracting Party may restrict the free exercise of a breeder's right for reasons other than of public interest.
(2) [Equitable remuneration] When any such restriction has the effect of authorizing a third party to perform any act for which the breeder's authorization is required, the Contracting Party concerned shall take all measures necessary to ensure that the breeder re-

ceives equitable remuneration.

Article 18: Measures Regulating Commerce

The breeder's right shall be independent of any measure taken by a Contracting Party to regulate within its territory the production, certification and marketing of material of varieties or the importing or exporting of such material. In any case, such measures shall not affect the application of the provisions of this Convention.

Article 19: Duration of the Breeder's Right

1) [Period of protection] The breeder's right shall be granted for a fixed period.
(2) [Minimum period] The said period shall not be shorter than 20 years from the date of the grant of the breeder's right. For trees and vines, the said period shall not be shorter than 25 years from the said date.

Chapter VI:
VARIETY DENOMINATION

Article 20: Variety Denomination

1) [Designation of varieties by denominations; use of the denomination] (a) The variety shall be designated by a denomination which will be its generic designation. (b) Each Contracting Party shall ensure that, subject to paragraph (4), no rights in the designation registered as the denomination of the variety shall hamper the free use of the denomination in connection with the variety, even after the expiration of the breeder's right.
(2) [Characteristics of the denomination] The denomination must enable the variety to be identified. It may not consist solely of figures except where this is an established practice for designating varieties. It must not be liable to mislead or to cause confusion concerning the characteristics, value or identity of the variety or the identity of the breeder. In particular, it must be different from every denomination which designates, in the territory of any Contracting Party, an existing variety of the same plant species or of a closely related species.
(3) [Registration of the denomination] The denomination of the variety shall be submitted by the breeder to the authority. If it is found that the denomination does not satisfy the requirements of paragraph (2), the authority shall refuse to register it and shall require the breeder to propose another denomination within a prescribed period. The denomination shall be registered by the authority at the same time as the breeder's right is granted.
(4) [Prior rights of third persons] Prior rights of third persons shall not be affected. If, by reason of a prior right, the use of the denomination of a variety is forbidden to a person who, in accordance with the provisions of paragraph (7), is obliged to use it, the authority shall require the breeder to submit another denomination for the variety.
(5) [Same denomination in all Contracting Parties] A variety must be submitted to all Contracting Parties under the same denomination. The authority of each Contracting Party shall register the denomination so submitted, unless it considers the denomination unsuitable within its territory. In the latter case, it shall require the breeder to submit another denomination.
(6) [Information among the authorities of Contracting Parties] The authority of a Contracting Party shall ensure that the authorities of all the other Contracting Parties are informed of matters concerning variety denominations, in particular the submission, registration and cancellation of denominations. Any authority may address its observations, if any, on the registration of a denomination to the authority which communicated that denomination.
(7) [Obligation to use the denomination] Any person who, within the territory of one of the Contracting Parties, offers for sale or markets propagating material of a variety protected within the said territory shall be obliged to use the denomination of that variety, even after the expiration of the breeder's right in that variety, except where, in accordance with the provisions of paragraph (4), prior rights prevent such use.
(8) [Indications used in association with denominations] When a variety is offered for sale or marketed, it shall be permitted to associate a trademark, trade name or other similar indication with a registered variety denomination. If such an indication is so associated, the denomination must nevertheless be easily recognizable.

Chapter VII:
Nullity and cancellation of the breeder's right

Article 21: Nullity of the Breeder's Right

1) [Reasons of nullity] Each Contracting Party shall declare a breeder's right granted by it null and void when it is established
(i) that the conditions laid down in Articles 6 or 7 were not complied with at the time of the grant of the breeder's right,
(ii) that, where the grant of the breeder's right has

been essentially based upon information and documents furnished by the breeder, the conditions laid down in Articles 8 or 9 were not complied with at the time of the grant of the breeder's right, or (iii) that the breeder's right has been granted to a person who is not entitled to it, unless it is transferred to the person who is so entitled.
(2) [Exclusion of other reasons] No breeder's right shall be declared null and void for reasons
other than those referred to in paragraph (1).

Article 22: Cancellation of the Breeder's Right

1) [Reasons for cancellation] (a) Each Contracting Party may cancel a breeder's right granted by it if it is established that the conditions laid down in Articles 8 or 9 are no longer fulfilled. (b) Furthermore, each Contracting Party may cancel a breeder's right granted by it if, after being requested to do so and within a prescribed period,
(i) the breeder does not provide the authority with the information, documents or material
deemed necessary for verifying the maintenance of the variety,
(ii) the breeder fails to pay such fees as may be payable to keep his right in force, or
(iii) the breeder does not propose, where the denomination of the variety is cancelled after the grant of the right, another suitable denomination.
(2) [Exclusion of other reasons] No breeder's right shall be cancelled for reasons other than those referred to in paragraph (1).

Chapter VIII:
The Unión

Article 23: Members

The Contracting Parties shall be members of the Union.

Article 24: Legal Status and Seat

1) [Legal personality] The Union has legal personality.
(2) [Legal capacity] The Union enjoys on the territory of each Contracting Party, in conformity with the laws applicable in the said territory, such legal capacity as may be necessary for the fulfillment of the objectives of the Union and for the exercise of its functions.
(3) [Seat] The seat of the Union and its permanent organs are at Geneva.
(4) [Headquarters agreement] The Union has a headquarters agreement with the Swiss
Confederation.

Article 25: Organs

The permanent organs of the Union are the Council and the Office of the Union.

Article 26: The Council

1) [Composition] The Council shall consist of the representatives of the members of the Union. Each member of the Union shall appoint one representative to the Council and one alternate. Representatives or alternates may be accompanied by assistants or advisers.
(2) [Officers] The Council shall elect a President and a first Vice-President from among its members. It may elect other Vice-Presidents. The first Vice-President shall take the place of the President if the latter is unable to officiate. The President shall hold office for three years.
(3) [Sessions] The Council shall meet upon convocation by its President. An ordinary session of the Council shall be held annually. In addition, the President may convene the Council at his discretion; he shall convene it, within a period of three months, if one-third of the members of the Union so request.
(4) [Observers] States not members of the Union may be invited as observers to meetings of the Council. Other observers, as well as experts, may also be invited to such meetings.
(5) [Tasks] The tasks of the Council shall be to:
(i) study appropriate measures to safeguard the interests and to encourage the development of the Union;
(ii) establish its rules of procedure;
(iii) appoint the Secretary-General and, if it finds it necessary, a Vice Secretary-General and
determine the terms of appointment of each;
(iv) examine an annual report on the activities of the Union and lay down the program for its future work;
(v) give to the Secretary-General all necessary directions for the accomplishment of the tasks of the Union;
(vi) establish the administrative and financial regulations of the Union;
(vii) examine and approve the budget of the Union and fix the contribution of each member of the Union;
(viii) examine and approve the accounts presented by the Secretary-General;
(ix) fix the date and place of the conferences referred to in Article 38 and take the measures necessary for their preparation; and
(x) in general, take all necessary decisions to ensure

the efficient functioning of the Union.
(6) [Votes] (a) Each member of the Union that is a State shall have one vote in the Council. (b) Any Contracting Party that is an intergovernmental organization may, in matters within its competence, exercise the rights to vote of its member States that are members of the Union. Such an intergovernmental organization shall not exercise the rights to vote of its member States if its member States exercise their right to vote, and vice versa.
(7) [Majorities] Any decision of the Council shall require a simple majority of the votes cast, provided that any decision of the Council under paragraphs (5)(ii), (vi) and (vii), and under Articles 28(3), 29(5)(b) and 38(1) shall require three-fourths of the votes cast. Abstentions shall not be considered as votes.

Article 27: The Office of the Union

1) [Tasks and direction of the Office] The Office of the Union shall carry out all the duties and tasks entrusted to it by the Council. It shall be under the direction of the Secretary-General.
(2) [Duties of the Secretary-General] The Secretary-General shall be responsible to the Council; he shall be responsible for carrying out the decisions of the Council. He shall submit the budget of the Union for the approval of the Council and shall be responsible for its implementation. He shall make reports to the Council on his administration and the activities and financial position of the Union.
(3) [Staff] Subject to the provisions of Article 26(5)(iii), the conditions of appointment and employment of the staff necessary for the efficient performance of the tasks of the Office of the Union shall be fixed in the administrative and financial regulations.

Article 28: Languages

1) [Languages of the Office] The English, French, German and Spanish languages shall be used by the Office of the Union in carrying out its duties.
(2) [Languages in certain meetings] Meetings of the Council and of revision conferences shall be held in the four languages.
(3) [Further languages] The Council may decide that further languages shall be used.

Article 29: Finances

1) [Income] The expenses of the Union shall be met from (i) the annual contributions of the States members of the Union, (ii) payments received for services rendered, (iii) miscellaneous receipts.
(2) [Contributions: units] (a) The share of each State member of the Union in the total amount of the annual contributions shall be determined by reference to the total expenditure to be met from the contributions of the States members of the Union and to the number of contribution units applicable to it under paragraph (3). The said share shall be computed according to paragraph (4). (b) The number of contribution units shall be expressed in whole numbers or fractions thereof, provided that no fraction shall be smaller than one-fifth.
(3) [Contributions: share of each member] (a) The number of contribution units applicable to any member of the Union which is party to the Act of 1961/1972 or the Act of 1978 on the date on which it becomes bound by this Convention shall be the same as the number applicable to it immediately before the said date. (b) Any other State member of the Union shall, on joining the Union, indicate, in a declaration addressed to the Secretary-General, the number of contribution units applicable to it. (c) Any State member of the Union may, at any time, indicate, in a declaration addressed to the Secretary-General, a number of contribution units different from the number applicable to it under subparagraph (a) or (b). Such declaration, if made during the first six months of a calendar year, shall take effect from the beginning of the subsequent calendar year; otherwise, it shall take effect from the beginning of the second calendar year which follows the year in which the declaration was made.
(4) [Contributions: computation of shares] (a) For each budgetary period, the amount corresponding to one contribution unit shall be obtained by dividing the total amount of the expenditure to be met in that period from the contributions of the States members of the Union by the total number of units applicable to those States members of the Union. (b) The amount of the contribution of each State member of the Union shall be obtained by multiplying the amount corresponding to one contribution unit by the number of contribution units applicable to that State member of the Union.
(5) [Arrears in contributions] (a) A State member of the Union which is in arrears in the payment of its contributions may not, subject to subparagraph (b), exercise its right to vote in the Council if the amount of its arrears equals or exceeds the amount of the contribution due from it for the preceding full year. The suspension of the right to vote shall not relieve such State member of the Union of its obligations under this Convention and shall not deprive it of any other rights thereunder. (b) The Council may allow the said State member of the Union to continue to exercise its right to vote if, and as long as, the Council is satisfied that the delay in payment is due to exceptional and unavoidable circumstances.
(6) [Auditing of the accounts] The auditing of the accounts of the Union shall be effected by a State member of the Union as provided in the administrative and

financial regulations. Such State member of the Union shall be designated, with its agreement, by the Council.
(7) [Contributions of intergovernmental organizations] Any Contracting Party which is an intergovernmental organization shall not be obliged to pay contributions. If, nevertheless, it chooses to pay contributions, the provisions of paragraphs (1) to (4) shall be applied accordingly.

Chapter IX:
Implementation of the convention; other agreements

Article 30: Implementation of the Convention

1) [Measures of implementation] Each Contracting Party shall adopt all measures necessary for the implementation of this Convention; in particular, it shall:
(i) provide for appropriate legal remedies for the effective enforcement of breeders' rights;
(ii) maintain an authority entrusted with the task of granting breeders' rights or entrust the said task to an authority maintained by another Contracting Party;
(iii) ensure that the public is informed through the regular publication of information concerning
- applications for and grants of breeders' rights, and
- proposed and approved denominations.
(2) [Conformity of laws] It shall be understood that, on depositing its instrument of ratification, acceptance, approval or accession, as the case may be, each State or intergovernmental organization must be in a position, under its laws, to give effect to the provisions of this Convention.

Article31: Relations Between Contracting Parties and States Bound by Earlier Acts

1) [Relations between States bound by this Convention] Between States members of the Union which are bound both by this Convention and any earlier Act of the Convention, only this Convention shall apply.
(2) [Possible relations with States not bound by this Convention] Any State member of the Union not bound by this Convention may declare, in a notification addressed to the Secretary- General, that, in its relations with each member of the Union bound only by this Convention, it will apply the latest Act by which it is bound. As from the expiration of one month after the date of such notification and until the State member of the Union making the declaration becomes bound by this Convention, the said member of the Union shall apply the latest Act by which it is bound in its relations with each of the members of the Union bound only by this Convention, whereas the latter shall apply this Convention in respect of the former.

Article 32: Special Agreements

Members of the Union reserve the right to conclude among themselves special agreements for the protection of varieties, insofar as such agreements do not contravene the provisions of this Convention.

Chapter X:
Final provisions

Article 33: Signature

This Convention shall be open for signature by any State which is a member of the Union at the date of its adoption. It shall remain open for signature until March 31, 1992.

Article 34: Ratification, Acceptance or Approval; Accession

1) [States and certain intergovernmental organizations] (a) Any State may, as provided in this Article, become party to this Convention. (b) Any intergovernmental organization may, as provided in this Article, become party to this Convention if it
(i) has competence in respect of matters governed by this Convention,
(ii) has its own legislation providing for the grant and protection of breeders' rights binding on all its member States and
(iii) has been duly authorized, in accordance with its internal procedures, to accede to this Convention.
(2) [Instrument of adherence] Any State which has signed this Convention shall become party to this Convention by depositing an instrument of ratification, acceptance or approval of this Convention. Any State which has not signed this Convention and any intergovernmental organization shall become party to this Convention by depositing an instrument of accession to this Convention. Instruments of ratification, acceptance, approval or accession shall be deposited with the Secretary-General.
(3) [Advice of the Council] Any State which is not a member of the Union and any intergovernmental organization shall, before depositing its instrument of accession, ask the Council to advise it in respect of the conformity of its laws with the provisions of this Convention. If the decision embodying the advice is positive, the instrument of accession may be deposited.

Article 35: Reservations

1) [Principle] Subject to paragraph (2), no reservations to this Convention are permitted.
(2) [Possible exception] (a) Notwithstanding the provisions of Article 3(1), any State which, at the time of becoming party to this Convention, is a party to the Act of 1978 and which, as far as varieties reproduced asexually are concerned, provides for protection by an industrial property title other than a breeder's right shall have the right to continue to do so without applying this Convention to those varieties. (b) Any State making use of the said right shall, at the time of depositing its instrument of ratification, acceptance, approval or accession, as the case may be, notify the Secretary-General accordingly. The same State may, at any time, withdraw the said notification.

Article 36: Communications Concerning Legislation and the Genera and Species Protected; Information to be Published

1) [Initial notification] When depositing its instrument of ratification, acceptance or approval of or accession to this Convention, as the case may be, any State or intergovernmental organization shall notify the Secretary-General of
(i) its legislation governing breeder's rights and
(ii) the list of plant genera and species to which, on the date on which it will become bound by this Convention, it will apply the provisions of this Convention.
(2) [Notification of changes] Each Contracting Party shall promptly notify the Secretary-General of
(i) any changes in its legislation governing breeders' rights and
(ii) any extension of the application of this Convention to additional plant genera and species.
(3) [Publication of the information] The Secretary-General shall, on the basis of communications received from each Contracting Party concerned, publish information on
(i) the legislation governing breeders' rights and any changes in that legislation, and
(ii) the list of plant genera and species referred to in paragraph (1)(ii) and any extension referred to in paragraph (2)(ii).

Article 37: Entry into Force; Closing of Earlier Acts

1) [Initial entry into force] This Convention shall enter into force one month after five States have deposited their instruments of ratification, acceptance, approval or accession, as the case may be, provided that at least three of the said instruments have been deposited by States party to the Act of 1961/1972 or the Act of 1978.
2) [Subsequent entry into force] Any State not covered by paragraph (1) or any intergovernmental organization shall become bound by this Convention one month after the date on which it has deposited its instrument of ratification, acceptance, approval or accession, as the case may be.
3) [Closing of the 1978 Act] No instrument of accession to the Act of 1978 may be deposited after the entry into force of this Convention according to paragraph (1), except that any State that, in conformity with the established practice of the General Assembly of the United Nations, is regarded as a developing country may deposit such an instrument until December 31, 1995, and that any other State may deposit such an instrument until December 31, 1993, even if this Convention enters into force before that date.

Article 38: Revisión del Convenio

1) [Conference] This Convention may be revised by a conference of the members of the Union. The convocation of such conference shall be decided by the Council.
(2) [Quorum and majority] The proceedings of a conference shall be effective only if at least half of the States members of the Union are represented at it. A majority of three-quarters of the States members of the Union present and voting at the conference shall be required for the adoption of any revision.

Article 39: Denunciation

(1) [Notifications] Any Contracting Party may denounce this Convention by notification addressed to the Secretary-General. The Secretary-General shall promptly notify all members of the Union of the receipt of that notification.
(2) [Earlier Acts] Notification of the denunciation of this Convention shall be deemed also to constitute notification of the denunciation of any earlier Act by which the Contracting Party denouncing this Convention is bound.
(2) [Effective date] The denunciation shall take effect at the end of the calendar year following the year in which the notification was received by the Secretary-General.
(3) [Acquired rights] The denunciation shall not affect any rights acquired in a variety by reason of this Convention or any earlier Act prior to the date on which the denunciation becomes effective.

Article 40: Preservation of Existing Rights

This Convention shall not limit existing breeders' rights under the laws of Contracting Parties or by reason of any earlier Act or any agreement other

than this Convention concluded between members of the Union.

Article 41: Original and Official Texts of the Convention

1) [Original] This Convention shall be signed in a single original in the English, French and German languages, the French text prevailing in case of any discrepancy among the various texts. The original shall be deposited with the Secretary-General.

(2) [Official texts] The Secretary-General shall, after consultation with the interested Governments, establish official texts of this Convention in the Arabic, Dutch, Italian, Japanese and Spanish languages and such other languages as the Council may designate.

Article 42: Depositary Functions

1) [Transmittal of copies] The Secretary-General shall transmit certified copies of this Convention to all States and intergovernmental organizations which were represented in the Diplomatic Conference that adopted this Convention and, on request, to any other State or intergovernmental organization.

(2) [Registration] The Secretary-General shall register this Convention with the Secretariat of the United Nations.

SEEDS AND PHYTOGENETIC DEVELOPMENTS

Law Nº 20.247

BUENOS AIRES, March 30th, 1973
In exercise of the powers conferred by Article 5, The president of Argentina approves and enacts into law:

CHAPTER I
Generalities

Article 1: - The purpose of this law is to promote an efficient activity of the production and trade of seeds, to ensure the agrarian producers the identity and quality of the seed they acquire and to protect the property of the phytogenetic developments.

Article 2: - By virtue of this law it is understood that:
a) (Seed) or «Germ» means every vegetal structure aimed for sowing or spreading.
b) (Phytogenetic Development) is the variety obtained in the discovery or in the application of scientific knowledge in the inherital improvements of the plants.

Artículo 3: - The Ministry of Agriculture, together with the advice ofthe National Commission of Seeds, shall set in force the present law and shall establish general requirements, rules and indulgences by kind, category and specie of seed.

CHAPTER II
National Cornmission of Seeds

Article 4: - The National Commission ofSeeds is formed, in the jurisdiction ofthe Ministry of Agriculture, as a collegiate entity with funcrions and powers granted by the present law and its respective regulations.

Article 5: - The Commission will be formed by 10 members appointed by the Ministry of Agriculture. They shall have special knowledge on seeds. Five (5) of these members shall be official State representatives; two (2) of them shall belong to the ational Division of Agriculture Examinationand Trade; two (2) shall be long to the National Institute for Agricultural Technology; and one (1) shall belong to the National Board of Grains. The other five (5) :nembers shall represent the private companies; one (1) shall represent the breeders; two (2) shall represent the production and trade of seeds; and two (2) shall represent the consumers. The Ministry of Agricu1ture and Livestock shall determine, among the -Stáfé representatives, who will act as president and vice-president of the Commission. The other members that form the Commission, shall act as voting members of the same.
Each voting mcmber shall have a deputy member appointed by the Ministry of Agriculture and Livestock , and they shall act in absence of thc regular member with the same authority.
The representatives of the private compar.ies, -cgular or deputy members, shall be appointed by the most representative entities of each sector.

The.r position in office shall last two years, they can be re- elected and they cannot be removed from office as long as their term of office last, except for a serious cause. They shall receive a salary which will be fixed yearly by the Ministry of Agriculture and Livestock.

Article 6: - The decision of the Cornmission shall be approved by simple majority of votes, and the President shall have the possibility of a double vote in case of equal results. Such decisions shal1 be communicated at the Ministry of Agriculture and Livestock, and it will make execute it by its specialized service, if it is considered pertinent.

Article 7: - . The functions and powers of the Commission shall be the following:
a) To propose the mies and criteria of 'interpretation for the enforcement of the present law.
b) To establish the species that will be inc1uded in the system of seed «Controlled» .
c) To make a decision in every matter that, in fulfillment of the present law and its regulations, the technical services of the Ministry of Agriculture and Livestock should present.
d) To take notice and give opinion on the national, provincial and municipal projects of official policies, laws, decrees, decisions and provisions related with the nature of the present law, as well as with the official trade entities of the Agriculture production.
e) To examine the records re1ated with presumption breaks of this law, and proposing, if needed, the enforcement of penalties established in Chapter VII.
f) To deal with the technical differences that might occur between the services of the Ministry of Agriculture and the identifier, sellers and consumers in the enforcement of this law and its regulations.
g) To pro pose the Ministry of Agriculture and Livestock the rates for the services that might be given by virtue of this law, as well as any modification of the same.
As well as the above mentioned functions and powers, the Commission could propose the government measures that the Commission considers necessary for the best fulfillment of the law.

Article 8: - The Commission shall establish its internal regulations of operation and shall have a perrnanent- Technical Secretary, It shall designate committees for the treatment of specific subjects, such committees could be permanent and they shall be formed in accordance with what it is set forth in said by-laws.

CHAPTER III
The Seed

Article 9: - . The public seed or the ones delivered to the customers (a cualquier titulo) of any kind, shall be dully identified, specifying on the label, at least, the following specifications:
a)Name and address of the identifier of the seed and its number of registration.
b)Name and address of the seed's seller and his number of registration, when he is not the identifier.
e) The common name ofthe specie and the botanical one for those species which are established in the by-laws; in the case that the specie is a group of 2 or more species the «Mixture» must be specified as well as the names and percentages of each of the components that, individually or jointly, exceed the total percentage dully established.
d) Name of the variety and its kind of purity, if needed, if not the word «cornmon» (ordinary) shall be written down ..
e)Percentage of physical and botanical purity, by weight when this is under the established values.
f)Percentage of germination, by number and date of analysis (month and year), when this is under the established values,
g)Percentage of weeds, for those species dully established,
h)Net contents.
i)Year of harvest.
j)Place of origin for the imported seeds.
k)Seed (Category), if any,
l) Cured seed - Poison, in red letters, if the seed has been treated with a toxic substance.

Article 10: - . The following kind of seeds are established:
a)(Identified). It is the one that fulfills with the requirements set forth in section 9.
b)(Controlled). It is the one that, although fulfilling with the requirements set forth for the «identifi seed and showing good behavior on the officially approved test, is submitted under a official con during the phases of its production cycle. Within these type of seeds, the following «categori recognized: «Original» (Basic or Foundation) and «Certified» in different grades.
The regulations could establish other categories within the types already mentioned.

The Ministry of Agriculture and Livestock, together with the advice of the National Commission o Seeds, shall keep under the system of controlled production, all the species that might be under this situation when this law is enacted, and could incorporate to the System of (Controlled) seed the productioc of species that it might consider convenient for the agronomic and of general interest purposes.

Article 11: - The import and export of seeds are subjected to the system of this law, pursuant to tire rules that National Executive Power shall pronounce in defense and promotion of the agrarian productios of our country.

Article 12: - The settlement of issues about the quality of imported or exported seeds shall be bas on international rules set in force about methods and procedures of the analysis and tolerance of seeds.

Article 13: - . It is created, in the jurisdiction of the Ministry of Agriculture and Livestock, the (Nation Registry of trade and Control of seeds) in which it shall be registered every person who imports, exports, produces controlled seeds, manufactures, analyses, identifies or sells seeds in accordance with the rules dully established.

Article 14: - The assignment of any property of seeds with the purpose of trading, planting - propagation by third parties, shall only be made by a person registered in the National Registry of Tra and Control of Seeds, who shall be the responsible for the proper labeling of it when an assignment takes place. The regulations shall establish the cases in which, for the passing of time or other factors, su responsibility could cease.

Article 15: - The Ministry of Agriculture and Livestock with the advice ofthe National Commission o:
Seeds shall forbid, limit to special requirements or rules, temporary or permanently, in the whole or part- s: the national territory, the production, multiplication, dissemination, promotion or trade of a seed wh that entity considers it convenient for the agronomic and of general interest purposes.
When any of the above mentioned measures are executed, the Ministry of Agriculture and Livest shall establish a period of time, which does not prejudice the legitimate interests, for their enforcement.

CHAPTER IV
National Registry ofVarieties

Article 16: - The National Registry of Varieties is established within the jurisdiction of the Ministry . Agriculture and Livestock. Every variety identified for the first time shall be registered in said Registr; pursuant to what is set forth in section 9 of this law, such registration shall be made under the supervisi of an agricultural expert having a national or validated degree. The varieties which are of public knowledg on the date the present law is set in force, shall be registered, per se, by said Ministry.

Article 17: - The application form for the registration of every variety shall specify name and address of the applicant, botanical specie, name of the variety, origin, the most outstanding characteristics of the specie according to the supervising expert, and place of origino The Ministry of Agriculture and Livestock with the advice of the National Commission of Seeds, could establish additional requirements for the registration of certain classes. It could not be registered varieties of the same class with the same name or with some similarity which can provoke confusion; the name in its original language shall be maintained
following the same criterion. The registration in the Registry established pursuant to what is set forth in section 16, does not grant the right of property.

Article 18: - . In the cases that the Ministry of Agriculture and Livestock with the advice ofthe National Commission of Seeds, discovers a verified synonymy, it shali give priority to the name given in the first description of the variety in a scientific review, or in a private or official catalogue, or vernacular name, or in case of doubt, to the first name registered in the National Registry of Varieties. It is prohibited the use of the other names from the date that shall be established for each case.

CHAPTER V
National Registry of the Variety Properties

Article 19: - . The National Registry of Variety Properties is established within the jurisdiction of the Ministry of Agriculture, in order to protect the right of property of the originators and discoverers of the new varieties.

Article 20: - . It could be registered in the Registry established pursuant to section 19, and it shall be considered «Goods»and will be govemed by this law, the phytogenetic developments or varieties which are distinguishable from others already known at the timethe application of property is presented, and in which the individuals have similar and stable inherited characteristics along successive generations.
Such registration shall be done by the originator or discoverer under the supervision of an agricultural expert having a national or validated degree, and such new variety shall be individualized with a name that has the requirements established in section 17.

Article 21: - The application of property for the new variety shall specified the characteristics required on section 20 and shall include seeds and samples ofthe same, ifthe Ministry of Agriculture and Livestock asks for it. Said Ministry could submit the new variety under tests and laboratory and field examinations in order to verify the attributed characteristics, it can be accepted as proof the results of previous examination made by the applicant of the property and by official services. With such elements and the advice of the National Commission of Seeds, the Ministry of Agriculture and Livestock shall decide upon the granting of the correspondent Certificate of Property. The respective variety could not be sold or offered for sale until such certificate is not granted. The owner shall keep a live sample ofthe variety at the disposal ofthe Ministry of Agriculture and Livestock as long. as such title is enforced.

Article 22: - The Title of Property upon a variety shall be granted for a period no less than 10 years and no more than 20 years, depending on the specie or group of species, in accordance with what the regulations might establish. The issuance and expiring date shall be included in the Title of Property.

Artículo 23: - The Title of Property of the varieties could be assigned, such assignment must be registered in the National Registry of Property of Varieties. If not, such assignment shall not be liable to third parties.

Article 24: - The Proprietary right of the variety belongs to the holder of the right. Unless an express authorization of the holder is granted, the persons involved on the tasks related tophytogenetic development or discovery of new varieties shall not have the rights to use it for particular purposes.

Article 25: - The Property of a variety does not prevent other persons from using it for the development of a new variety, which could be registered under the name of the originator without the consent of the owner of the phytogenetic development use to obtain the new one, provided the latter is not used permanently for the development of the new one.

Article 26: - The originator or his duly authorized representative domiciled in Argentina shall apply for the Proprietory Right of a foreign variety, and it shall be granted provided that the country where the variety was developed recognizes a similar right for the Argentine phytogenetic developments. The validity of the proprietory right in such cases shall have as a maximum term the period remaining for the expiration of that same right in the country of origino.

Article 27: - The proprietary right of a new variety is not affected when a person authorized by the owner, delivers for any reason, seeds from the same variety, or sets aside and sows seed for his own benefit, or uses or sells as raw material or food the product obtained from the cultivation of such phytogenetic development.

Article 28: - The Title of Property of a variety shall be declared of «Limited Public Use» by the National Executive Power if proposed by the Ministry of Agriculture and Livestock upon a fair payment for the owner, when it is established that such declaration is necessary in order to ensure an adequate supply in the country of the product obtained from the variety, and that the beneficiary of the proprietory right is not supplying the public demand of seeds from said variety in a reasonable amount and price. During the term in which the variety was declared of «Limited Public Use», the Ministry of Agriculture and Livestock shall grant its exploitation to interested parties who shall offer satisfactory technical guarantees and register in this Ministry to that effect. The declaration of the National Executive Power could establish or not the amount to be paid to the owner, such amount could be fixed among the interested parties. In case of disagreement, said amount shall be fixed by the National Commission of Seeds, such resolution can be appealed

before the National Court. The proceedings of the payment agreement shall not delay under any circumstance the availability of the variety; which shall be immediately after the declaration of the National Executive Power; in case of objection the owner shall be liable.

Article 29: - The declaration of (Limited Public Use) of a variety shall be in effect for a term no longer than two (2) years. The extension of this term for two more years could only be declared by the National Executive Power by means of a new well-founded resolution.

Article 30: - The Title of Property of a variety shall expire according to the following reasons:
a)Resignation of the owner to his rights, in this case the variety shall be of public use.
b)When it could be proved that it has been obtained due to fraud upon third parties, in this case the right shall be assigned to its legitimate owner, if this could be established, on the contrary it shall be of public use.
e) Expiration of the legal term of property, being of public use from that date.
d) When the owner shall not provide a live sample ofthe it, with the same characteristics to the original variety, when required by the Ministry of Agriculture and Livestock
e) When the payment of the annual fee of the National Registry of Property of Varieties is due, six (6) month after the payment has been duly claimed, it shall be of public use.

CHAPTER VI
Fees and Subsidies

Article 31: - The National Executive Power, if proposed by the Ministry of Agriculture and Livestock and with the advice of the National Commission of Seeds, shall established fees for the following items:
a)Registration, yearly payment and certifications in the National Registry of Property of Varieties.
b)Registration and yearly payment in the National Registry of Trade and Control of Seeds.
e) Supply of official labels for the seed «Controlled»,
c)Seeds analysis and variety tests.
d)Required services.
e)Registration of laboratories and other auxiliary services.

Article 32: - . If proposed by the Ministry of Agriculture and Livestock and with the advice of the National Commission of Seeds, the Executive Power shall have the authority to grant, according to the regulations, subsidies, special promotional credits and tax exemptions in favor of cooperative farm entities, official entities, persons and companies having national capital which are engaged in the tasks of phytogenetic development. The funds to support those expenses shall be allocated to the Special Account (Law of Seeds) which is enacted pursuant to section 34.

Article 33: - The Executive Power, if proposed by the Ministry of Agriculture and Livestock and with the advice of the National Commission of Seeds, shall have the power to grant incentive awards to breeders technicians through their job in the different official entities, producing new varieties of relevant aptitudes and significant contribution to the economy of the country. The necessary fund for this purpose shall be allocated to the Special Account (Law of Seeds).

Article 34: - It shall be started/opened a special account, called «Law of Seeds», which shall be administered by the Ministry of Agriculture and Livestock, where the funds collected through fees, fines, donations or through any other income or amount established in the general budget of the Nation shall be credited, and where the necessary expenses and investments for the maintenance of services, payment of subsides and awards referred to in this law shall be debited. The balance ofthis funds not used in a fiscal year, shall be transferred to the following year.

CAPITULO VII - Penalties

Article 35: - Any person that, for any reason, implicates or delivers a seed not identified in accordance with what it is established in section 9 and its regulations, or makes a false statement on the label of the container in accordance with the established requirements, shall receive a warning notice if a simple mistake or omission has been made, if not he shall be bound to paya fine the amount of which may vary from one hundred pesos ($100) to one hundred thousand pesos (l00.000), and the confiscation of the goods shall be done if these goods could not be trade as seed. In this case the Ministry of Agriculture and Live-

stock could authorize the owner to sell the confiscated goods for consumption or destruction according to what the regulation establishes.

Article 36: - . If any person disseminates/ spreads as seeds varieties not registered in the National Registry of Varieties, this goods shall be confiscated/seized, and he shall be bound to paya fine the amount of which may vary from one thousand pesos ($ 1,0ÓO) to sixty thousand pesos ($ 60,000). The amount of the fine shall be established according to the record s of the infringer and the importance of the seed economy.

Article37: - Any person who identifies or sells with the proper or other -identification variety seeds not authorized for their multiplication and trade by the owner of the variety, shall be bound to paid afine the amount of whichrnay vary from two thousand pesos ($2,000) to one hundred thousand pesos ($ 100,000).

Article 38: - Any person who shall violate/breach the decisions pronounced pursuant to section 15, shall be bound to paya fine the amount of which may vary from two thousand pesos ($2,000) to one hundred thousand pesos ($ 100,000) and the infringing goods shall be confiscated.

Article 39: - The person who uses any information or advertisement which may lead to confusion about the seed qualities or conditions, or who does not give the information required by the law, shall receive a warning notice or shall be bound to paya fine the amount of which may vary from one thousand pesos ($1,000) to sixty thousand pesos ($60,000).

Article 40: - In addition to the penalties established from section 33 to 39 and in section 42, aimed for the persons named in section 13, it could be included as an accessory penalty, the temporary or permanent suspension of their registration in the National Registry of Seeds Trade and Control, being inhibited/restrained from acting on any activity ruled by this present law, during the term of such suspension, and when they shall breach the present law and its functioning regulations as importer, exporter, sower, manufacturer, analyst, identifier or seller of seeds.

Article 41: - The registration failure of the persons and entities, bound to do so by virtue of section 13, in the National Registry of Trade and Control of Seeds, shall result in their reception of a warning or notice ordering them to adjust such situation within fifteen (15) days after/as of the reception of the notice, in case of failure, they shall be bound to paya fine of one thousand pesos ($ 1,000). In case they repeat the offense, the fine shall be increased up to the amount of sixty thousand pesos ($60,000).

Article 42: - If a person fails to prove, within the terms to be established by the regulation, the use given to the official labels acquired for «Controlled» seeds, he shall be fined for the double of the value of each label, pursuant to what it has been established in section 31, subsection d),

Article 43: - The seller shall be bound to reimburse the buyer the purchase price of the seed proved to be under the established requirements and the freight. The buyer shall return the seeds that he does not sow, with their respective containers, the expenses accrued for this action being charged to the seller.

Article 44: - The Ministry of Agriculture and Livestock could publish, from time to time, the results of the controls and surveys made by it. In addition, it could publish the penalty resolutions on two (2) newspapers, one (1) of them, at least, shall be from the same place where the infringer has his domicile.

Article 45: - The officials acting in accordance with the present law shall be able to control, take - samples and analyze sample of seeds obtained from stored, transported, sold, offered or displayed for sale seeds, at any time or place. They shall have access to any store where there are seeds and shall be able to examine any document related with the same. They shall be able to stop or audit/supervise the sale and distribution of any seed lot which might be considered under breach, for a period of time no longer than thirty (30) days.
Therefore, the Ministry of Agriculture and Livestock could require the operational cooperation of other official entities, as well as the support of the police if it is considered convenient.

Article 46: - Ministry of Agriculture and Livestock shall charge the breach/violation of the present law and its regulations after judgment of the National Commission of seeds. The persons who breach this law shall be able to file a notice of

appeal before said Ministry within ten (10) working days after receiving notice.

Article 47: - If the Ministry dismisses the notice of appeal, the appellant shall be able to file a notice of appeal before the National Court after paying the corresponding fine within thirty (30) days after receiving the due notice.

Article 48: - The enforcement of the charges/ penalties referred to in this Chapter, does not exclude the charges that might pronounce for the violation of other judicial roles.

Temporary Provision:

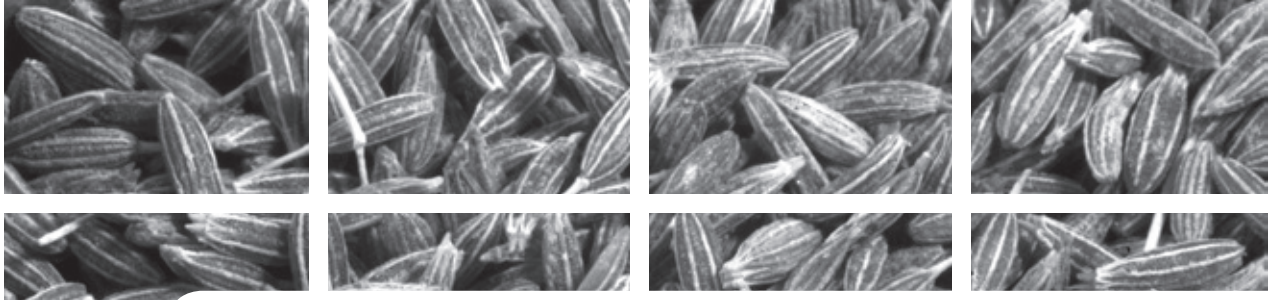
Article 49: - Once this law is set in force, the owners varieties temporarily registered pursuant to the provisions set forth in Act 12.253, shall be able to apply the title ofproperty ofthe same according to what is established in Chapter V.

Article 50: - It is revoked section 22 to 27 ofthe Act Nr. 12.253, Promotional Genetic Chapter, and any other roles that shall object the present law.

Article 51: - Chapters 1 and II shall set in force on the date in which the present law is enacted, the other chapters and section 49 and 50, shall set in force six days after the enactment of this law. The Ministry of Agriculture and Livestock shall be able to postpone/extend/delay up to eighteen (18) months the enforcement of section 9 for those seeds that it may deem necessary.

Article 52: - Adjectival sectíon.

>> Signed: LANUSSE
Ernesto J. Lanusse
Ernesto 1. Parrellada



DECREE LAW REGULATORY AND SEEDS
Nº Phytogenetic 20.247

DECREE N° 2183/91

BUENOS AIRES, October 21 st 1991

HAVING REGARD to file Nr. 1560/91 of the Registry of the Secretariat of Agriculture, Livestock and Fisheries in which the NATIONAL SEED COMMISSION proposes the repeal of Decree Nr. 50 of January 17, 1989, a regulation mode under Law Nr. 20.247, and its replacement by a new legal instrument,

CONSIDERING:

That Article 34 of Decree Nr. 2476 of November 26, 1990, establishes the need to reorganize and strengthen the plant inspection functions of national agricultural production, particularly that which is destined for external markets.

That the said Article foresees, moreover, the creation of a specialized organization for this purpose which would enable a more efficient application of Law Nr. 20.247 and secure a greater participation in the international seed market.

That, likewise, the creation of an organization as described requires that its activities be seen within the framework of regulations appropriate to the objective.

That the said regulations should conform to those international agreements and standards "which secure an effective protection of intellectual property, in order to afford the legal certainty necessary for the increase of investment in the seed sector.

That such conformity will result in greater incentives for the breeding and commercialization of new varieties of planting materials, will guarantee for farmers a basic input of high quality for agricultural production together with clear rules for the development of the national seed market.

That the new regulations will embody the experience accumulated since the entry into force of Law Nr. 20.247 and language which reflects the national and international progress in the relevant technology.

That the authority to establish this Decree arises from Article 86 indent 2) of the National Constitution.

Therefore,
THE PRESIDENT OF THE ARGENTINE NATION DECREES:

CHAPTER I
GENERAL

Article 1: - For the understanding of the concepts used in Law Nr. 20.247 and in these Regulations,
(a)(Seed) or (planting material) means any plant organ, not only seed in the strict botanical sense, but also fruit, bulbs, tubers, buds, cuttings, cut flowers and any other structures, including nursery plants, whenever intended or used for sowing, for planting or for propagation.
(b)(Plant genetic creation) means any variety or cultivar, whatever its genetic nature, obtained by discovery or by incorporation and/or application of scientific knowledge.
(c)(Variety) means a group of plants within a single botanical taxon of the lowest known rank which can be defined by the characteristics that are the expression of a given genotype or combination of genotypes and can be distinguished from other groups of plants of the same botanical taxon by at least one of the said characteristics. A particular variety may be represented by several plants, a single plant or by one or several parts of a plant, provided that such part or parts can be used for the production of entire plants of the variety.
(d) (Breeder) means the person who breeds or discovers a variety or cultivar.

CHAPTER II
NATIONAL SEED COMMISSION (CONASE)

Article 2: - The NATIONAL SEED COMMISSION (CONASE) shall exercise the function of adviser under Article 7 of the Law Nr. 20.247 under the jurisdiction of the SECRETARIAT OF AGRICULTURE, LIVESTOCK AND FISHERIES which will exercise full powers as the implementing authority under the said Law.

Article 3: - In the cases for which provision is made in indents d) and e) of Article 7 of Law Nr. 20.247, the NATIONAL SEED COMMISSION (CONASE) shall give its opinion within a period of FIFTEEN (15) days, it can request a single extension of time of fifteen days when the completion of the task requires it. At the expiration of the said period, the implementing authority shall act on the matter without further formalities.

Article 4: - The Technical Secretariat of the NATIONAL SEED COMMISSION.(CONASE) shall perform its functions within the ambit the of the implementing authority under Law Nr. 20.247 jointly with the committees provided for in Article 8 of the said Law.

CHAPTER III
IMPLEMENTING AUTHORITY

Article 5: - The SECRETARIAT OF AGRICULTURE, LIVESTOCK AND FISHERIES, as the implementing authority under Law Nr. 20.247, shall perform the tasks described in Article 6° of this Decree by means of the NATIONAL SEED SERVICE (SENASE), or any organization which replaces it in the future.

Article 6: - The following shall be the functions of the NATIONAL SEED SERVICE (SENASE):
(a)to keep the National Register for Seed Trading and Certification and to publish periodically the lists of establishments that constitute its sections;
(b)to keep the National Register of Cultivars, to effect the registration ex officio of plant genetic creations that are a matter of common knowledge and to publish specific catalogues periodically:
(c)to keep the National register of Cultivar Ownership and to issue cultivar property titles;
(d)to effect botanical, agricultural and industrial inspections of varieties that have been or are to be registered, and also of material subject to certification in plant research establishments,
(e)to lay down provisions for the registration, operation and supervision of establishments that produce «certified» seed, and also of any other category of establishments that it sees fit to regulate;
(f)to lay down with the advice of the NATIONAL SEED COMMISSION (CONASE) provisions for the registration and supervision of the growing and production of the various categories of seeds;
(g) to carry out inspections of establishments producing certified and/or identified seed;
(h) to carry out the inspection of planted material submitted for certification, and to authorize the sale of the production achieved;
(i) to arrange for the printing of official labels for the identification of certified seed;
(j) to sell the official labels to certified establishments;
(k) to carry out the inspection of seed on sites of production, processing, trading or transport;
(l) to determine the characteristics and procedures

for the packing and labeling of planting material;
(ll) to supervise the publicizing of the agronomic characteristics of varieties;
(m) to supervise the import and export of seed under Law Nr. 20.247;
(n) to direct the Official Board of Comparative Testing of Registered Cultivars, and to publish findings periodically;
(ft) to direct the Central Seed Testing Station and its associated laboratories; to lay down the provisions for the authorization and operation of seed-analysis laboratories;
(o) to supervise the seed trade, exercising the police powers established by Article 45 of Law Nr. 20.247;
(p) to publish periodically the results of the inspections and samplings provides for in Article 44 of law Nr. 20.247;
(q) to ensure compliance with Article 39 of Law Nr. 20.247;
(r) to provide for control over the production and transport of seed prior to its identification;
(s) to determine the fate of seed confiscated under Articles 35 to 39 of law Nr. 20.247,
(t) to provide the NATIONAL SEED COMMISSION (CONASE) with all information that may be requested of it for the satisfactory operation of the latter body;
(u) to lay down provisions for the operation of quality certification schemes organized by species or groups of species;
(v) to lay down provisions whereby the National Register for Seed Trading and Certification registers for publicity purposes, and at the request of interested parties, standard license contracts and/or ordinary licenses granted by breeders or associations of breeders and third parties; The NATIONAL SEED SERVICE (SENASE) may, in order to carry out the aforesaid functions better, seek the advice of the NATIONAL SEED COMMISSION (CONASE) on matters within its competence.

Article 7: - The SECRETARIAT OF AGRICULTURE, LIVESTOCK AND FISHERIES may delegate the functions provided for in subparagraphs (g), (h), (j), (k), (ll), (o), (p), (q), (r) and (s) or Article 6 of this Decree by means of special arrangements with official agencies at national, provincial or municipal level, which shall remain under the supervision and direct responsibility of the implementing authority, subject to a prior ruling by CONASE. It nay likewise entrust collaborative functions to private bodies with respect to the assignments provided for in subparagraphs (g), (h), (j), (k) and (n) of the said Article 6, by means of special arrangements under the supervision and direct responsibility of the implementing authority, subject to a prior ruling by the NATIONAL SEED COMMISSION (CONASE).

CHAPTER IV
SEED

Article 8: - For the purposes of the interpretation of Article 9 of law Nr. 20.247, it shall be presumed that:
(a)seed «exposed to the public» means all that which is available for delivery for whatever reason and in respect of which advertising, the display of samples, trading, offering for sale, display for sale, transactions, exchanges or any other forms of marketing take place, whether on properties or in premises, warehouses, depots, fields, etc., either in bulk or in containers of any kind.
(b)Seed «delivered to users for whatever reason» means all that seed which is:
I . in vehicles destined for users;
II . in the possession of users.
Seed that has been identified or is the process of being identified and does not fall into the above categories shall be regarded as not exposed to the public.
Supervision of the production and transport of seed prior to identification shall be organized by the SECRETARIAT OF AGRICULTURE, LIVESTOCK AND FISHERIES jointly with the organization which is competent in the particular case.
The Law Nr. 19.982 on the Identification of Merchandise as amended shall apply subsidiary for the purposes of identification.

Article 9: - (Label) means any label, tag or printed slip of any kind pasted, stamped or tied on to the seed package or container. The implementing authority shall lay down rules concerning the use, characteristics and constituent materials of labels, packages and containers and any other elements suitable for identifying, containing or protecting planting material.

Article 10: - The class of (identified) seed shall include the following categories:
(a) «common»: where the name of the variety is not given;
(b) «listed»: where the name of the variety is given. The implementing authority shall specify the cases in which the cultivar may or should be mentioned, for which purpose it may seek the advice of the NATIONAL SEED COMMISSION (CONASE).

Article 11: - The class of «certified» seed contains the following categories:
(a)(original) (basic or initial): the progeny of genetic, prebasic or elite seed, produced in such a way as it retains its purity and identity;
(b)(certified first-propagation) (registered): the first-generation offspring of (original) seed;
(c)(certified subsequent-propagation): seed produced from (original) or (first-propagation) planting material or from any earlier propagation stage; the implementing authority shall specify the stages of propagation;
(d)(hybrid): planting materia! obtained as a result of the production cycle of first-generation hybrid cultivars.

Article 12: - The SECRETARIAT OF AGRICULTURE, LIVESTOCK AND FISHERIES, on the advice of the NATIONAL SEED COMMISSION (CONASE), shall determine the species in respect of which it shall be mandator}' or optional to produce and sell seed corresponding to the (certified) class. Planting material corresponding to species here certification is optional may be marketed as (identified) except in the case of hybrid cultivars.

Article 13: - The import and export of seed shall take place through the agency of the SECRETARIAT OF AGRICULTURE, LIVESTOCK AND FISHERIES, which may grant or refuse import or export licenses in the light of an assessment of their compliance with requirements pertaining to registration, quality, health and certification of origin that have to be met by any seed according to its species, cultivar and destination, the latter term being understood to mean direct distribution, propagation or testing.
The import of seed of species declared agricultural pests is prohibited.

Article 14: - The SECRETARIAT OF AGRICULTURE, LIVESTOCK AND FISHERIES shall lay down, on the proposition of the NATIONAL SEED SERVICE (SENASE), the maximum and minimum periods determining liability for the quality of planting material.
The sale or display to the public of seed whose liability period has expired shall be prohibited.
The liability of the identifier or retailer shall end if, when the merchandise has been delivered, it is found that the containers have been tampered with or that the merchandise has been improperly stored by others.
The fact of pasting, stamping or attaching a label on to a package or container shall have the character of a sworn declaration on the part of the person who does so.

CHAPTER V
NATIONAL REGISTER OF CULTIVARS

Article 15: - The National Register of Cultivars shall be organized in sections by species, botanical varieties or lower taxons where appropriate, according to the rules laid down by the NATIONAL SEED SERVICE.

Article 16: - Those new or undisclosed cultivars that meet the requirements of Article 18° of this Decree shall be entered in the National Register of Cultivars, as shall, ex officio, those that are a matter of common knowledge on the date of entry into force of Law Nr. 20.247.
For those purposes:
(a)(new or undisclosed variety) means any variety that has been identified for the first time, is covered by a property title issued by the implementing authority or has not yet been recorded, with a similar description, at the time of its submission to the National register of Cultivars;
(b)(variety that is a matter of common knowledge) means any variety that has appeared in scientific publications or in official or private catalogues in the country, or has been declared to be in the public domain in countries with reciprocity agreements exist, and the characteristics of which, as required by Article 17 of Law Nr. 20.247, are known.

Article 17: - varieties already registered under Decree Nr. 50/89 shall remain on record in the official registers kept by the implementing authority.

Article 18: - The application form for entry in the National Register of Cultivars shall have character oi a sworn statement and shall be filed with the implementing authority subject to compliance with the followingrequirements:
(a)name, address and registration number of the applicant in the Nationa! Register for Seed Trading and Certification;
(b)name, address and professional registration number of the agronomist sponsoring the registration;
(c)common and scientific names of the species;
(d)name of the variety;

(e)establishment and locality in which the variety has been produced, with an indication where appropriate of the country of origin;
(f)morphological, physiological, health, phenological and physico-chemical features, and the most striking industrial or technological properties that allow it to be distinguished. Photographs, drawings or any other commonly-accepted technical means of illustrating morphological aspects shall be enclosed.

Article 19: - For the purposes of compliance with the provisions of subparagraph (d) of the foregoing Article, it shall be considered that:
(a) varieties to be registered must be designated by a denomination intended to be its generic designation in accordance with the provisions of Article 17 of Law Nr. 20.247; that denomination shall combine the following characteristics:
I. it shall permit identification of the variety;
II.it may not be composed solely of numerals, except where that is a common practice in the designation of varieties;
III.it may not mislead or confuse as to the characteristics, value or identity of the variety or as to the identity of its breeder;
IV.It must be different from any denomination that designates a pre-existing variety of the same botanical species or a similar species in any other country;
The NATIONAL SEED SERVICE (SEN ASE) may refuse the registration of a variety whose denomination does not combine the aforesaid characteristics, and shall demand the proposal of another denomination within 30 days of the notification of refusal;
(b) The implementing authority may in addition require the breeder to change the denomination of a variety when:
I. it affects prior rights granted by another country;
II.registration is sought for a denomination different from the one registered for the same cultivar in a State or States with which the Argentine Republic has signed agreements on the subject.

Article 20: - Any person who places on sale or in any way markets or handles in any capacity plating material of a variety protected by a property title shall be obliged to make use of the denomination of that variety, even after the property title has expired, provided that previously-acquired rights are not affected thereby. The denomination of the variety may likewise be accompanied by a trademark or trade name or similar sign, in so far as it does not mislead as to the denomination of the variety orthe name of the breeder.

Article 21: - If a cultivar is registered in the National registered of Cultivar Ownership, the approve! denomination thereof shall be registered at the same time as the property title concerned is granted.

Article 22: - The implementing authority may request the submission of additional information on agronomic properties: genetic origin, proof of health status, agro-ecological qualities and proof of industria value.

Article 23: - The NATIONAL SEED SERVICE (SENASE) shall regulate the registration of varieties in the National Register of Cultivars, which shall be given priority according to the hour and date of submission, and which may be registered either provisionally or finally, while registration may also be refused, and the exercise of the rights deriving from grant suspended, or rights already registered may be canceled, where anomalies or defects that warrant such a step are detected. The measure shall be subject to appeal by referral to the Federal Courts of Administrative Litigation.

Article 24: - The National Seed Service (SEN ASE) shall satisfy itself of the authority or scientific value of catalogues or publications invoked in cases of synonymy, and shall set the date from which thesimultaneous use of different names for the same variety is to be prohibited.

Article 25: - Where varieties belonging to a species whose registration has been organized and implemented have not themselves been registered or where their registration has been canceled in the National Register of Cultivars, their distribution on whatever grounds shall be prohibited.

CHAPTER VI
CONDITIONS FOR THE GRANT OF TITLES OF OWNERSHIP

Article 26: - For a variety to be the subject of a property title it shall meet the following conditions:
(a) Novelty: It shall not have been offered for sale or sold by the breeder or with his consent:

I. In the national territory, before the date of filing the application for inscription in the National register of Cultivar Ownership;
II. In the territory of another State with which the Argentine Republic has a bilateral or multilateral agreement on the subject for a period greater than FOUR (4) years or, in the case of trees or vines, for a period greater than SIX (6) years before the application for inscription in the National Register of Cultivar Ownership.
(b)Distinctness: It must be clearly distinguishable by means of one or more characteristics, from any other variety whose existence is a matter of common knowledge at the time of the filling of the application. In particular, the filing of an application for the granting of a breeder's right or for the entering of another variety in an official register of varieties, in any country, shall be deemed to render that other variety a matter of common knowledge from the date of the application, provided that the application leads to the granting of a breeder's right or to the entering of the said other variety in the official register of varieties, as the case may be.
(c)Uniformity: Subject to predictable variations due to the specific features of its propagation, it must retain its most significant hereditary characteristics in a sufficiently uniform manner;
(d)Stability: Its most significant hereditary characteristics must remain true to the description thereof after repeated propagation, or, in the case of a particular cycle of propagation, at the end of each such cycle.

Article 27: - The grant of a property title in a variety, in so far as it meets the conditions specified in this Title and the denomination of the variety conforms to the provisions of Articles 19, 20 and 21 of this Decree, may not be made subject to any additional condition other than payment of the.

CHAPTER VII
RECORDING IN THE NATIONAL REGISTER OF CULTIVAR OWNERSHIP

Article 28: - The National Register of Cultivar Ownership shall be organized in sections by species, botanical varieties or lower taxons where appropriate, as directed by the implementing authority.

Article 29: - The application for registration in the National Register of Cultivar Ownership shall have the character of a sworn statement, and shall be filed with the implementing authority, subject to compliance with the following requirements:
(a)name, address of the breeder or discoverer or his national representative if appropriate;
(b)name, address and professional registration number of the agronomist sponsoring the registration;
(c)common and scientific names of the species;
(d)name proposed for the variety;
(e)establishment and locality in which the variety was bred;
(f)description: this must cover the morphological, physiological, health, phenological and physicochemical features, and also the industrial or technological properties that allow it to be identified; drawings, photographs or any other commonly-accepted technical means of illustrating morphological aspects shall be enclosed;
(g)justification of novelty: reasons for which it is considered that the variety possesses new and undisclosed character, with evidence of differentiation in relation to existing varieties;
(h) verification of stability: date on which the cultivar was propagated for the first time as such, for verification of stability;
(i) origin: national or foreign, with an indication in the letter case of the country of origin;
(j) reproductive or vegetative propagation mechanism;
(k) other additional conditions for species that so require, as established by the NATIONAL SEED SERVICE (SENASE).
The implementing authority may, when it considers this necessary, require field trials and/or laboratory tests for the verification of the characteristics attributed to the new cultivar.

Article 30: - The filing of the application for the registration of a variety in any State with which the Argentine Republic has a bilateral or multilateral agreement on the subject shall give the applicant priority for TWELVE (12) months for its registration in the National Register of Cultivar Ownership: that period shall be calculated as from the day following that of first filing in any such state. On its expiration, the applicant shall have a period on TWO (2) years in which to submit the documentation and material required by Article 29° of this Decree.

Article 31: - Any decision to grant a right of ownership of a variety shall require an examination for compliance with the conditions provided

for in Chapter VI of this Decree. In the course of the examination, the NATIONAL SEED SERVICE (SENASE) may grow the variety or carry out other necessary tests or take into account the results of growing tests or other trials which have already been carried out. For the purposes of examination, the authority may require the breeder to furnish ail the necessary information, documents or material, which should be available to the implementing authority for the validation of the title of ownership.

Article 32: - The SECRETARIAT OR AGRICULTURE, LIVESTOCK AND FISHERIES, on the advice of the NATIONAL SEED COMMISSION (CONASE), shall enact provisions governing the procedure for the recording of cultivars in the Register. The provisions to be enacted shall be without prejudice to the right of third parties to make such oppositions as they consider appropriate.

Article 33: - The SECRETARIAT OF AGRICULTURE, LIVESTOCK AND FISHERIES, when it has all the facts of the case in its possession, shall decide on the grant of the property title and shall make the appropriate communication to the applicant and shall issue the title.

Article 34: - If the decision of the SECRETARIAT OF AGRICULTURE, LIVESTOCK AND FISHERIES is to refuse registration, this shall be brought to the notice of the applicant in order that he may produce specific proof concerning the aspects objected to within a maximum period of HUNDRED AND EIGHTY (180) days.
If the applicant does not contest the refusal of his application, he shall be regarded as having renounced it.
If he does contest the refusal, the SECRETARIAT OF AGRICULTURE, LIVESTOCK AND FISHERIES shall have THIRTY (30) days within which to pronounce on the subject, for which purpose it may seek the advice of the NATIONAL SEED COMMISSION (CONASE).

Article 35: - The breeder's right shall be declared null and void when it is established that, at the time of the grant of the title of ownership:
(a)The conditions laid down in indents (a) and (b) of Article 26° were not effectively complied with.
(b)Where the grant of the breeder's right has been essentially based upon information and documents furnished by the breeder, the conditions laid down in indents (c) and (d) of Article 26 were not complied with.
The right of the breeder shall not be declared mull and void for reasons other than those referred to in this article.

Article 36: - The right of the breeder in a variety shall lapse in accordance with the provisions of Article 30° of Law Nr. 20.247 for the following reasons:
(a)The breeder surrenders his rights, in which case the variety falls into the public domain.
(b)when it is shown that it has been obtained by fraud upon a third party, in which case the right shall be transferred to its legitimate owner if he can be identified. In the contrary case, it shall fall into the public domain.
(c)Upon termination of the legal period of ownership, after which it passes.
(d)When the breeder is not in a position to provide the implementing authority with the materials considered necessary to control the maintenance of the variety, as required by Article 31° of this Decree.
(e)For failure to pay the annua! fee to the National Register of cultivar Ownership for a period of SIX (6) months from the making of a demand for payment, after which the variety passes into the public domain.
The breeder may not be deprived of his right for reasons other than those mentioned in this Article.

Article 37: - Property titles for cultivars shall be granted for a maximum of TWENTY (20) consecutive years for all species.
The SECRETARIAT OF AGRICULTURE, LIVESTOCK AND FISHERIES may specify other, shorter periods, depending on the nature of the species.

Article 38: - When the property title has been granted, the relevant decision of the SECRETARIAT OF AGRICULTURE, LIVESTOCK AND FISHERIES shall be published in the Official gazette at the expense of the party concerned.
Surrenders of titles, cancellations and transfers shall also be published at his expense.

Article 39: - Any transfer of the property title shall take place in the form of a request that states the names and addresses of the transferor and transferee, and shall be accompanied by the legal document evidencing the said transfer. The record of transfer shall be entered in the national Register of Cultivar Ownership and on the property title. The transferee shall remain subject to

the same obligations as the transferor.

Article 40: - Where the breeding of a new variety has been achieved by two or more persons, ownership thereof shall be governed by the rules of the Civil Code on joint ownership.
In the case of persons who have collaborated in the breeding of the variety in the course of employment relations, the provisions of Article 82 of the Law on Employment contracts, Nr. 20.744, and amendments thereto, shall apply.

CHAPTER VIII
THE RIGHTS OF THE BREEDER SCOPE AND RESTRICTIONS

Article 41: - For the purposes of Article 27 and related Articles of Law Nr. 20.247, and also the present Regulations, the property rights granted to a breeder in respect of a variety shall have the effect of making his prior authorization necessary for the acts specified below in relation to the planting material of the protected variety:
(a)Production or reproduction;
(b)Conditioning for the purposes of propagation;
(c)Offering for sale;
(d)Sale or any other form of marketing;
(e)Export;
(f)(g) Advertising, display of samples;
(g)(h) Exchange, transfer and any other form of commercial transaction;
(h)(i) Stocking for any of the purposes mentioned in subparagraphs (a) to (h);
(i) (j) Any other delivery, in whatever connection.

Article 42: - The breeder may make his authorization of the acts specified in the foregoing Artic subject to conditions defined by himself, including for instance quality control, inspection of plot} volume of production, royalty percentages, periods, authorization to sublicense and other such restriction.
Where a breeder makes a firm public offer of licensing, it shall be presumed that whoever carries out. any of the acts specified in the foregoing Article has secured authorization therefor.

Article 43: - The ownership of a variety shall not prevent its use as a source of variation or as a provider of desirable characteristics in plant improvement work.
To that end, it shall not be necessary either to know the breeder or to secure his authorization. However, the repeated and/or systematic use of a variety as a necessary means of producing commercial seed shall require the authorization of the said owner.

Article 44: - The authorization of the breeder of a variety shall not be required, in accordance with thJ provisions of Article 27 of Law Nr. 20.247, when a farmer saves and uses as planting material on his own! holding or estate, the product of the harvest which has been obtained by planting in such place, a protected variety.

Article 45: - Final decisions handed down by the administrative bodies created by Law N° 20.247 andj by this Decree shall be subject to appeal before the Federal Courts of Administrative Litigation together with consequential decisions involving ownership of varieties which in the field of private law can result from the breach of other legal rules.

Article 46: - The restricted public use» declaration shall be published in the official Gazette and in one specialized publication, which latter shall request submissions from interested third parties, together with the minimum technical and economic guarantees and any other requirements that have to be met by such applicants.

Article 47: - Any exploitation under restricted public use» provisions shall be registered by the implementing authority. Interested third parties shall be registered by the same authority, with an indication of name and address, and of the locality and area of the exploitation to be undertaken and information on j compliance with the technical and economic guarantees imposed.

Article 48: - The implementing authority shall undertake the verification of the existence of original seed of the restricted public use» variety in the exploitation thereof by licensed third parties. Any surplus planting material shall be returned to the owner of the variety on expiry of the period for which restricted public use» has been declared.

Article 49: - The names of varieties that become public property shall have the same character, even where they have also been registered as trademarks.

Article 50: - The fees and fines provided for in

chapters VI and VII of Law Nr. 20.247 as amended shall be paid to the implementing authority.

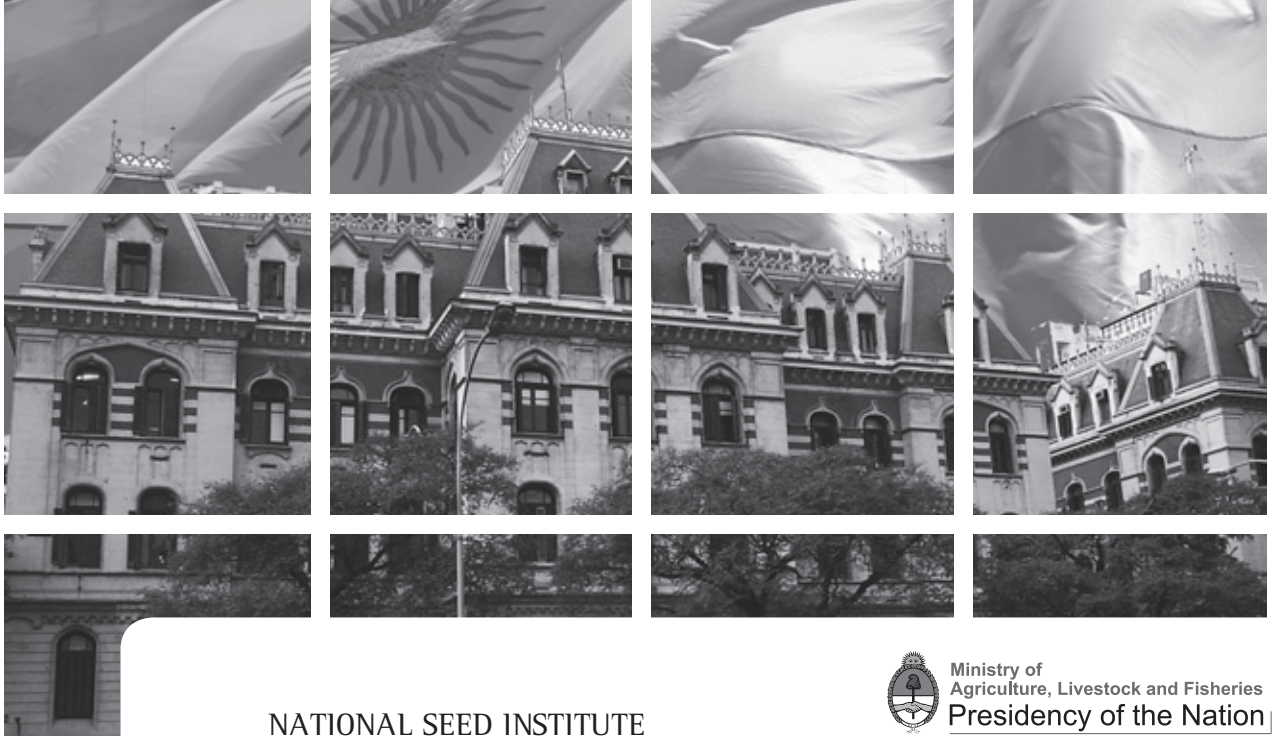
CHAPTER IX
TRANSITIONAL PROVISIONS

Article 51: - This Decree shall enter into force on the day following its publication in the Official Gazette.

Article 52: - Decree Nr. 50 of January 17,1989, shall be repealed on the coming into force of this Decree.

Article 53: - This Decree is to be communicated, published, conveyed to the National Directorate of Official Registration and placed on record.

>> Dr. Menem - Guido Di Telia



Ministry of
Agriculture, Livestock and Fisheries
Presidency of the Nation

NATIONAL SEED INSTITUTE

Decree 2817/91

BUENOS AIRES, December 30 th, 1991 //47

National Institute off Seeds Administration and Representation Structure. Resources general regulations.

Having Regard to the Laws Nr. 20.247,23.696 and 23.697, the Decrees Nr. 2138 of October 21st 1991, Nr. 435ofMarch 4th 1990, Nr. 612 of April 2nd, 1990,Nr. 1757 of September 5th, 1990 and Nr. 2476 of November 26 th. 1990, and what has been proposed by the SECRETARIAT OF AGRICULTURE, LIVESTOCK AND FISHERY under the jurisdiction of the MINISTRY OF FINANCE AND PUBLIC WORKS AND SERVICES, and,

CONSIDERING:

That the Article 334 of the aforementioned Decree Nr. 2476/90 authorizes the SECRETARIAT OF AGRICULTURE, LIVESTOCK AND FISHERY of the MINISTRY OF FINANCE AND PUBLIC WORKS AND SERVICES to submit to THE NATIONAL EXECUTIVE POWER a proposal which aims at reorganization and strengthening of its functions of Plant Inspection Functions of th national agricultural production, particularly that assigned to foreign markets.

That, consequently, such a rule facilitates a most efficient enforcement of the Law Nr. 20.247 - Law on Seeds and phytogenetic Creations -, in a stage of expansion of the activity in the international order.

That the high quality seed is the basic consumption of the whole national agricultural production.

That the access to the world markets, taking into consideration the utilization of the agroecological advantages of our country, requires that the competitive and high quality products be guaranteed.

That in view of such circumstances it is essential that the organism to be created to attain such objectives has the human and material resources adequate to the level of efficiency means for its financing by the charge of fees and retributive rates from the services rendered.

That, consequently, it is according to law to take immediate measures which deal with the determination of its organic structure, permanent staff group, capacity to take decisions and other necessary actions to achieve its complete operative function.

That, for this reason, it is necessary to take account the dynamism that will be required in taking decisions and in the availability of the means to get their fulfillment, considering that quick technological change and the consequent adequacy of its normative structure.

That the Juridical form of a decentralized organism of the SECRETARIAT OF AGRICULTURE,

LIVESTOCK AND FISHERY of the MINISTRY OF FI-

NANCE AND PUBLIC WORKS AND SERVICES deems fit for the enforcement of the Law Nr. 20.247.
That the EXECUTIVE CONTROLLER COMMITTEE OF THE ADMINISTRATIVE AMENDMENT has taken the ompetent intervention and it has handed down decisions favourably.
That the introduced budget amendments are deemed fit in the provisions of articles 8,9 and 10 of the law Nr. 23.990.
That the most relevant constitutional doctrine states that some circumstances may be determined or some situations may be created in which the strict compliance of jurisdictions might cause difficulties and where, therefore, it would be more opportune that one to which has been institutionally assigned.
That, the Jurisprudence of the Supreme Court of the Nation has received such a function of
exception in its verdicts.
That, in view of the present state where the aforesaid circumstances of time and manner and the urgency and need which accompany them, advise the issue of this proceeding made by the NATIONAL EXECUTIVE POWER. That such faculty is implicitly comprised in the
article 86° of the National Constitution.

WHEREFORE,
THE PRESIDENT OF THE ARGENTINE NATION
RESOLVES:

CHAPTER I - DECLARATION OF NATIONAL INTEREST

Article 1: - To declare of national interest the attainment,.production, movement and the internal ai external commercialization of seeds, phytogenetic and biotechnological creations.

CHAPTER II - NATIONAL SEED INSTITUTE(INASE)

Article 2: - The NATIONAL SEED INSTITUTE (INASE) is transformed into the NATIONAL SEE INSTITUTE (INASE). This Institute will carry out its functions as a decentralized organism of the SECRETARIAT OF AGRICULTURE, LIVESTOCK AND FISHERY under the MINISTRY OF FINANCE AND PUBLIC WORKS AND SERVICES, with economical and financial autarchy, with jurisdiction in the whole territory of the Nation and with legal capacity to act in the ambit of public and private law.

Article 3: - THE NATIONAL SEED INSTITUTE (INASE) shall be the instrument of enforcement of Law Nr. 20.247 and its Reglamentary Decree Nr. 2183/91 or those which replace it, as well as of the technic rules that will be laid down in the future by the SECRETARIAT OF AGRICULTURE, LIVESTOCK AN FISHERY within the jurisdiction of the Institute, in use of the attributions conferred by Article 3 of Law Nr 20.247. THE NATIONAL SEED INSTITUTE (INASE) shall put such rules into consideration of the SECRETARIAT OF AGRICULTURE, LIVESTOCK AND FISHERY, who shall pronounce about the name in a period of FIFTEEN (15) working days.

Article 4: - THE NATIONAL SEED INSTITUTE (INASE) will have the following attributions and obligations:
a)To have jurisdiction of the national and international certification in compliance with the resolution carried out or to be carried out in such a subject matter, of the physiological, physical and genetic quality of each vegetable organ destined or used for sowing, planting or dissemination.
b)To practice the police power conferred by Law Nr. 20.247.
c)To draw up titles on new varieties of plants accordingly to the national rules and international agreements either bilateral or multilateral signed or to be signed in the subject matter.
d)To make agreements with national, provincial and municipal public entities or their subordina divisions, as well as with international, aiming at, among other objectives, the deregulation an decentralization to get the best fulfillment of the functions car-

ried out by the Institute.
e)To collaborate and put into the consideration of the SECRETARIAT OF AGRICULTURE, LIVESTOC AND FISHERY the technical rules about the seed quality and phytogenetic and biotechnological creation.

CHAPTER III - ABOUT ADMINISTRATION AND REPRESENTATION

Article 5: - The administration and direction of the THE NATIONAL SEED INSTITUTE (INASE) sh be in charge of a board of Directors formed by ONE (1) President and SEVEN (7) Directors.
THE NATIONAL EXECUTIVE POWER shall appoint the President of the Board of Directors based a proposal put forward by the SECRETARY OF AGRICULTURE, LIVESTOCK AND FISHERY. This pub office shall receive a fixed income and its remuneration will be determinate by the NATIONAL EXECUTIV POWER. The remaining members shall carry out their functions ad honorem.
THE NATIONAL EXECUTIVE POWER shall also appoint the remaining members of the Board Directors.
Two (2) shall be proposed by the SECRETARY OF AGRICULTURE, LIVESTOCK AND FISHERY and who shall act as vice-president and replace the President in cases if temporary absence or disability; the other one shall be elected from a triad put forward by the NATIONAL INSTITUTE OF AGRICULTURE TECHNOLOGY (INTA).
The FIVE (5) remaining members shall represent: ONE (1) the FEDERAL AGRICULTURE AND CATTLE COUNCIL (CFA); ONE (1) the Seed Traders Commerce, ONE (1) the users; ONE (1) the breeders and; ONE (1) the seed multipliers.
The members of the Board of Directions shall carry out their functions for THREE (3 years), and they may be reelected.
The National Seed Director of the Institute shall participate in the Board of Directors with word but not a casting vote.

Article 6: - To act as President of the Board of Directors it is required a University degree related to this activity and a recognized qualification in the area under the jurisdiction of the Institute.

Article 7: - The resolutions of the Board of Directors will be adopted by simple majority of the members attending the SESSION, with a quorum of at least FIVE (5) members including the President.
In the event of being a tie vote the President shall have a casting vote.
The Board of Directors shall hold a regular session, at least, once a month and special meeting whenever they were called by the President or at the request or at least THREE (3) Directors.
Its members will be severally and unlimitedly liable of the decisions adopted. The Director who has participated in a deliberation or resolution and has given express evidence of his dissent and has given immediate notification of it to the SECRETARY OS AGRICULTURE, LIVESTOCK AND FISHERY will be exempt of any liability.

Article 8: - The Board of Directors shall be the maximum authority of the body and will have the following power and liabilities:
a) To exercise the power specified in Article 4, paragraph b) of the decree.
b) To set up its internal rules.
c) To set up the internal rules for the best functioning of the Institute.
d) To propose the yearly budget of expenses and the estimate of funds and their amendments.
e) To resolve the administrative summary proceedings drew up in the Institute jurisdiction.
f) To advise the SECRETARY OF AGRICULTURE, LIVESTOCK AND FISHERY on all the subjects under its jurisdiction.
g)To propose the SECRETARY OF AGRICULTURE, LIVESTOCK AND FISHERY to settle the fees and income-producing rates of the services effectively rendered by the Institute at the request of the interested party.
h) To determine the purchase and sale of chattels and real state belongings to its patrimony, barter, lease or use and constitute real rights thereof and, in general, enter into contracts and legal proceeding and issue the necessary administrative acts for the proper functioning of the Institute. To propose amendments in the organic structure of the Institute.
j) To appoint, transfer, promote and dismiss it staff compliance with the rules in force in the subject matter.
k) To declare the emergency state in the seed production and phytogenetic and biotechnological creations, being able to hire lease of employment and make whatever expenses that may be deemed necessary to face this situation.
l) To draw up grant property title on new varieties of plants.
m) To grant scholarships for the study and specialization of the subjects inherent to the specific activities assigned to the Institute.
n) To elaborate and propose to the SECRETARY OF AGRICULTURE, LIVESTOCK AND FISHERY, the text

with the arranged rules which shall be enforced by THE NATIONAL SEED INSTITUTE (INASE) and to keep it permanently updated,
ñ) To get a better efficiency and quickness in the steps, the Board Directors shall be able to delegan in the President its assigned faculties, whenever it counts with the majority vote of the three quarter part of its members.

Article 9: - The President of the Board of Directors shall have the following powers and liabilities: I
a)To represent the Institute legally.
b)To carry out arid enforce the rules in force in the subject matter under the jurisdiction of the Institut and perform the resolutions of the Board of Directors.
c)To practice the powers laid down in Article 4, paragraph a), b), c), d) and e) of this decree.
d)To subscribe the resolutions pertaining to the decisions adopted by the Board of Directors.
e)To issue the definitive resolutions in the application of the penalties concerning the infringement at the rules which THE NATIONAL,SEED INSTITUTE (INASE) is the entity in charge of their enforcemenl.
f) To lead the internal administration of the Institute.
g)To administrate the assets of the Institute.
h) To make up the files of summary proceedings and administrative proceedings being able to delegate such power in Public Officials under this jurisdiction.
i) To summon and preside the regular and special sessions of the Board of Directors.
j) To perform the functions of the Board of Directors in urgent cases whenever it is not possible to hold a meeting on time, having consequently, to call to a special session in a period not greater than FIVE (5) calendar days so that it may ratify the proceedings in exercise of such power.

CHAPTER IV
ORGANIC STRUCTURE

Article 10: - Is approved the organic structure of the NATIONAL SEED INSTITUTE (INASE) in accordance with: Table of contents; objectives: Primary Liability and Acts; Permanent Staff; Permanen Staff and Gabinet and Comparative Payroll of Financing Categories which acting as ANNEX I, II, III, IV at IV b and V b belong to this decree.

Article 11: - The NATIONAL SEED INSTITUTE (INASE) is excepted of what has been provided k Article 18 of the Decree NR. 2048 dated on September 23rd, 1980 and the Decree Nr. 1887, September 18tt 1991, to the only effect of covering the staff of the organic structure approved by this Decree.

Article 12: - The distribution per offices and hours worked on the chair of a Professor of Paragraph - staff in force belonging to jurisdiction 58 of the SECRETARIAT OF AGPICULTURE, LIVESTOCK AND FISHERY - CENTRAL ADMINISTRATION, in the quantity of personal officies of the former NATIONAL SEED INSTITUTE, except the office available is arnended.

CHAPTER V - RESOURCES

Article 13: - For the development of its activities the NATIONAL SEED INSTITUTE (INASE) shal have the following resources, which shall be deposited to its order:
a)Those arising from rates and schedules of fees determined by the SECRETARY OF AGRICULTURE LIVESTOCK AND FISHERY.
b)Those arising from penalties and sanctions applied.
c)Those arising from donations and legacies.
d)The interests and incomes that acrcure the inversions of the obtained resources.
e)the extra charges determined by delay in the payment of rates and fees received by the Institute*
f) The funds arising from agreements and/or accords laid down in Article 4, paragraph d).
g)The special contributions from the National Treasure.

Article 14: - The Special Account Nr. 167 - Seed Law - is dropped, transferring its credits, debts and resources to the NATIONAL SEED INSTITUTE (INASE). ANNEX VI, that belongs to this decree is approved. Is modified the GENERAL BUDGET OF THE NATIONAL ADMINISTRATION in force, complying with the particular acting in ANNEX Va and ANNEX VII that belongs to this decree, according to the authorization of article 13, last paragraph, of the Law on Accounting.

Article 15: - Is included the estimate of resources assigned to the financing of the budget of the Decentralized Entity 154. - NATIONAL SEED INSTITUTE belonging to jurisdiction 58-SECRETARIAT OF AGRICULTURE, LIVESTOCK AND FISHERY, according to the particular acting in ANNEX VIII that belongs to this decree.

Article 16: - Is determined the fiancement by contributions assigned to the financing of the budget of the Decentralized Entity 154. NATIONAL SEED INSTI-

TUTE (INASE), belonging to Jurisdiction 58 - SECRETARIAT OF AGRICULTURE, LIVESTOCK AND FISHERY, according to the particular acting in ANNEX IX that belongs to this decree.

CHAPTER VI
GENERAL PROVISIONS

Article 17: - Annually, and based on the based on the political measures laid down on the subject matter by the SECRETARIAT OF AGRICULTURE, LIVESTOCK AND FISHERY, the NATIONAL SEED INSTITUTE (INASE) shall elevate to its consideration the programs, subprograms and activities to be fulfilled in the next accounting period.

Article 18: - Are transferred to the NATIONAL SEED INSTITUTE (INASE) the chattels, real assets and liabilities on rendering of services, from the NATIONAL SEED SERVICE to the SECRETARIAT OF AGRICULTURE, LIVESTOCK AND FISHERY.

Article 19: - Is created the Reference Unit of Sanction (URS) as a unit of measure to determine the value of the penalties. The Board of Directors is compowered to determine the value of a public property and habitual transaction in the seed market..

Article 20: -The Institute as the body in charge of the rule enforcement shall penalize the liable parties for infringement, according to the seriousness of the fault, with:
a)Warning.
b)Admonition
c)Penalty up to ONE MILLION (1.000.000) of reference unit of sanction (URS).
d)Confiscation of the goods and/or the elements used to commit infringement.
e)Temporal or permanent deprivation of civil rights.
f) Partial or total closure, temporal or permanent closure of the premises.
The aforementioned penalties shall be imposed separately or some of them jointly, according to the liable party.
The penalties substitute the foreseen ones in the respective rules, which enforcement is under jurisdiction of the Institute.

CHAPTER VII
TRANSITORY PROVISIONS

Article 21: - Until the services on administrative and legal support of the Institute are established, the Institute shall adopt the services rendered by the SECRETARY OF AGRICULTURE, LIVESTOCK AND FISHERY of the MINISTRY OF FINANCE AND PUBLIC WORKS AND SERVICES.

Article 22: - The SECRETARIAT OF AGRICULTURE, LIVESTOCK AND FISHERY is empowered to dispose, by means of the reolutory proceeding, the transference of the personnel payroll passed by thii decree.

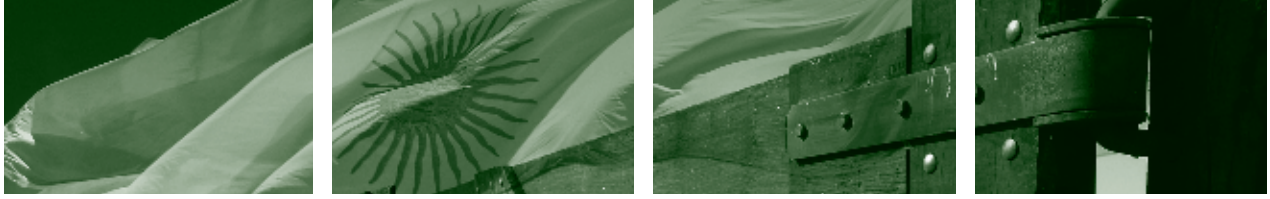
Article 23: - The SECRETARY OF AGRICULTURE, LIVESTOCK AND FISHERY shall appoint, trasitoril the Public Official who shall be in charge or the Institute, with the powers of the President and of Board o! Directors of the Institute, until THE NATIONAL EXECUTIVE power appoints the President and th; Board of Directors and it has the quorum necessary to act, not exceeding the period of FORTY FIVE (45 calendar days, the time in which the person appointed to carry out such functions shall leave them.

Article 24: - In order to assure the fulfillment of the functions in the area to be transformed, the preseil organic structure is kept safe until the organizing structure passed hare to be put into function.

Article 25: - Let it be known to the HONORABLE HOUSE OF REPRESENTATIVES?

Article 26: - Let it be known, published, sent to the National Direction of the Official Registry and seil to the archives.

>> MENEM – Antonio E. González



NATIONAL SEEDS INSTITUTE RECREATION

Act Nº 25.845

Recreation NATIONAL INSTITUTE OF SEEDS

Invalidated Decree Nr. 1104, 2000 by it was disolved the mentioned institute and ratified the Decree Nr. 2817/1991 strength, taken back in consecuence the National Seeds Institute its functions, misions and regulated structures by Act Nr 20247, Decree Nr 2183/1991 and Administrative Order Nr. 489/1996.
Approved: November, 26th, 2003.
Promulgate in fact: January, 6th, 2004.

The Senate and Chamber of Deputies of Argentina Nation assembled in Congress, etc. Approve with Law force:

Article 1: - Invalidate Decree Nr. 1104/2000, by it was disolved the National Seeds Insitutute (INASE).
Article 2: - Ratify by means of the present the strength of Decree Nr 2817/1991, taken back in consecuence the National Seeds Institute its functions, misions and regulated structures by Act Nr 20247, Decree Nr 2183/1991 and Administrative Order Nr. 489/1996.
Article 3: - Substitute article 5º of Decree Nr. 2817/1991, which will keep writen by the following way: Article 5º: The administration and direction of National Seeds Institute (INASE) will be in charge of a board of Directors formed by ONE (1) President, ONE (1) Vicepresident and EIGHT (8) Directors. THE NATIONAL EXECUTIVE POWER shall appoint the President of the Board of Directors proposed by the SECRETARY OF AGRICULTURE, LIVESTOCK, FISHERY AND FOOD OF THE NATION. This public office shall receive a fixed income and its remuneration will be determinate by the NATIONAL EXECUTIVE POWER. The remaining members shall carry out their functions "ad honorem". THE NATIONAL EXECUTIVE POWER shall also appoint the remaining members of the Board, proposed by the sectors that representes to know:
a) ONE (1) the FEDERAL AGRICULTURE AND CATTLE COUNCIL (CFA) appointed between the members of the FEDERAL SEEDS COUNCIL (CFS), it will be which carries out the vicepresidence and reeplace the President in cases of temporaly absent or disability.
b) ONE (1) representative of the SECRETARY OF AGRICULTURE, LIVESTOCK, FISHERY AND FOODS OF THE NATION.
c) ONE (1) will be elected from a triad put foward by the NATIONAL INSTITUTE OF AGRICULTURE TECHNOLOGY (INTA)
d) ONE (1) the Multipliers
e) ONE (1) the Breeders
f) ONE (1) the Nursery
g) ONE (1) the Seed Traders Commerce,
h) TWO (2) the users, appointed of the properly institutions and in a rotary way between them. The members of the Board will carry out their funtions for two (2) years, and they could be redesigned. In case of stand off, the Board Presidnet will have doble vote.
Article 4: - The Boss Cabinet of Ministres mut, in use of the faculties obteined by the Article 16º of Act Nr.25725 to reasigne the budget ítems necesary for theri adecuate functioning during the exercise in course. The propousals by the following years will have to contémplate the specific ítems.
Article 5: - Let it be known to the EXECUTIVE POWER.

Given in the salloon of SESIONS OF THE ARGENTINEA CONGRESS, IN BUENOS AIRES, ON NOVEMBER, 26 TH, 2003.
REGISTERED BY Nº 25845.

>> Eduardo O. Camaño. - Daniel O. Scioli. - Eduardo D. Rollano. - Juan Estrada.

Resolution Nº 35/96

FARMER'S PRIVILEGE

28/02/96

Measures adopted in connection with the "farmer's privilege" provided for in Article 27 of Law No. 20.247.

CONSIDERING:

That it is necessary to establish procedural requirements for such an exception and its modalities, to ensure the exercise without prejudice to the rights of breeders in a harmonious, balanced and fair way.

It is necessary to provide for the creation of a labeling system according to the reality of processing of seed for own use, when the seeds need to be taken aout of the breeders field.
That this corresponds to clearly identify the non-limitation of responsibilities and obligations of the producer and processor in the above, in relation to the facts under Articles 35, 37 and 38 of Law No. 20 247 as against third parties and this Agency.

That because of the provisions of Articles 15 of Law No. 20 247, 4, item b) and 8, subsection a) Decree No. 2817/91 of the Board of the National Seeds Institute has power for the issuance of this administrative act.

That the undersigned is competent to sign this as the power conferred by Article 9, subsection d) of Decree No. 2817/91.

WHEREFORE, DIRECTORY OF NATIONAL INSTITUTE OF SEEDS
RESOLVES:

Article 1: - (The Directorate of the National Seeds Institute decrees that:)
The conditions determining eligibility for the "farmer's privilege" provided for in Article 27 of Law 20.247 are the following:
(a) To be a farmer.
(b) To have acquired the original seed legally.
(c) To have obtained the present seed from that legally acquired;
(d) To set aside from the harvested grain the amount of seed that will be used for subsequent sowing, distinguishing it by variety and quantity, prior to processing.
There shall be no farmer's privilege where the farmer has acquired seed for sowing otherwise than by setting it aside himself, whether free of charge

or for consideration (purchase, exchange, donation, etc.).
(e)The purpose of the seed set aside to be sowing by the farmer on his own farm and for his own use. Purposes other than sowing by the farmer shall not be covered by Article 27 of Law No. 20.247.
The purposes of sale, permutation or exchange by the farmer himself or through an intermediary are expressly excluded.
The exception shall benefit the farmer alone and not third parties.
(f)The seed set aside for the farmer's own use shall be kept separate from the remainder of the grain, its identity and individuality being preserved from the time at which it is taken from the land by the farmer, and that identity shall be maintained throughout the process of processing, packaging and storage up to the time at which it is sown on the farmer's land.
A person interested in availing himself of the farmer's privilege shall prove compliance with the conditions set forth in this Article.

Article 2: - Neither the breeder's authorization under Article 44 of Decree No. 2183/91 nor labelling of the seed under Article 9 of Law No. 20.247 shall be required in the case of the farmer setting aside, packaging, storing, depositing and sowing seed in any of the plots that constitute his farm without altering the boundaries thereof.
For the purposes of this Article, "farm" means the various plots of land of one and the same owner, regardless of the nature of the tenancy.
In the event of the seed having to be moved from one plot of land to another that belongs to the same owner, the move shall be recorded in the relevant documentation (waybill, consignment note, guide, etc.). The documentation shall give the name of the farmer, the plots of land from which the seed comes and for which it is destined, the amount of seed and its variety and the dates of sending and arrival of the seed; the documentation shall remain in the farmer's possession, and shall be presented or handed over at the request of the National Seeds Institute.
Where the seed present on the land or farm of the farmer is covered by the concepts of "exposed to the public" or "delivered to users for whatever reason" provided for in Article 8 of Decree No. 2183/91, the seed shall be labelled and the owner shall have the authorization of the owner of the cultivar, in the case of protected varieties, depending on the various situations provided for in Article 41(c), (d), (g), (h), (i) and (j) of the said Decree.

Article 3: - Where the farmer decides to package and/or store the seed of a protected variety set aside for his own use in a cooperative, warehouse, plant or deposit belonging to a third party, whether natural person or legal entity, he shall, sufficiently in advance of the removal of the seed from his land, seek the permission of the owner of the variety in an recorded communication (registered letter, telegram with advice of receipt, etc.).
The breeder-owner shall inform the farmer in a recorded communication of his acceptance or rejection of the request for permission within a period not exceeding 30 working days following the date of receipt thereof.
The silence of the breeder in response to the request for permission shall be considered acceptance thereof on expiry of the aforesaid period.

Article 4: - The farmer who delivers seed to a third party for processing and/or deposit with a view to his own use thereof shall take responsibility for its identity (variety of the species), and shall so state on the identification label.

Article 5: - For the purposes of the foregoing Article, the processor or depositary shall ask the farmer for a document in duplicate, signed by the latter, which shall compulsorily contain the following particulars:
(a) Full name of the farmer, with, in the case of legal entities, corporate designation and the position occupied by the signatory within it, including the relevant confirmatory stamp or seal;
(b) True address of the farmer or domicile in the case of legal entities;
(c) Document number of the signatory;
(d) Assurance that the intended purpose of the seed delivered is exclusively the recipient's own use (Article 27 of Law No. 20.247);
(e) Declaration, by the farmer, of the variety or varieties of seed to be delivered, with an express mention of the number of gross kilograms for each variety;
(f) Declaration of the exact location of the plot or plots of the farmer's land on which the seed is to be sown, with specific details of the place in which it is situated (department, district, etc.), and the means of access to it from the place of processing;
(g) Type of occupancy of the building or buildings

specified in paragraph (f) (ownership, rental, leasehold, etc.);
(h) Period, with the details of the probable starting or ending date of the sowing of the seed intended for own use on the property referred to in (f);
(i) Period of time in which the seed in question will be held on deposit, and approximate date of removal.

Article 6: - The document shall be received by the processor or depositary, who shall record on it the date of receipt, and deliver the copy to the farmer, keeping the original in his possession.
The processor or depositary shall request of the farmer a copy of the breeder-owner's authorization, or of the request for authorization in the event of refusal, in respect of each protected variety, which shall bear the signature of the farmer and be accompanied by the aforementioned document.
The processor of depositary shall be under the obligation to keep on file for a minimum period of 18 months following receipt, entirely on his own responsibility, all the documentation provided for in this Article.
If any of the particulars under Article 5 are different, the farmer shall draw up a new document in duplicate incorporating the changes, and shall hand it to the processor or depositary within a period not exceeding seven days of the change being observed, and the latter shall act as specified earlier.

Article 7: - The document provided for in the foregoing Article shall have the character of a sworn statement by the farmer in which he assumes total responsibility for the particulars set down therein.
Similarly, the processor or depositary shall be responsible for the veracity of the particulars reported by the farmer as specified in Article 5(a), (b), (c) and (i), having had to verify their accuracy.

Article 8: - The processor or depositary shall issue the farmer a certificate of deposit for the seed that the latter hands to him for his own sowing, with pre-printed correlative numbering.
The certificate of deposit shall specify the proper name or corporate designation of the farmer and his address, the species and variety of the seed, its weight according to the official weighing carried out, a statement to the effect that it is seed for own use within the meaning of Article 27 of Law No. 20.247, the estimated date of delivery of the reserved seed to the farmer and a record of the farmer's submission of the authorization or authorizations of the breeder-owners in the case of protected varieties.

Article 9: - Once the farmer's seed has been processed, the packaging shall bear a special label which shall differ in color and characteristics from the labels used for commercial seed, measuring not less than 10cm x 20cm on which shall be printed in distinct and readily legible lettering the notice "FARMER'S SEED FOR OWN USE; ARTICLE 27 OF LAW NO. 20.247."
The label shall compulsorily give also the following information:
(a) Proper name of the farmer, or corporate designation in the case of legal entities, and private or business address;
(b) Proper name or corporate designation, address and registration number in the National Register of Seed Trade and Control of the processor or identifier;
(c) Name of the species;
(d) Name of the variety;
(e) Percentage of physico-botanical purity by weight, where lower than the values specified by regulation;
(f) Percentage of germination by number, where below the values specified by regulation;
(g) Net contents;
(h) Year of harvesting;
(i) "Treated seed - poison" in red lettering where the seed has been treated with toxic substances.
The following notice shall be added on the back of the same label, in a prominent place and in distinct capital letters: "The identity of this seed has been declared by ..... in (address) ..... The seed covered by this label may not be used for a purpose other than sowing on his land by the person named thereon as provided in Article 44 of Decree 2183/91. Any sale, marketing or delivery in whatever form is prohibited on pain of the possessors of the seed being liable to the sanctions provided for in Chapter VII of Law 20.247."

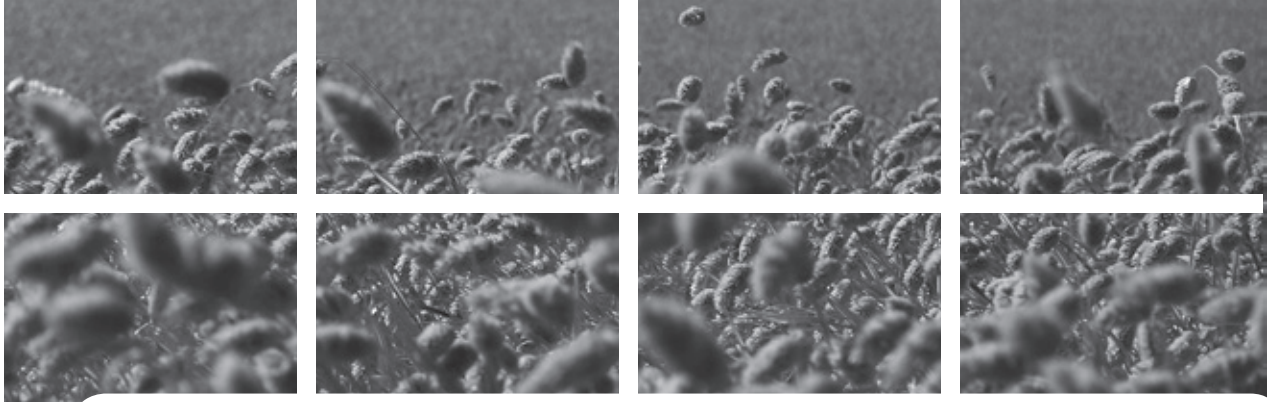
Article 10: - The processor or depositary shall be the person responsible for the correct labelling of the seed as specified in the foregoing Article, namely in the form of labels supplied by the farmer or manufactured on his instructions, and for having the appropriate authorization or request

for authorization in the event of refusal, for protected varieties supplied by the owner-breeders to the farmer as provided in Article 6 hereof. Where the farmer has not secured the authorization specified in the foregoing paragraph, the processor and/or depositary shall be under the obligation to serve notice on the breeder-owner to give his authorization in order that the packaging and storage of the said seed may proceed in accordance with Article 41(b) and (i) of Decree 2183/91.
To that end he shall submit, together with the request for authorization, a copy of the document handed to him by the farmer under Article 5.
The breeder shall respond within the period specified in Article 3, which provision shall apply fully to the present case. The processor, depositary or identifier who fails to comply with the obligations specified in this Article shall be liable to the appropriate sanctions under Chapter VII of Law No. 20.247.

Article 11: - The documentation specified in the foregoing Articles shall be submitted to the inspectors of the National Seeds Institute at their request, on pain of application of the sanctions provided for in Articles 38 and 39 of Law No. 20.247.

Article 12: - Where the breeder-owner refuses the authorization requested under Article 3 or 10 hereof, the farmer shall submit to INASE, without need for any advance notice, a copy of the request submitted to the breeder and of the notice of refusal, duly signed by the person concerned, as all the documentation specified in Article 5 shall be.
The farmer shall likewise specify the proper name or corporate designation, address and registration number in the National Register of Seed Trade and Control of the processor or depositary to whom or which his seed will be delivered, the period of time in which the seed will be processed and deposited, the probable date of its removal, subject to the recorded communication to the Certification and Control Directorate, with 30 days of advance notice, of the date of sowing of the seed and the designation of the land on which it will be sown, accompanied by a plan of the property and certified copies of the documentation supporting his ownership.
INASE, when in possession of the documentation required under this Article, together with such additional documentation as it may consider relevant, shall proceed to evaluate and verify the claimed own use and issue a finding thereon.
Failure by the farmer to submit all the documentation and information specified in this Article within the periods mentioned, and any additional documentation and information that may have been required, shall result in rejection of the request for the farmer's privilege under Article 27 of
Law No. 20.247.

Article 13: - The foregoing shall be communicated, published, conveyed to the Directorate of Official Registration and placed on record.



Secretariat of Agriculture, Livestock, Fisheries, and Food

Seeds and Phytogenetic. Creations

Resolution Nº 338/2006

Buenos Aires, 20/6/2006

Be determined the scope of the farmer's exception to store his own seed, contemplated by Article 27 of Act N° 20247.

WHEREAS File Nº S01:0254460/2005 of the Registry of the Secretariat of Agriculture, Livestock, Fisheries and Food of the MINISTRY OF ECONOMY AND PRODUCTION, Article 27 of Act Nº 20247 on Seeds and Phytogenetic Creations, Article 44 Decree Nº 2183 from October 21st, 1991, Resolution Nº 35 from February 28th, 1996 of the National Seeds Institute, decentralized body within the scope of the former SECRETARIAT OF AGRICULTURE, LIVESTOCK, FISHERIES AND FOOD of the former MINISTRY OF ECONOMY, WORKS AND PUBLIC SERVICES.

WHEREAS:

The purpose of Act No 20,247 of Seeds and Phytogenetic Creations is to promote an efficient activity of production and commercialization of seeds, ensure the farmers the identity and quality of the seed acquired, and protect the property of the phytogenetic creations. That the exclusive use of the seed by the farmer, starting with the legal purchase of seed, that he sows, harvests and again sows in its exploitation, is considered by Article 27 of the abovementioned law, in Article 44 of Decree N° 2183 dated October 21st, 1991, and in the Resolution N° 35 dated February, 1996 of the National Seeds Institute, decentralized body within the scope of the former SECRETARIAT OF AGRICULTURE, LIVESTOCK, FISHERIES AND FOOD of the former MINISTRY OF ECONOMY, WORKS AND PUBLIC SERVICES.

That it is necessary to determine the scope of the exception to store his own seed included in Article 27 of Act 20,247 on Seeds and Phytogenetic Creations, to which purpose it is pertinent to establish Article 44 of the abovementioned Decree N° 2183/91.

That the storage and sowing for personal use constitutes an exception to the constitutional right of the breeder's right, included in Article 17 of the NATIONAL CONSTITUTION.

That, being the personal use an exception of the breeder's right and pursuant to the criteria set forth by the LEGAL COUNSEL TO THE DEPARTMENT OF THE TREASURY, the exceptions should be understood in a restrictive manner (Rulings 84:92 and 201:12, among others and the Magazine of the LEGAL COUNSEL TO THE DEPARTMENT OF THE TREASURY, N° 19, page 162).

That the farmer's exception that is contemplated by Article 27 of the abovementioned Act N 20,247 is not applicable to the activity that implies to increase, year after year, the area sown with seed

crops with a valid property right, having acquired seeds only for a first sowing of a smaller surface.

That, according to Article 1071 from our Civil Code, stating the opposite would imply an excess of what is clearly set forth by the regulation.

That, from the agro-economic point of view, it is necessary to determine the scope of the exception to store his own seed, with the purpose of ensuring in the short and medium term the sustainable development of the research system and of the national genetic improvement, guaranteeing private companies and public institutions, acceptable conditions for the development and marketing of genetically improved varieties, promoting this way in the national agricultural system a dynamic of continuous improvement of the productivity.

That this measure implies the legitimate exercise of the policing power, which includes, at the same time, the possibility of restricting the individual rights in order to protect the general welfare and protect the economic interests of the community. (Ruling 122:21 of the LEGAL COUNSEL TO THE DEPARTMENT OF THE TREASURY).

That the NATIONAL SEEDS COMMISSION has acted within its competence.

That the Legal Division of the AGRICULTURE, LIVESTOCK, FISHERIES AND FOOD Area depending from the General Directorate of Legal Affairs Bureau of the MINISTRY OF ECONOMY AND PRODUCTION has acted within its competence.

That said measure is created by virtue of the powers granted by Articles 3° and 15 of the abovementioned Act N° 20,247 and 3° of Decree N° 2817 dated December 30th, 1991, of Decree N° 25 dated May 27th, 2003 and its amendment Decree N° 1359 dated October 5th, 2004. Therefore, THE SECRETARIAT OF AGRICULTURE, LIVESTOCK, FISHERIES AND FOOD decides:

Article 1º - The authorization of the breeder of a plant variety protected, pursuant to Article 27 of Act N° 20,247 shall not be requested, when a farmer stores and uses in his exploitation, regardless of its tenure system, the harvested product so long as the new sowing does not exceed the amount of hectares sowed in the previous term, or requires a higher amount of seeds than the amount legally acquired the first time.

Article 2º - The NATIONAL SEEDS INSTITUTE, decentralized body within the scope of the SECRETARIAT OF AGRICULTURE, LIVESTOCK, FISHERIES AND FOOD OF THE MINISTRY OF ECONOMY AND PRODUCTION shall enact interpretative regulations and set forth the execution term of this resolution.

Article 3º - Be it notified, published, submitted to the National Bureau of Official Registry and filed.

Miguel S. Campos.

3. Coordination of Intellectual Property Rights and Phytogenetic Creations

According to Resolution INASE Nº 99 dated May 26th, 2009 the Intellectual Property Rights and Phytogenetic Creations Thematic Coordination Unit has been created within the scope of the INASE Presidency.

This Coordination Unit continues with the tasks and activities that the Intellectual Property Rights Area of the Legal Affairs Bureau has been performing since its creation, by Resolution INASE Nº 344, dated March 6th, 2006, and which was in charge of Mrs. Carmen A. M. Gianni uninterruptedly since that date.

This Coordination Unit is in charge of the following tasks:

- Coordinating the duties related to the legal, administrative, and institutional aspects in connection with the intellectual property rights of plant-related affairs, especially with new varieties of plants, genetic resources, and plant biotechnology.
- Advising and participating from the development and application of international treaties, regulations and national, provincial, and municipal agreements related to the abovementioned subjects.
- Representing the National Seeds Institute, at the request of its highest authority, before national and international, public and private agencies and entities, and especially before the International Convention for the Protection of New Varieties of Plants (UPOV) and before the United Nations Organization for Food and Agriculture (FAO), in the areas within its competence.
- Planning and developing information, training and research activities related to the intellectual property subject matter assigned.
- Coordinating follow-up of policies, guidelines, programs, and procedures established by the highest authority in the areas within its competence.
- Representing and keeping the Body connected with all the national and international forums and the public and/or private organizations where the intellectual property subject matter is discussed.

By means of Decree 2125/09 Mrs. Carmen A. M. Gianni was appointed as Thematic Coordinator for the Intellectual Property Rights and Phytogenetic Creations Coordination.

Dra. María Laura Villamayor / Dra. Carmen Gianni

You can contact the Intellectual Property Rights Coordination Unit:

Av. Paseo Colón 922, 3th. floor, office 344, Tel. 011-4349-2398,
Dra. Carmen Gianni: **cgianni@inase.gov.ar.**
Dra. María Laura Villamayor: **mlvillamayor@inase.gov.ar**

4. Articles and Presentations

THE UPOV AND ITS ORGANIZATION

What is the International Convention for the Protection of New Varieties of Plants (UPOV)?

The International Convention for the Protection of New Varieties of Plants (UPOV) is an international organization composed by the States which only mission is to submit and promote an effective system for the protection of new varieties of plants, aiming at the development of new varieties of plants for the benefit of the society.

It was established by the International Convention for the Protection of New Varieties of Plants signed in

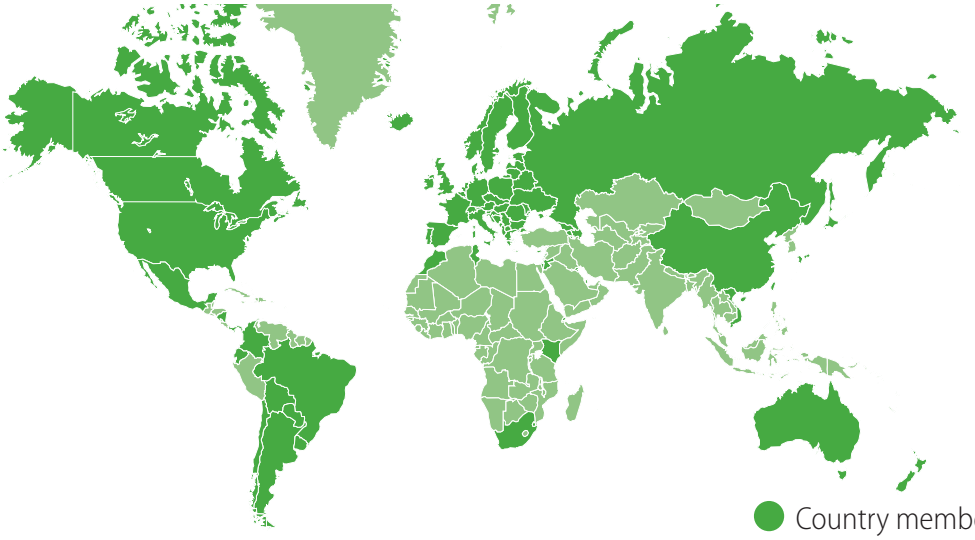
Paris in 1961, and came into force in 1968. Same was reviewed in Geneva in 1972, 1978 and 1991, setting forth minutes that came into force, such as Act 1978 of November 8th, 1981 and Act 1991 of April 24th, 1998.

Nowadays, 67 countries are part of the organization. Fourteen of those countries are from Latin America: Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, Mexico, Nicaragua, Panama, Paraguay, Dominican Republic, Trinidad and Tobago and Uruguay.

Our country has been a member of the UPOV since September 21, 1994 ; date on which our Parliament enacted Law Nº 24376 pursuant to which the Argentine Republic adheres to the UPOV Convention Act of 1978, as well as the remaining countries of the MERCOSUR: Brazil, Paraguay and Uruguay.

For more information please visit UPOV's website at:

www.upov.org.int



How is it the (UPOV) organized?

The UPOV is composed of the Office of the Union, the Council which is the political body, the Consulting Committee; a Technical Committee from which the Technical Working Groups and the Administrative Committee depends on. All of them have their main office in Geneva, Switzerland.

The main duties of the Office of the Union are: providing administrative support to the Council and its Committees and legal and technical assistance to the members, States and Organizations of the Union which have initiated the procedure to become members of the Union and other States or Organizations which came into contact with the Office for the development of laws on protection of new varieties of plants.

Which are the duties of the UPOV bodies?

- The Council is composed by the representatives of the countries members of the Union as well as of the representatives of non-member countries, also assisting public and private non-governmental organizations, as observers.

By virtue of Act of 1991, there is also the possibility that inter-governmental organizations become members of the Union, as it is the case of the European Community.

Its main tasks is to analyze the appropriate measures in order to protect the interests and promote the development of the Union, setting forth the rules of

procedure, appoint the Secretary General and the Vice Secretary General, establish the administrative and financial regulations, approve the budget and in general take the necessary measures for the good operation of the Union.

The Council holds an ordinary meeting once per year and can also summon extraordinary sessions.

- The Consulting Committee: this meeting can only be attended by the representatives of the member States, being excluded the observers. Within its duties we can mention: analyzing the compatibility of the legislations of the countries that wish to become members of the UPOV with the Convention, approving the documents subject to query by others Committees, etc.

- The Legal and Administrative Committee has the mission of interpreting the text of the Convention for which purpose explanatory notes of its precepts are drafted, and to advise and intervene in all the legal and administrative matters and other measures related to the breeder's right included in the Convention.

It holds meetings twice per year (April and October)

The Administrative and Legal Committee has an Advisor Committee named CAJ AG that meets in October. Its main priority is to advice the Administrative and Legal Committee on the issues and subject matters entrusted to it and the preparation of the documents concerning the information material about the UPOV Convention.

- The Technical Committee is in charge of the study and adoption of the technical documents of test, homogeneity, and stability of the new varieties. This Committee also has Specific Technical Working Groups that depend on said Committee and which are: Agricultural Plants (TWA), Fruit Plants (TWF), Ornamental Plants and Forest Trees (TWO), Vegetables (TWV), Automation and Computer Programs (TWC), Biochemical and Molecular Techniques and DNA profiles, in particular (BMT).

Likewise, within the Technical Committee there are Subgroups of Crops per Species, being nowadays included within the Agricultural Plants Working Group the following subgroups: corn, rape, potato, soy, sugar cane, wheat and barley; and within the Ornamental Plants and Fruit Trees Working Group, the subgroup of rose tree and within the Vegetables Working Group the subgroup of tomato.

The Technical Committee and the Working Groups meet once per year and the subgroups whenever the Technical Committee decides so.

- Within the scope of the UPOV we can find the "Special Subgroup of technicians and legal experts on biochemical and molecular techniques" (BMT RG) created on April 5th, 2001 and which is an advisory and decision body that assists the different bodies of the UPOV and which mission is reviewing the models of application for the use of biotechnical and molecular techniques in the exam of the distinction, homogeneity and stability determining its accordance with the UPOV Convention and the possible repercussions concerning the effectiveness of the protection.

The BMT RG Group consists of Experts specialized in the technical and legal issues of the different countries members of the UPOV, as well as the international breeder's organizations.

The sessions of this Committee are open to the countries which are members and the observer international organizations. It held meetings on April, 2006 and April, 2009.

The BMT RG Group is composed by the following people:

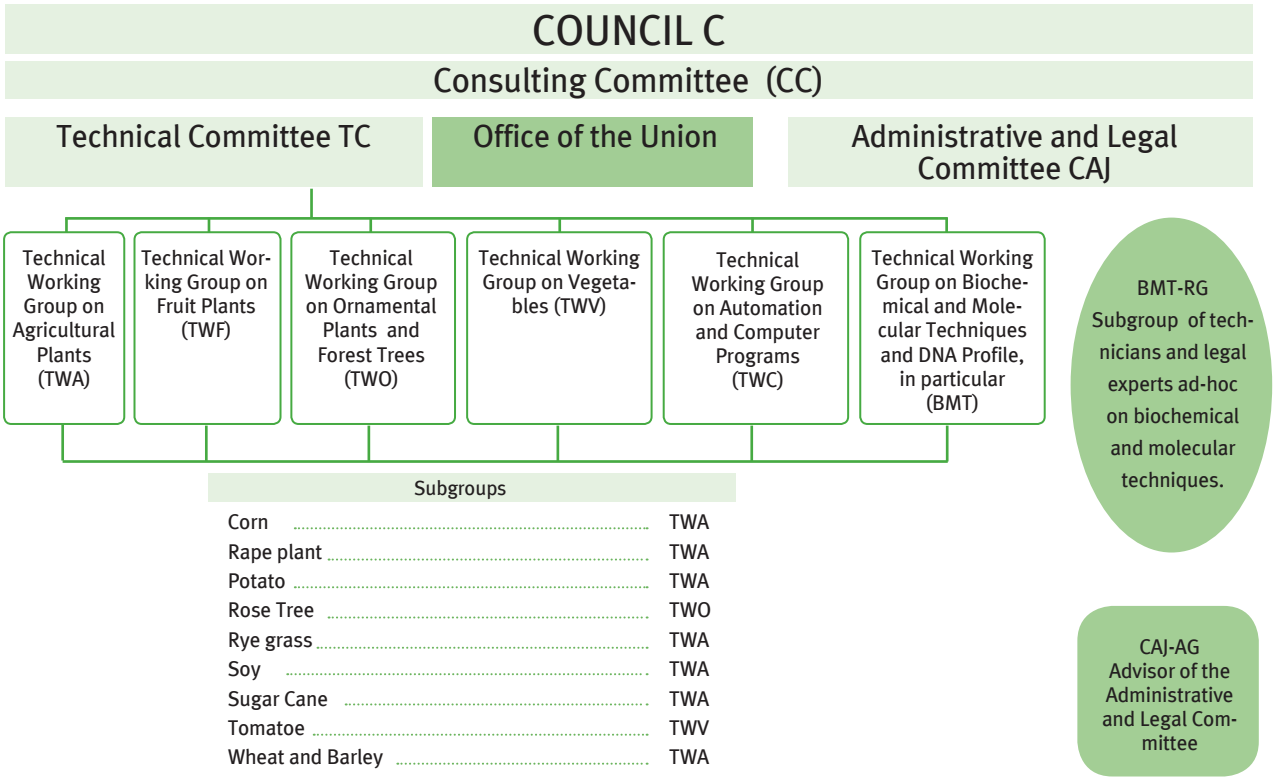
President:
Mr. Rolf Jördens (Office of the Union).

Members:
- Mrs. Carmen Gianni, representative of Argentina and President of the Administrative and Legal Committee.
- Mr. Doug Waterhouse, representative of Australia and President of the Council and Consulting Committee.
- Mr. Bart Kiewiet / Mr. Carlos Godinho, representatives of the European Community.
- Mr. Michael Köller, representative of Denmark.
- Mss. Nicole Bustin, representative of France, Secretary General of the Committee of Protection of New Varieties of Plants of the Secretariat of Agriculture and Fisheries.
- Mr. Joël Guiard, representative of France Deputy Director of the Group of Control and Study of Varieties.
- Mr. Hiroki Fukai, representative of Japan.
- Mr. Henk Bonthuis, representative of The Netherlands, former president of BMT.
- Mr. Chris Barnaby from New Zealand and President of the Technical Committee.
- Mr. Michael Camlin, representative of the United

Kingdom of Great Britain.
- Mr. Andrew Mitchell, representative of the United Kingdom of Great Britain and President of BMT.
- Mss. Beate Rücker, representative of Denmark, President of the Group Ad-Hoc of Subgroup of molecular techniques for corn.

Observers:
- The International Community of Breeders of Ornamental Plants and Sexless reproduction Fruit Plants (CIOPORA).
- nternational Seeds Association (ISF)

For the Office of the Union
- Mr. Peter Button
- Mr. Raimundo Lavignolle
- Mr. Makoto Tabata
- Mrs. Yolanda Huerta



How does the INASE participate of the UPOV?

Since 1994 and until this date, the INASE through its representatives, experts and technicians, according to the speciality, assists periodically to the meetings of the Council of the different Committees, Working Groups, and technical subgroups.

Since 2008 Dr. Carmen A. M. Gianni, Coordinator of Intellectual Property Rights and Phytogenetic Creations of INASE is the President of the Administrative and Legal Committee, having acted as Vice-president from 2004 to 2007 and member of the subgroup of Technicians and Legal Experts on Biochemical and Molecular techniques since 2006, acting on behalf of the Argentine Republic and in her capacity of President of the Administrative and Legal Committee. Moreover, Eng. Marcelo Labarta, Director of the Registry of New Varieties is the current representative of INASE before the Council and President of the Subgroup of Soy since 2010. He also was part of the Group Study of the Impact of the Breeder's right (work published by the UPOV), Study group on denominations and Consulting Group on financial matters of the UPOV.

The Breeder`s Right



The Protection system of Plants Varieties in Argentina

This article was written by **Ms. María Laura Villamayor,** Legal Counsel of the Intellectual Property Rights and Phytogenetic Creations Coordination Unit, prior member of the Legal Affairs Office of INASE.

Historical Evolution of plant breeding, the system of Plant Breeders' Rights. The UPOV Convention and the legal framework in Argentina. Exceptions to breeder's right. The Seed and Phytogenetic Creations Act No. 20 247 and its Regulations.

Mankind has always applied improvement to the plants, unconscious or consciously, in a more advanced state of evolution. Both Assyrians and Babylonians (700 years B.C.) artificially pollinated date palms and the American Indigenous Peoples made improvements in corn.

Domestication was a process of empirical improvement carried out for thousands of years, which resulted in the current agronomic species.
The fact of the matter is that nowadays plant improvement continues combining traditional knowledge with the most advanced biotechnological techniques. As a result, commercial varieties have become more productive, richer in nutrients, resistant to illnesses or environmental characteristics, etc.

The investment allocated for the creation of these varieties is costly and time-consuming, that is why the rights of plant variety breeders must be protected and rewarded with the results of their own dedication, so that they can reinvest to create new varieties. The establishment of a system that guarantees the breeder an exclusive right over his new variety is the incentive needed to promote investment and increase productivity.

With the same principles where other intellectual property rights emerge and are justified, within a branch that has its own special peculiarities, intellectual property rights on plant varieties were established.

This type of protection of plant varieties, also known as "breeder's right", is the right granted to the breeder to exclusively exploit a new variety and, just as with the patent right, the inventor has the monopoly of his invention. The BREEDER'S RIGHT grants an exclusive right on the plant variety.

The protection of plant varieties through the breeder's right system is a "sui generis" protection form, specifically designed to protect the new creations.

In the Republic of Argentina, the legal framework that established and regulates the protection of plant varieties is the Act No 24.376 of Adherence to the International Convention for the Protection of New Varieties of Plants –UPOV- Act of 1978 and the Seeds and Phytogenetic Creations Act No 20.247, regulated in the year 1991 by means of Decree No 2183/91 and 2817/91, both ratified by Act No 25.845.

Diplomatic Conferences in París

From the 7th to the11th of may of 1957
21st of november of 1961
2nd of december of 1961

ACT 1978
ACT 1991

UPOV

Revisions:
10th of november of 1972
23 th of october of 1978
March of 1991

To be protected, a plant variety shall comply with the following requirements:

The variety shall be DISTINCT: it shall clearly distinguishes itself from the existing and widely known varieties, UNIFORM, which means uniform in its relevant characteristics, STABLE, which means that its relevant characteristics remain unchanged after repeated propagations, NEW, a novelty in the scope of the breeder's right entails that the variety to be registered has not been marketed before the date of the request of the right.

It shall be given an appropriate Denomination.

The UPOV Convention, establishes that more requirements, other than the abovementioned, shall not be demanded and the applicant shall comply with the formalities that each Member State establishes, apart from the payment of the respective fees or duties.

The title holder, that is to say, a property right, can prevent third parties from carrying out certain actions without his/her consent, regarding the propagation or multiplication of the protected variety. These actions are established in Article 5 of the Act of 1978 of the UPOV Convention. In order words: it establishes the scope of the Breeder's right.
Conferring this right to the breeder, means that his prior authorization shall be requested for:
1) the production with marketable purposes

2) the offering for sale

3) the marketing of the reproductive or plant propagating material, as such, of the variety.

SCOPE OF THE BREEDER'S RIGHT

Art. 41 Decree 2183/91

a) Production or reproduction.
b) Improvement with propagation purposes.
c) Offer.
d) Sale or any other form of marketing available in the market
e) Export.
f) Import.
g) Advertising, samples exhibition.
h) Exchange, transaction and any other form of marketing.
i) Storing for the abovementioned purposes.
j) Any other delivery for any reason.

COMMERCIALIZATION

Likewise, it sets forth that the authorization given by the breeder may be subject to certain conditions specified by him.

Each Member State of the Union, either under its own legislation or by means of special agreements, such as those referred to in Article 29, can grant to the breeders, in respect of certain botanical genera or species, a more comprehensive right than the one defined in the 1st paragraph of Article 5 which could be extended specifically until the marketed product. A member State of the Union granting this right may limit its benefit to the nationals of Member States of the Union which grant an identical right, as well as the natural or legal persons with domicile or residence in any of those States.

Exceptions to the Breeder's Right

The UPOV Act of 1978 contains the exception of the breeder in Article 5, paragraph 3 and states that the breeder's authorization shall not be required for the utilization of the variety as an initial source of variation in order to create other varieties or to market them. However, such authorization shall be required when the repeated use of the variety is needed for the commercial production of another variety.

The farmer's exception is not explicitly stated in the UPOV Act of 1978. However, it shall be deduced by exceptions, depending on the acts needing the breeder's authorization, contained in Article 5.

The exceptions provided in the Seeds and Phytogenetic Creations Act No 20.247, and its regulatory decree Nº 2183/91, are the following:

THE FARMER´S PRIVILEGE

Art. 27 (ACT 20.247):
The proper ty right over a variety is not affected by the person who sets aside and sows seed for his own use.

Article 25, Act No 20.247. The property of a variety does not prevent other people from using it for the development of a new variety, which can be registered under the name of the originator without the consent of the owner of the phytogenetic creation used to obtain the new one, as long as the latter is not used permanently for the development of the new one.

Article 43 of decree 2183/1991 establishes that the property of a variety does not prevent its use as a source of variation or as a contribution of the desirable characteristics in plant improvement processes.

As regards the exception of the farmer, Article 27 of Act 20.247 states that: "It does not affect the property right of a variety, that who delivers for any reason seeds from the same variety, counting first with the consent of the owner, or who stores and sows seeds for its own use, or uses or sells as raw material or food the product obtained from the cultivation of such phytogenetic creation".

The Article 44 of decree 2183/1991 establishes that: "Pursuant to article 27 of Act 20.247, the breeder's authorization of a variety shall not be required when a farmer stores and uses in his own land, regardless of its tenure system, the harvested product as a result of the growing of a protected variety in that place".

Also included are, consumption and the limited public use exeptions.

The International Union for the Protection of new Varieties of Plants

UPOV is an intergovernmental organization located in Geneva.

It was established by the International Convention for the protection of New Varieties of Plants signed in Paris in 1961, and entered into force in 1968. It was revised in Geneva in 1972, 1978, and 1991, establishing acts which came into force, Act 1978 on December 8, 1981 and Act of 1991, on April 24, 1998.

The purpose of the Convention is to protect new plant varieties by grating intellectual property rights.

As regards the legal condition and the seat of the Union, the Convention (Article 24) establishes the following:

1) [Legal personality] The Union has legal personality.
2) [Legal capacity] The Union enjoys in the territory of each Contracting Party, in accordance with the applicable laws in the said territory, the legal capacity necessary to achieve its objectives and exercise its functions.
3) [Seat] The Seat of the Union and its permanents organs are located in Geneva.
4) [Headquarters Agreement] The Union has a Headquarters Agreement with the Swiss Confederation.

The Convention contains the basic provisions which shall be included in the legislation for the protection of varieties of those States wishing to join the Union. This is analyzed before each country wishes to adhere to the Convention and become part of the Union.

The members gathered analyze if the national legislation of the country wishing to become a member of the UPOV, is in accordance with the Convention, or if, in contrast, it is necessary to apply some adjustments to the legislation, before the country becomes a member.

Once the legislation is approved, the country or intergovernmental organization is invited to deposit its instrument of accession.

The Union is also characterized by the cooperation between Member States, which is instrumented mainly through agreements for the examination of the distinction, homogeneity, and stability of the varieties.

By means of such agreements, Member States can reduce the costs and time needed to check if the varieties comply with the protection requirements. Said Cooperation may consist of the purchase of other member's reports or tests regionally accepted.

The UPOV convention establishes the following organs:

Consultative Committee: Committee exclusively made up by the representatives of the members of the Union. That is to say, a Council but without observers. It is the only UPOV committee with no observers.

Administrative and Legal Committee (CAJ): Committee established to advise the Council on administrative and legal matters.

Technical Committee: Committee created to advise the Council on technical matters, especially those related to the examination of distinction, homogeneity and stability (DHE). The Technical Committee is also responsible of supervising the performance of the Technical Working Party.

Technical Working Parties: The Technical Working Parties (TWO or GTT) are expert groups of the members of the Union created by the Council to advise the Technical Committee on technical matters related to specific crops. These are:

- Technical Working Party for Agricultural Crops (TWA)
- Technical Working Party for Fruit Crops (TWF)
- Technical Working Party for Ornamental Plants and Forest Trees (TWO)
- Technical Working Party for Vegetables (TWV)

A crucial task of the GTTs is the drawing-up of the principles necessary for the implementation of the examinations of distinction, homogeneity, and stability (the "Principles of Examination").

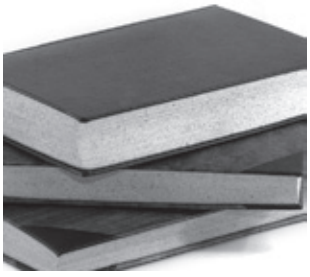
Apart from the GTT focused on certain types of plants; there are two other groups which advise on specific technical matters:

- Technical Working Party on Automation and Computer Programs (TWC)

Working Party on Biochemical and Molecular Techniques and DNA Profiles, in particular (BMT)

CAJ AG: Advisory Group of the Administrative and Legal Committee.

BMT RG: Group of technical and legal experts on Technical and Molecular Techniques.


The 1978 UPOV Convention and The Argentine Legislation: Comparative chart

Article written by **Dr. Carmen Gianni,** published in the book "Plant Varieties in Argentina: Seeds Trade and the breeder's right", Editorial: Latin Gráfica, October 1998, pages 101.

Nature of rights, subjects of rights, the object, term of protection, Assignment and Transfer of rights, Causes of exhaustion of rights, Registration of Varieties, administrative penalties.

On September 21, 1994, by means of the Act 24,376, the National Congress approved the International Convention for the Protection of Varieties of Plants, adopted in Paris, French Republic, on December of 1961, reviewed in Geneva, Swiss Confederation, on November 10, 1972, October 23, 1978, stating in its second article that the provisions of the Convention shall prevail in its member States.

With the Convention approval, the Republic of Argentina becomes a member of the International Union for the Protection of Varieties of Plants (UPOV), an intergovernmental organization of international character, with headquarters in Geneva, Switzerland.

The purpose of the Convention is the protection of the intellectual property right of the breeders of plant varieties.

Due to the prevalence of International treaties over national rules, it is important to make a comparison of the Convention texts, the Act 20247 and its regulatory Decree 2183/91.

Nature of the Right

The Act 20247, in its article 19, defines this right, as a property right of the developers and discoverers of new plant varieties.

This concept is ratified, in Chapter V, when it states that the breeder is guaranteed property rights over his creation or discoveries, in such a way that no other person can reproduce or sell

his creations without his authorization. It also states that the property right over plants or new plant varieties is granted for a certain period of time, relatively limited.

The Convention, in its first article, states that its purpose is to acknowledge and guarantee a right to the breeder, or its successor in title, of a new plant variety. The second article adds that each State of the Union can acknowledge the breeder's right by granting a title of specific protection or a patent. Nevertheless, every State of the Union, which national legislation admits both types of protections, shall apply only one of them to a same botanical genera or species. In other words, the double protection is forbidden.

The Convention, contrary to the Argentine law, does not make any reference to the property rights, but only to the right granted to the developer of a new plant variety.

When Act 20,247 was passed, and after joining the Convention, Argentina opted to protect the breeder or developer's rights by means of a peculiar system of protection: a sui generis system different from the patent system, for all plant varieties, regardless of its genera or species.

The explicit legislative will was to create a reassurance system for the inventor of a plant variety, conferring him a property right over his creation or discovery, adapted to the specific nature of the object it is protecting, different from the existing intellectual and industrial property rights systems.

This arises from the submission note of the law, expressing that the measure supposes granting a property right over plants or new varieties of plants for a certain period of time, relatively limited, which shall allow the developer to obtain profits from his ownership in consideration for his effort, and provide him with benefits concerning the new plant variety obtained. The system, according to the note, is simple and similar to the one applied in the country for intellectual and industrial property rights on inventions.

This peculiar protection system is applied to all plant genera and species, without any limitation. Therefore, after our country adopted the 1978 Act of the Convention, the rights of the plant breeders can only be protected by the system applied by this Convention and by the Act 20,247, expressly excluding the patent system for plant varieties.

Holders of the right

According to article 19 of the Act 20,247, the holders of the rights are the developers and discoverers of new varieties of plants.

According to article 1, subsection d) of Decree 2183/91, the breeder is the person who creates or discovers and develops a variety.

For the law, the property right over a plant variety belongs to the person who obtained it, and unless he provides his express consent, the people involved in the tasks related to its creation, shall have the right to exploit the creation only for personal use (article 24).

If the new variety was obtained by more than one person, then the rules of the Civil Code, in relation to condominium, will be applied to the property. In the case of employees who had collaborated in obtaining the new variety, then article 82 of the Labor Contract Act 20,744 and its amendments (article 40 of Decree 2183/91) shall be applied.

The Convention does not define the concept of breeder.

Object of the right

The phytogenetic creations or plant varieties constitute the object of the right (articles 29 and 20 of the Act 20247).

According to Decree 2183/91, 1st article subsection b), a phytogenetic creation is every variety or plant variety, regardless of its genetic nature, obtained through a discovery or incorporation and / or application of scientific knowledge.

In the same article subsection e), the decree defines "variety" as a group of plants of one botanical taxon of the lowest rank known, which can be defined by the expression of the characters resulting from a certain genotype, or a certain combination of genotypes, and can be distinguished from any other group of plants for the expression of at least one of such characters. A variety can be

represented by several plants, only one plant or one or several parts of a plant, as long as this part o parts can be used for the production of complete plants of the variety.

The Convention, according to its article 4, is applicable to all botanical genera and species. The States of the Union undertake to adopt all the necessary measures to gradually apply its provisions to the highest possible number of botanical genera and species. When these provisions of the Convention come into force in the territory, each State of the Union shall apply the provisions to at least five different genera or species.

Requirements of the variety

a) Novelty

According to decree 2183/91, the variety shall not have been offered on sale nor commercialized by the breeder or commercialized with his consent, in the national territory until the date of the submission of the registration application in the National List Registry, and in the territory of another State which is party with the Republic of Argentina of a multilateral or bilateral agreement on the subject, for a period of at least four years prior to such application, which will be extended to six years in case of trees and vines.

According to the Convention (article 6) in the date of submission of the protection form in a State of the Union, the variety shall not have been offered for sale nor been commercialized, with the breeder's consent, in the territory of such State (or if the legislation of that State envisages it, not for more than one year) and in the case of the territory of another State, it shall not have been offered for sale, nor been commercialized, with the breeder's consent, for a prior period longer than four years, which shall be extended to six in the case of vines, forest trees, fruit trees and ornamental trees, with the inclusion, in each case, of its rootstocks.

Every test performed on the variety which does not include an offer for sale or commercialization, does not oppose to the breeder's protection. The fact that the variety has become known by other means different than the offer for sale or commercialization, does not oppose to the breeder's right protection either.

Notwithstanding the foregoing, every State of the Union shall have the power, without this generating obligations for the rest of the other States of the Union, of restricting the demand of novelty concerning recently created varieties existing at the moment when such State applies for the first time the provisions of the Convention to the genera or species to which such varieties belong to (article 38).

b) Distinctness

According to Act 20,247, article 20, the plant variety shall be distinguishable from others at the moment of submission of the property application.

Decree 2183/91, article 26, adds that the variety shall be clearly distinguishable by means of one or more characteristics of any other variety which existence shall be publicly known at the moment of filing the application. The filing of the application to grant a breeder´s right or filing the variety in an official varieties registry in the territory of any State, shall cause the variety to become publicly known from the date of application, as long as the application leads to the granting of a breeder´s right or the registration of the variety in the National List Registry.

The Convention, in its article 6, states that regardless of the origin, artificial or natural, of the initial variation that gave rise to the variety, this shall be clearly distinguishable for one or several important characters of any other variety, which existence shall be notoriously known at the moment of requesting the protection. This notoriety can be established by different references, such as ongoing crop or commercialization, registration made or pending in an official registry of varieties, presence in a collection of references or a precise description in a publication. The characters which allow defining and distinguishing a variety must be recognizable and precisely described.

c) Homogeneity and stability

Act 20,247 states that the plant variety shall have hereditary characteristics which will be sufficiently uniform and stable through consecutives propagations.

Article 26 of Decree 2183/91 establishes that, subject to the predictable variations originated in the particular mechanisms of its propagation, the variety shall maintain its most relevant hereditary characteristics in a sufficiently uniform way and they shall remain in line with its definition, after consecutives

propagations or, in the case of a special propagation cycle, at the end of each of these cycles.

For the Convention, the variety shall be sufficiently uniform, considering the particularities which its sexual reproduction or its plant propagation presents, and it shall be stable in its essential characters, that is to say, it shall remain in line with its definition after consecutives reproductions or propagations, or when the breeder had defined a particular cycle of reproductions or propagations, at the end of each cycle (article 6).

d) Denomination

According to Act 20,247, the registration application of every plant variety shall specify the denomination of the cultivar. Plant Varieties of the same species with the same denomination or a similar denomination that leads to confusion shall not be registered. The denomination shall be registered in its original language. In case of synonymy reliably evidenced by the Ministry of Agriculture and Livestock, priority shall be given to the denomination provided in the first description of the plant variety in a scientific publication or in an official or private catalogue, or to the vernacular denomination, or in case of doubt, to the first denomination registered in the National List Registry. The use of other denominations, as from the date established in each of the cases, is forbidden. (Articles 17, 18 and 20).

According to Decree 2183/91, varieties shall be given a denomination which shall be its generic designation having the following characteristics: it shall allow the variety to be identified; it shall not consist solely of figures, except where this is an established practice in the designation of varieties; it shall not be liable to mislead or cause confusion concerning the characteristics, value or identity of the variety or of the breeder; it shall be different from any other denomination designating an existing variety of the same botanical species or a similar species in any other National State.

The National Service of Seeds can refuse the registration of a variety which denomination does not fulfill the conditions mentioned above, requesting another denomination within thirty days as of the date the refusal was notified.

Furthermore, the breeder can be requested to change the denomination of the variety, when same affects the rights previously conferred by another National State or it is pretended to register a denomination different from the one already registered for the same variety in another National State. (Article 19).

The person who offers for sale, commercializes in any way, or delivers for any reason seed of a protected variety by means of a breeder´s right, shall be forced to use the denomination of such variety, even after the expiration of the breeder´s right, as long as the rights previously acquired shall not be affected.

Furthermore, it shall be permitted to associate a trademark, trade name or other similar indication with a registered variety denomination. If such an indication is so associated, the denomination must nevertheless not be liable to mislead concerning the variety denomination or the breeder's name (article 20).

If a variety is registered in the National List Registry, the approved denomination shall be registered together with the granting of the respective breeder´s right (article 21).

The National Seeds Institute shall decide regarding the authority or the scientific value of the catalogues or publications invoked, in cases of synonymies, and shall set the date as from which the simultaneous use of different denominations of the same variety shall be forbidden (article 24).

The denominations of the varieties which become of public use shall have that same character, even in the cases where they are also registered as trademarks (article 49).

According to article 6 of the Convention, the variety shall receive a denomination according to what is stipulated in article 13.

This last one establishes: 1) The variety shall have a denomination destined to be its generic designation. Each State of the Union shall make sure that, notwithstanding what is established in paragraph four, no rights concerning the registered designation as a variety denomination, shall hamper the free use of the denomination in relation with the variety, even after the expiration of the protection. 2) The denomination shall allow the variety to be identified. It shall not consist solely of figures, except where this is an established practice in the designation of varieties. It shall not be liable to mislead or

cause confusion concerning the characteristics, value, or identity of the variety or the breeder. In particular, it shall be different from any denomination which designates, in any of the States of the Union, an existing variety of the same botanical species or of a similar species. 3) The variety denomination shall be deposited by the breeder in the Service provided for such effect. If it is proved that this denomination does not meet the requirements of the second paragraph, said Service shall refuse the registration and request the breeder to propose another denomination in a certain term. The denomination shall be registered when the protection title is awarded. 4) It shall not go against third parties rights previously granted. If, by virtue of a prior right, the use of the variety denomination is forbidden to a person who, according to the paragraph 7), is forced to use it, the Service shall request the breeder to propose another denomination for the variety. 5) A variety shall only be deposited in the States of the Union under the same denomination. The Service shall be forced to register the denomination so deposited, unless the inconvenience of such denomination is proved in that State. In this case, the breeder will be requested to propose another denomination. 6) The Service shall inform the other Services about the data related to the varieties denomination, specially the deposit, registry and nullity of the denominations. The Service can provide their comments concerning the denominations to the Service informing the event. 7) If a person in one of the States of the Union offers for sale or commercializes the plant reproduction or propagation material of a variety protected in such State, he shall be forced to use the denomination of such variety, even after the expiration of the protection of the variety, as long as, in accordance with the fourth paragraph, prior rights shall not oppose to this use. 8) When a variety is offered for sale or it is commercialized, it shall be permitted to associate a trademark, trade name or other similar indication with a registered variety denomination. If such an indication is so associated, the denomination must nevertheless be easily recognizable.

Term of the protection

According to the Act 20,247, the protection term lasts between ten and twenty years, depending on the species or group of species and according to what is established by the regulation (article 22). Decree 2183/91 states that the breeder´s right of the variety shall be granted for twenty consecutive years, as a maximum, for all the species. The Secretariat of Agriculture, Livestock and Fisheries could establish shorter terms, depending on the nature of the species (article 37).

The Convention establishes that the right conferred to the breeder has a limited duration. This duration cannot be shorter than fifteen years from the date of the grant of the protection title. For vines, forest trees, fruit trees and ornamental trees, with its rootstocks in each case, the term of the protection cannot be shorter than eighteen years as from that date.

Rights granted by the system

a) Right on the variety and the propagation material

Decree 2183/91 states that the property right of a variety granted to the breeder means that all the acts that will be mentioned below shall need his prior authorization concerning the seed of a protected variety: production or reproduction, improvement for propagation purposes, offer, sale or any other way of availability in the market, export, import, advertisement, samples exhibition, exchange, transaction and any other way of commercialization, storage for any of the abovementioned purposes and any delivery for any reason to a third party (article 41).

The breeder can subject his authorization for the abovementioned acts to the conditions defined by him, for instance, quality control, plot inspection, production volume, percentage of royalties, terms, authorization to sublicense, etc (article 42). For the Convention, the right conferred to the breeder, shall mean that his prior authorization is needed before production with commercial purposes, the offer for sale, the commercialization of the plant reproduction or propagation material, as such, of the variety.

The plant propagation material includes entire plants.

The breeder's right extends to ornamental plants or to the parts of such plants which are generally commercialized for purposes other than propaga-

tion. That is to say, in the case these are used commercially as propagation material with a view to the production of ornamental plants or cut flowers.

The breeder can subject his authorization to the conditions defined by him.

Each State of the Union, either by means of its own legislation or by special agreements, can grant the breeders, for certain botanical genera or species, a right greater than the one defined which could be specially extended until covering the commercialized product.

A State of the Union granting this right, shall have the power of restricting its benefit to the nationals of the States of the Union which confer an identical right, as well as to natural persons and legal entities resident or having their registered domicile in one of those States (article 5).

b) Denomination right

According to Decree 2183/91, the person who offers for sale, commercializes in any way or delivers to a third party a seed of a variety protected by a breeder´s right, shall be forced to use the denomination of such variety even after the expiration of the breeder´s right, as long as the rights previously acquired shall not be affected.

Furthermore, it shall be permitted to associate a trademark, trade name or other similar indication with a registered variety denomination. If such an indication is so associated, the denomination shall not cause confusion concerning the variety denomination or the breeder's name (article 20).

If a variety is registered in the National List Registry, its approved denomination shall be registered together with the grant of the respective breeder´s right (article 21).

According to the Convention, the denomination shall be registered at the time when the protection title is granted.

A variety shall only be deposited in the States of the Union under the same denomination. The Service shall be forced to deposit the denomination so registered, unless the inconvenience of such denomination in its State is proved. In this case, the breeder shall propose another denomination.

The person who, in one of the States of the Union, offers for sale or commercializes the plant reproduction or propagation material of a variety protected in such State, shall be forced to use the denomination of that variety, even after the expiration of the protection term of such variety, as long as prior rights do not oppose to its use.

When a variety is offered for sale or is commercialized, it shall be permitted to associate a trademark, trade name or other similar indication with a registered variety denomination. If such an indication is so associated, the denomination must nevertheless be easily recognizable.

c) Priority Right

Decree 2183/91 establishes that the applicant who files the registration application of a variety in any National State which is a party together with the Republic of Argentina of a bilateral or multilateral agreement on the subject, shall enjoy a right of priority of twelve months to register it in the National List Registry. This term shall be computed from the date of filing the first application in any of such National States. The day of the filing shall not be included in the mentioned period. Upon its expiration, the applicant shall have two years to provide the documentation and the material stipulated in article 29 (article 30).

According to the Convention, the breeder who has regularly submitted a protection form in one of the States of the Union shall enjoy a priority right for a term of twelve months to file the application in the other States of the Union. This term shall be computed from the date of filing the first application. The date of the filing shall not be included in the mentioned period.

In order to benefit from the abovementioned, the subsequent application shall include a protection petition, the priority claim of the first application and in a 3 month period, a copy of the documents which are part of that application shall be submitted certified by the administration which received it.

The breeder shall have a term of four years, after the expiration of the priority term, to provide the State of the Union where he has submitted a protection form in the stated conditions, the complementary documents and material required by the laws and provisions of such State. Nevertheless, this State can demand in an appropriate period

the supply of complementary documents and the material, if the application which priority is claimed has been rejected or withdrawn.

It shall not oppose to the application made in the conditions stated before, the events occurred in the term stipulated in the first paragraph, such as a new application, the publication or use of the variety subject of the first application. Such events shall also not give rise to any third-party right. (article 12).

Obligations of the developer:

a) Maintenance of live samples

Act 20,247 states that the owner shall maintain a live sample of the plant variety available for the Ministry of Agriculture and Livestock, as long as the respective title is in force (article 21).

The breeder's right on a plant variety shall expire if the owner does not provide a live sample of same, with characteristics which are the same as the originals, at the request of the Ministry of Agriculture and Livestock (article 30).

Decree 2183/91 states that the breeder's right on a variety shall expire, according to article 30 of Act 20247, when the breeder is not able to submit before the enforcement authority the materials requested in article 31 considered necessary to control the maintenance of the variety (article 36).

The Convention states that the person who is not able to submit before the enforcement authority, the reproduction or propagation material allowing to obtain the variety with its characters in the way they were defined when the protection was granted, shall be deprived of his breeder's right. (article 10).

b) Payment of tariffs

According to Act 20,247, the breeder's right on a plant variety shall expire due to lack of payment of the annual tariff of the National List Registry, upon a six month term since the actual payment claim was done, becoming afterwards of public use (article 30).

According to Decree 2183/91 the breeder's right on a variety shall expire due to lack of payment of the annual tariff of the National List Registry, upon a six month term since the actual payment claim was done, becoming afterwards of public use (article 36).

For the Convention the breeder must comply with the obligations established in the national legislations, including the payment of fees for the enforcement of his rights. If payment is not received within the specified term, the breeder shall be deprived of said rights (article 6).

Exceptions to the property right

a) Exception of general character

The property right of a plant variety shall not be affected if a person delivers its seeds to a third party with the owner's authorization (Act 20247, article 27).

b) Farmer's exception

The property right on a plant variety is not affected by the person who stores and sows seed for his personal use (Act 20247, article 27).

Pursuant to article 27 of the Act 20.247, the breeder's authorization shall not be necessary when a farmer stores and uses as a seed on his own holding, regardless of its tenure regime, the harvested product obtained as a result of planting in such place a protected variety. (Decree 2183/91, article 44).

c) Breeder's exception

The property on a plant variety does not prevent other people from using it for the development of a new variety, which can be registered under the name of the originator without the consent of the owner of the phytogenetic creation used to obtain the new one, as long as the latter shall not be used permanently for the development of the new one (Act 20247, article 25).

The property of a variety does not stop its use as a source of variation or as a contribution of the desirable characteristics in plant improvement processes. For such purposes, it shall not be necessary the knowledge nor the authorization of the breeder. However if the repeated and /or systematic use of a variety is required for the production of a commercial seed, then the owner's authorization is needed.(Decree 2183/91, article 43).

The authorization of the breeder shall not be required to use the variety as an initial source of

variation with view to create other varieties or to market them. However, such authorization shall be required when the repeated use of the variety is necessary for the commercial production of another variety (Convention, article 5).

d) Consumption exception

The property right on a plant variety shall not be affected if a person uses or sells as raw material or food, the product obtained from the planting of such phytogenetic creation (Act 20247, article 27).

e) Public Interest

Restricted public use:

The Breeder's Right of a plant variety might be declared of restricted public use by the National Executive Power, at the request of the Ministry of Agriculture and Livestock, on the basis of an equitable remuneration for its owner, when it is determined that this declaration is necessary to assure an adequate replacement in the country of the product obtainable from its crop, and that the beneficiary of the property right is not satisfying the public needs of seed of such plant variety in relation to quantity and price.

During the period when the plant variety is declared of restricted public use, the Ministry of Agriculture and Livestock will be able to establish or not which shall be the remuneration provided for the owner, being possible to set this remuneration among the interested parties. In case of disagreement, the remuneration shall be established by the National Seeds Commission, which resolution could be appealed before the Federal Justice. The agreement on the remuneration shall not delay, under any circumstances, the plant variety availability, which shall be immediate to the declaration of the National Executive Power. In case of opposition, the owner shall be sanctioned in accordance to this law (Act 20247, article 28).

The declaration of restricted public use of a plant variety shall have effect for a term of no more than two years. The extension of this period for another similar could only be declared by means of a new resolution of the National Executive Power (article 29).

The declaration of restricted public use shall be published in the Official Gazzette and in a specialized publication, requesting thereby the presentation of interested third parties, as well as the minimum technical and economical warranties and other requirements which shall be met by the applicants (Decree 2183/91, article 46).

Every exploitation of restricted public use shall be registered by the enforcement authority. Interested third parties shall be registered by the same organism, stating name, address, place and surface of the exploitation to be performed, and information concerning the warranties compliance (article 47).

The enforcement authority shall exercise the control of the availability of original seed of the variety of restricted public use in the exploitation licensed to third parties. The remaining seeds shall be returned to the owner of the variety at the end of the term declared of restricted public use (article 48).

For the Convention, the free exercise of the exclusive right granted to the breeder could only be limited for reasons of public interests. When this limitation takes place to assure the spread of the variety, the interested State of the Union shall adopt all the necessary measures so that the breeder receives an equitable remuneration.

Assignment and transfer of the right

According to Act 20,247 the breeder's right on a plant variety can be transferred. To do so, the transfer must be registered in the National List Registry, otherwise, the transfer shall not be enforceable to third parties. (article 23).

Decree 2183/91 states that the transfer of a breeder's right shall be made by means of a request stating the name and address of the assigner and the assignee and it shall be accompanied by the legal document formalizing the procedure. The proof of the transfer shall be registered in the National List Registry and in the breeder´s right. The assignee shall have the same obligations that the assigner had. (article 39).

Grounds for cancellation of the breeder´s right

a) Regular reasons

According to Act 20,247, the Property Right of a plant variety shall be terminated due to the following reasons: the owner waives his rights, in

which case the plant variety shall become of public use, termination of the legal term of ownership, in which case the plant variety shall become of public use. (article 30).

b) Irregular reasons

Nullity:

For the Act 20,247 the breeder´s right on a plant variety shall be terminated when it can be proved that it has been fraudulently obtained. In such case, the right shall be transferred to its legitimate owner, if same can be determined, otherwise, it shall become of public use (article 30).

Decree 2183/91 states that the breeder's right shall be declared null and void if it is proved that when the property right was granted: a) the conditions established in article 26 subsections a) and b) were not met, b) The conditions established in article 26 subsections e) and d) were not met if the grant of the breeder´s right was essentially based upon the information and documents furnished by the breeder. The breeder's right s cannot be cancelled for reasons other than the one mentioned above (article 35).

According to the Convention, the breeder's right shall be declared null and void, in compliance with the provisions of the national legislation of each State of the Union, if it is proved that the conditions established in article 6.1 a) and b) were not complied with at the time of the grant of the protection.

Expiration:

Act 20,247 states that the breeder´s right on a plant variety shall expire for the following reasons: When the owner does not provide a live sample of it, with the same characteristics of the originals, at the request of the Ministry of Agriculture and Livestock. When the annual tariff has not been paid to the National List Registry, upon a six month term from the actual payment claim is made, becoming afterwards of public use.

Decree 2183/91 adds that the breeder's right on a variety shall expire, as it is established by article 30 of the Act 20,247, for the following reasons: When the breeder is not able to submit before the enforcement authority the materials required in article 31, considered as necessary to control the maintenance of such variety. If the annual tariff of the National List Registry was not paid, upon a six month period after the actual payment claim is made, becoming afterwards of public use.

The breeder cannot be deprived of his right for reasons other than the ones mentioned before in the article.

According to the Convention, the breeder shall be deprived of his right when he is not able to submit to the enforcement authority the reproduction or propagation material allowing to obtain the variety with its characters, as they were defined in the moment when the protection right was granted. The breeder can be deprived of his right when: he does not submit to the enforcement authority in a certain term and after he was requested so, the reproduction or propagation material, the documents or the information considered necessary for the control of the variety, or who does not allow the inspection of the measures adopted for the conservation of the variety. Or the one who has not paid in the stipulated terms the accrued fees to maintain his rights in force. The breeder's right cannot be not be cancelled nor he can be deprived of his right for reasons other than the ones mentioned in this article.

Registration of foreign plant varieties

Act 20,247 establishes in its article 26 the so-called reciprocity principle for the foreign varieties expressing that the breeder´s right required for a foreign plant variety shall be conferred, as long as the country where it was originated recognizes a similar right in relation to Argentine phytogenetic creations. The property right shall be valid until it is extinguished in the country of origin. The following requirements are needed for the registration: It shall be presented by its developer or the duly authorized representative. This person shall reside in the Republic of Argentina.

Argentina joining the Act of 1978 of the UPOV meant incorporating the international principle to the national treatment which stipulates: 1) Natural persons or legal entities resident or having their registered address in one of the States of the Union shall enjoy in the other States of the Union, the acknowledgement and protection of the breeder's right, the same treatment that the respective laws of such States grant to its nationals, notwithstanding the rights especially stipulated by this Convention and complying with the conditions and formalities imposed to the nationals. 2) The nationals of the States of the Union, who do not have residence or registered address in one of such States,

shall enjoy the same rights, upon fulfillment of the obligations which can be imposed with a view to allow the examination of the varieties obtained, as well as the control of its propagation.

Notwithstanding the abovementioned, since UPOV 78 in its fourth article allows the progressive application of the protection to all genera and species, starting with a minimum of five, each State can reserve the option to restrict the protection to only those nationals of the member countries or the natural persons or legal entities having domicile or their registered address in a member country which protects the genera or species subject to protection, reaching a balance and equity in the treatment of the breeders of the different countries.

Therefore, the national treatment gives way to the reciprocity principle.

The UPOV Act 78 establishes: notwithstanding the provisions of the 1st and 2nd paragraphs, each State of the Union which applies this Convention to a certain genera or species, shall have the powers of restricting the benefit of the protection to the nationals of the States of the Union which apply the Convention to that genera or species and to natural persons or legal entities residents or having their registered address in one of such States.

For this reason at present, as regards the treatment of foreign plant varieties, there exists in the Republic of Argentina a duality treatment. The national treatment principle shall be applied to those natural persons or legal entities considered nationals of member countries of UPOV or having their residence or registered address in some of these States, when such country protects all the vegetal genera and species.

The reciprocity principle shall be applied when a national of a country member of the UPOV or with domicile or registered address thereby, said country does not protect the entire plant kingdom and restricts the protection to a certain number of botanical genera or species. The Republic of Argentina, in this case, shall recognize a property right to the breeder only with regard to the genera and species included in the list determined by the country of origin.

The reciprocity principle shall be applied for those plant varieties coming from countries which are not member of the UPOV with the scope established in the national rules.

Another difference to be pointed out between the national and the international rule is that while in the Argentine law the element determining the nationality is the country of origin of the plant variety or variety, in the UPOV normative, same shall be determined by the nationality of the applicant based on the domicile or registered address in one of the member States.

Registration of Plant Varieties

Requirements:

Act 20,247, in its article 20, states that the pertinent procedure shall be carried out by the developer or discoverer, represented by an agricultural engineer holding a national degree or degree revalidated.

Article 21 establishes that the request of ownership of the new plant variety shall detail the conditions required in article 20, and it shall be accompanied with its seeds and specimens, if so required by the Ministry of Agriculture and Livestock.

Article 29 of Decree 2183/91 states that: The registration application in the National List Registry shall be considered as a sworn statement and shall be submitted before the enforcement authority, complying with the following requirements: a) Name and address of the breeder or the developer and the national representative if any, b) Name, address and license number in the national order of the Agricultural engineer representing the registration, c) Common and scientific denomination of the species, d) Proposed variety denomination, e) Establishment and place where the variety was obtained, f) Description. It shall include the morphological, physiological, sanitary, phenological, physicochemical characteristics and industrial or technological qualities allowing its identification. Drawings, photographs or any other technical element commonly accepted in these cases shall also be submitted to illustrate the morphological aspects. g) Novelty: Reasons for which it is considered that the variety is new and unknown, stating in which aspects is different from the existing ones. h) Stability verification: Date when the variety was propagated for the first time as such, verifying its stability. i) Origin: National or foreign, indicating in the last case the country of origin. j) Reproduction or propagation mechanism. k) Ad-

ditional information for the species requiring so, as established by the National Seeds Service.

The enforcement authority could request when necessary, field tests and/or laboratory tests in order to verify the characteristics attributed to the new variety.

Examination of the variety According to article 21 of the Act 20,247, the Ministry could subject the new plant variety to laboratory and field tests in order to verify the attributed characteristics, being acceptable as evidence, the previous tests reports performed by the applicant and official services. With these opinion elements and the advice of the National Seeds Commission, the Ministry of Agriculture and Livestock shall decide on the granting of the corresponding Breeder´s Right.

Article 31 of Decree 2183/91 establishes that the grant of a property right over a variety shall require an examination of the compliance of the conditions stipulated in Chapter VI. In the framework of this examination, the National Seeds Service will be able to sow the variety or make other necessary tests, or take into account the results of the crop tests or other tests already performed. With respect to this examination, the Service can request the breeder all the necessary information, documents or material. All these elements shall be submitted to the enforcement authority as long as the breeder´s right is in force.

Article 32 adds that the Secretariat of Agriculture, Livestock and Fisheries with the advice of the National Seeds Commission, shall dictate the rules for the registration procedure of the varieties in the Registry. The rules to be enacted shall safeguard the right of third parties to not include the right of third parties to oppose, whenever they deem it necessary.

The Convention in its article 7 refers to the official examination of varieties in the following terms: 1) The protection shall be granted after a variety examination according to the criteria defined in the article 6. This examination shall be appropriate for each botanical genera or species. 2) In view of this examination, the competent services of each State of the Union could request the breeder to furnish all the necessary documents, information, plants or seeds.

Authority conferring the titles:

According to article 33 of Decree 2183/91, the Secretariat of Agriculture, Livestock and Fisheries, in possession of all the background information of the case, shall decide on the grant of the breeder´s right, being necessary to inform the applicant and issue the deed.

Article 8 of Decree 2817/91 stipulated that the Board of INASE shall be the highest authority of the entity and shall have the following powers and obligations: 1) Grant property rights over new plant varieties.

Third parties´ rights

Opposition to the registration:

Article 34 of Decree 2183/91 establishes that if the Secretariat of Agriculture, Livestock and Fisheries refuses the registration, the applicant shall be notified, so that he can submit specific evidence concerning the aspects challenged, within a term of 180 days.

If the applicant does not answer the objection to his request, then same shall be considered as abandoned. If he answers the objection, the Secretariat shall have 30 days to decide on the subject.

Article 45 stipulated that the definite resolutions of the administrative organisms created by the Act 20,247 and by this regulation, shall be appealable before the Contentious Administrative Justice and do not exclude the actions arising from the property of varieties, which in the private field, could correspond for infringing other legal rules.

For the Convention, each State of the Union shall adopt all the necessary measures for its application and especially: a) it shall provide the appropriate legal resources allowing an effective defense of the stated rights, b) it shall establish a special protection service for plant varieties or it shall order an existing service of such protection; e) It shall inform the public about the information related to that protection and, at least, the regular publication of the list of protection rights awarded.

Sanctions in the administrative organizations

Article 37 of Act 20,247 states that the person who identifies or sells with a correct identification or

otherwise, plant variety seeds which propagation and commercialization was not authorized by the owner of the plant variety shall be sanctioned with a fine.

Article 20 of decree 2817/91 sanctions the infringement of the rules of the Act 20,247, depending on the degree of the offense, with a reprimand, warning, fine, confiscation of the goods and/or the elements used to commit the infraction, temporal or permanent suspension of the corresponding registry, temporal or permanent disqualification and total or partial, temporal or permanent closure of commerce. The enumerated sanctions can be applied separately or jointly, depending on the degree of the offence and the background information of the responsible party. The sanctions substitute those stipulated in the rules of the Act 20,247, which application is in charge of the National Seeds Institute.

Article 46 of the Act 20,247 stipulates that the law and its regulations shall be sanctioned by the Ministry of Agriculture and Livestock, prior ruling by the National Seeds Commission. Those sanctioned could appeal requesting reversal before such Ministry within ten working days after having been notified of the sanction.

Articles 47 and 48 add that in view of the denial of the petition by the Ministry of Agriculture and Livestock, the offender could appeal before the Federal Justice, prior payment of the established fine, within thirty days of having been notified the denial of the petition and that the application of the sanctions referred to, do not exclude those fines that may correspond for infringing other legal rules.

Article 50 of Decree 2183/91 states that the tariffs and fines stipulated in Chapters VI and VII of the Act 20,247 and its amendments shall be payable to the enforcement authority.

Free choice by the breeder concerning the State where the first application is submitted

Applications in other States.

Independence of the protection in different States.
Article 11 of the Convention empowers the breeder to choose the State of the Union where he will file his first application.

The breeder can request the protection in other States of the Union, without having to wait for the protection title by the State of the Union where he submitted his first request

The requested protection in different States of the Union by natural persons or legal entities accepted under the benefit of the Convention, shall be independent from the protection obtained for the same variety in the other States, even if they do not belong to the Union.

Independent Protection of the regulatory measures of the production, certification and commercialization of seeds.

Article 14 of the Convention declares that right acknowledged to the breeder, by virtue of its rovisions is independent of the measures dopted in each State of the Union to regulate the production, certification, and commercialization of seeds and plants. Nevertheless, these measures shall prevent, to the greatest extent possible, hampering the application of the Convention regulations.



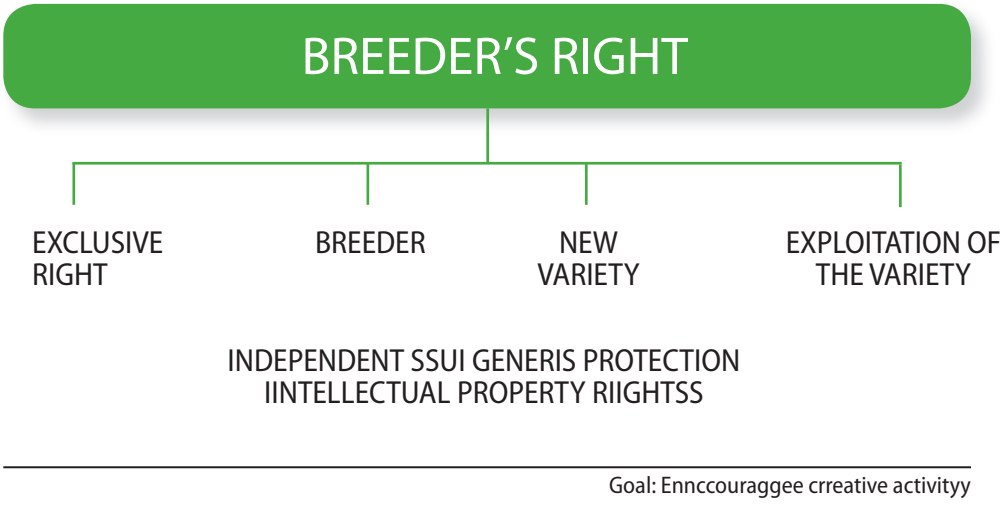
The Breeder's Right in relation to the production of the reproduction or propagation material.

Restrictions and Exceptions to the Breeder's Right.

Presentation by **Mrs. Carmen Gianni** representing Argentina in the International Convention organized by UPOV - International Convention for the Protection of New Varieties of Plants, with the support of The American Seed Trade Association (ASTA) and the ARPOV- Argentine Association for the Protection of New Varieties of Plants held in Buenos Aires, on August 10 and 11, 1999.

Acts which need authorization of the breeder. Limits to the rights. Exhaustion. Exceptions to the breeders rights in different countries and in different regulations.

I.- The subject that the UPOV has entrusted me to develop in this Seminar is related to "the breeder's right in relation to the production of the reproduction and propagation material" as it is considered by the UPOV Conventions.

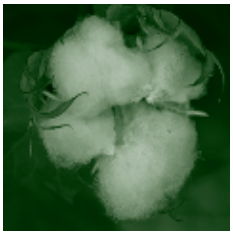


In order to introduce the subject, I will say that the protection of the new varieties of plants, also named "breeder's right", in the different national legislations, consists of an exclusive right which is granted to a person called breeder or breeder of "a new plant variety". The objective of this exclusive right is to prevent the use of his development by third parties.

It is an independent sui generis protection system, part of the so -called industrial property; similar in some aspects to the patents' right, trademarks' right, and copyrights. The difference is the object of law which is protecting, as specific as a plant variety and its propagation material, whether these are seeds, entire plants, or parts of them, tubers, etc.

It is a category of the so called intellectual property rights and which purpose is to encourage the creative activity by increasing the existence in a country's market of new varieties of plants of higher quality and technology, so that by improving the agricultural and food production, also the lifestyle of its inhabitants is improved

II.- The subject I am working with may be summarized in a question: How is the breeder's right put into practice?; What subjects does it include? What is the scope of that right?



How is the breeder's right put into practice?

This question makes us consider the so called protection scope, which at the same time can focus on the following questions:

1. What are the actions to be performed by the persons subject to this right?

2. Which are the acts subject to the breeder's authorization?

3. What are the varieties included in the breeder's right?

4.- Which is the material covered by the breeder's right?

III.- I will try to provide you with the answers to the abovementioned points, except for the one concerning the material, which shall be the object of the following presentation.

We will see the way how these subjects are dealt with in the UPOV Convention, Act of 1978 and particularly in the Act of 1991.

1.- ACTIONS TO BE PERFORMED BY THOSE PERSONS SUBJECT TO THE BREEDER'S RIGHT

The breeder, according to both Acts of the UPOV Convention, shall determine the conditions and restrictions that he considers pertinent for those third parties who want to use his development, and once these conditions and restrictions are understood by the third parties, whenever they want to perform any of the acts I will mention following, these third parties shall have to require the breeder's prior authorization or consent pursuant to the Act of 1978.

In practice, this authorization, as well as the acceptance of the conditions by third parties, is legitimated by means of private contracts or agreements between the parties or expressed authorizations or in some cases public offerings through mass communication media.

UPOV

ACT 1978 - Art. 5°

- Production with commercial purposes
- Offering for sale
- Marketing

Act in relation to the reproduction and propagation material

ACTA 1991 - Art. 14

- Production or reproduction (propagation)
- Preparation in order to reproduce or propagate
- Ofering for sale
- Sale or other marketing actions
- Export
- Import
- Storing for any of the purposes mentioned

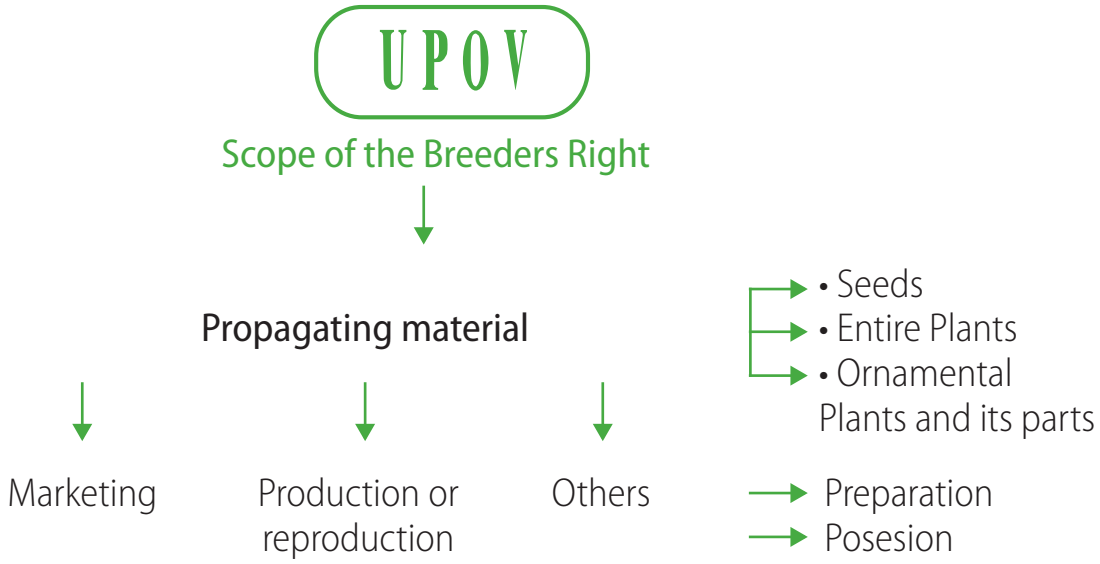
Article 5, of Act of 1978 states that the following items are subject to breeder's right: "production with commercial purposes, offering for sale and commercialization of the reproduction or plant propagation material, as such, of the protected variety."

This Article is essentially the same as Article 5 of the Act of 1961 of the UPOV Convention.

Please note that the resolutions of Article 5 specify the minimum scope of protection which must be granted to the breeder's right.

According to the Act of 1978, any State has the authority to extend the breeder's right to any other act which is not included in the abovementioned enumeration, reaching even the harvested product.

The breeder's right is applied to the "reproduction or plant propagation material, as such, expressly excluding any other material which is not used with propagating purposes, such as grinding grain".



Article 5.1 determines that entire plants and ornamental plants or parts thereof, constitute the propagation material of a variety, extending the right, for instance, to the use of the stem of a flower cut as cutting, or the use of an ornamental plant as mother plant in the production of cuttings, when this cuttings are used commercially for the production of other ornamental plants of cut flowers.

By means of Act of 1978 the breeder's authorization was only required for "production with commercial purposes."

If the production did not have commercial purposes, then it was out of the scope of the breeder's right.

Consequently, if someone produced seed in his own establishment for replanting purposes in the same place and it did not sell, then, the production of that seed was out of the protection scope of the breeder's right.

As a consequence, the so called "farmer's privilege" was created, in order to give the farmers the possibility to replant seeds of a protected variety in their own fields without requiring an authorization or paying royalties to the owners of those varieties.

It is important to highlight that in the Act of 1978 this situation arose only implicitly, as a result of the minimum scope of the protection right.

As a result of the application of this rule, it was noticed that the rule was applied not only to the crops with which farmers were used to store the seed, such as cereals and sexual reproduction varieties, such as wheat, soy, etc., but it was also extended to other varieties or to varieties of asexual reproduction, such as fruit trees and ornamental plants. In these situations, the exercise of the so-called farmer's privilege ended up being abusive, because with the sale of only one fruit tree, a producer could get propagation material, such as "sprout or cuttings" and reproduce several hectares of fruit trees which would produce for several years a great amount of fruit, by having acquired only one tree and paid the breeder for this concept.

Technological advances only aggravated this type of problems.

Consequently, in the 1991 review of the UPOV Convention, the restriction regarding production with commercial purposes was removed and extended to the entire production or reproduction process.

Thus, the "farmer's privilege", which used to be implicit, needed by means of this new Act to become

explicit, as it will be explained further on.
The acts subject to the breeder's authorization, pursuant to the Act of 1991, are the following: production or reproduction (propagation); preparation for reproduction or propagation purposes; offering for sale; sale or any other form of marketing; export; import and storing for any of the purposes mentioned. It is evident that the Act of 1991 specifies the commercial acts which require the breeder's authorization with more detail, but all of them were somehow included in the commercialization concept provided by Act of 1978.

The advantage of the new wording was that the extreme cases could be easily framed, becoming the breeder's right clearer and more effective.

The Act of 1991 incorporated two new acts: the preparation with reproduction or propagation purposes, such as the case where a person acquires grain for consumption purposes, such as wheat, and treats it and cures it in order to turn it into seed. This situation, with the new wording, would be in violation of the breeder's right.

The reference to possession or storing also supposes a means to make the breeder's right more effective, because an action can be initiated because of the mere storing of a seed without waiting for a sale or any other express commercial activity.

3.- VARIETIES INCLUDED BY THE BREEDER'S RIGHT

UPOV

Varieties subject to Breeder"s right

ACT 1978 - Art. 5° y 6°

- Protected variety.
- Variety which is not clearly distinguishable from the protected variety.
- Varieties that in order to produce them, the repeated use of the protected variety is needed.

ACT 1991 - Art. 14 - 5

- Protected variety.
- Variety which is not clearly distinguishable from the protected variety.
- Varieties that in order to produce them, the repeated use of the protected variety is needed.
- EEssseenntially derivved vaarieettiies.

By virtue of Articles 5 and 6 of the Act of 1978, the breeder's right was extended to the protected variety and as a consequence, to any other variety which could not be clearly distinguished from the variety protected.

Progenitor lines used in the production of hybrid seed constitute a special case.

These lines can be exploited at scale without the existence of any "production with commercial purposes" of seeds of these lines or any form of commercialization. In these cases, in order to guarantee the owner of the line an effective right, the breeder's right must cover not only the line but also the seed of the hybrid variety which originates it and also its commercialization.

Therefore, breeder's right includes any variety commercially produced by the repeated use of the protected variety.

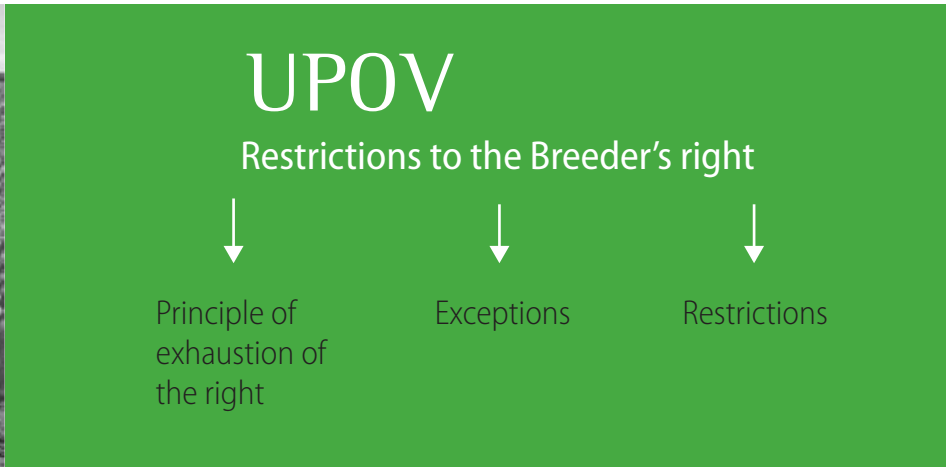
By virtue of Act of 1991, the breeder's right extends until reaching the essentially derived varieties of the protected variety, being the breeder's authorization, owner of the original variety, needed for its commercialization.

IV.- With regard to the scope of breeder's right, there appears a new one, closely related with the previous one, that is the RESTRICTIONS TO that right.

Which are the restrictions of the Breeder's Right?

There are three different legal situations that must be considered within the RESTRICTIONS OF THE BREEDER'S RIGHT: a) the principle of exhaustion of the right; b) its exceptions; c) the restrictions based on principles of general or public interest.

Fuente: www.inta.gov.ar



a) Exhaustion of the breeder's right

The principle of exhaustion of the breeder's right was implied in the Act of 1978, because there is not a specific rule in this regard, being expressly stated in Article 16 of Act of 1991, that once the propagation material has been legally placed into the market, the breeder can no longer exercise his right in order to object to subsequent exploitation acts.

UPOV

Exhaustion of the Breeder's right Article 16
Act of 1991

- Place into the market → Sale
  → Another form of marketing
- In the State´s territory
- By the Breeder or with his consent

However, the breeder's right "regenerates" when the exploitation act of a variety by a third party gives rise to a new reproduction of the variety, or when a material of the variety is exported to a country which does not protect the genera o plant species to which the protected variety belongs to, except that such export is intended for animal or human consumption purposes.

UPOV

Unless that

New reproduction of the protected variety

There is an exportation to a country that does not protect varieties of that genuos or specie

Exported material → CONSUMPTION

b) Exceptions to the right

A right of private nature, as the breeder's right, has exceptions which take into account the interests of specific sectors of the community.

The Act of 1978 in its Article 5ª3 stipulated the plant breeder exception, which states that the acts reserved for creation and marketing purposes of new varieties of plants are excluded from the breeder's right.

The plant breeder exception is the foundation stone of the breeder's right and the UPOV system. It is what makes a difference with a patent protection which is absent, and what maintains a balance between the legal monopoly granted to the creator and the benefit for the community, represented by a higher agricultural production developed by new varieties through the existence of unrestricted germplasm sources.

Article 15 of the Act of 1991 includes the plant breeder´s exception.

To such exception, it adds the execution of "acts done privately with non-commercial purposes"; "acts done with experimental purposes" and, as mentioned before, it makes explicit the farmer exception; which is expressed differently in the new Act: "to allow farmers to use with reproduction or propagation purposes in his own exploitation, the product of the harvest obtained by the planting, in his own exploitation of the variety protected or of a variety which is not different or essentially derived".

The Act of 1991 provides that said exception shall be granted within the reasonable limits and subject to safeguarding the legitimate interests of the breeder.

UPOV

EXEMPTIONS TO THE BREEDER´S RIGHTS

Private Interest

ACT 1991 - Art. 15°

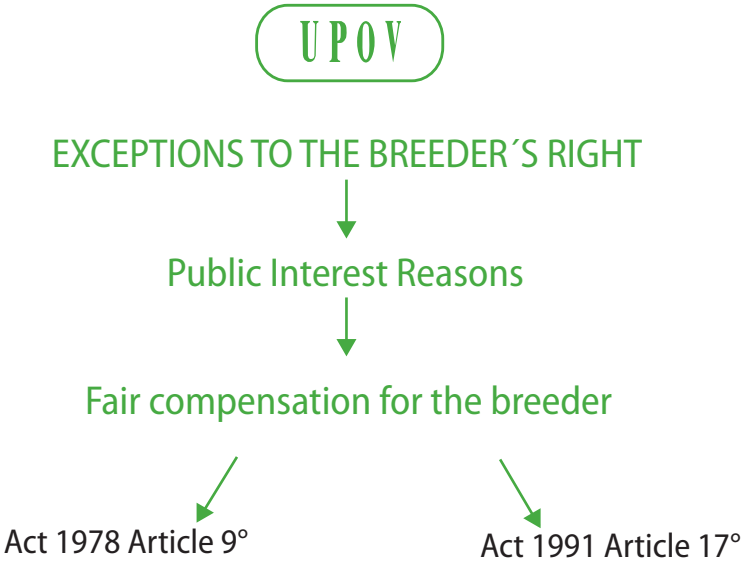
REASONABLE LIMITS ←

SAFEGUARDING THE INTERESTS OF THE BREEDER ←

Farmer´s Exception.
Allow the farmers to use with reproduction or propagation purposes, in its own exploitation, the product of the harvest obtained by the planting, in its own exploitation, of the protected variety or of a variety which is not different or essentially derived.

c) Restrictions of the breeder's right

In contrast to the exceptions, the restrictions to a private right have public interest reasons.



Articles 9ª and 1 7 of Acts of 1978 and 1991 respectively, list this principle without mentioning which would be the possible public interest reasons to be considered, and letting each country enumerate these reasons.

The only compulsory requirement to take into consideration is that the restriction to the right, shall have as consideration, an equitable remuneration or compensation for the breeder, and to allow each country to determine what type of compensation, in which amount, and the procedure and method which will determine it.

V.- As I have already explained the manner in which the UPOV Convention in its two versions of the Acts of 1978 and 1991 approaches the issue entrusted to me, I will try to show you now the way in which several countries have dealt with the scope of breeder's right and its restrictions.
The following are some examples:

- **European Union** with its Community Regulations related to the protection of new varieties of plants Nª 2100/94 and its amendment of 1995 and the agricultural exception Nª 1768/95.

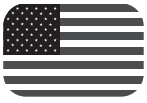
- **UNITED STATES OF AMERICA** with its "Plant Variety Protection Act, Amendments of 1994".

- **ANDEAN PACT** with the DECISION 345 or "Common Regime of protection to the rights of the breeders of plant varieties ".

- and **MERCOSUR** to the **ARGENTINE REPUBLIC** with its Seeds and Phytogenetic Creations Act Nª 20247/73 and the **FEDERATIVE REPUBLIC OF BRAZIL** with Act No 9456/97 of varieties protection.

Community Regulations

• Related to the plant variety protection N° 5 2100/94 and its amendments.
• Community regulations of the agricultural exception N° 1768/95.



Plant Variety Protection Act Amendments of 1944

Decision 345

• Common Regime for protection of the rights of the breeders of plant varieties.

MERCOSUR

• Seeds and phitogenetic creations Act N° 20.247/.73
• Act 9456/97 of protection of plant varieties.

1) ACTS SUBJECT TO BREEDER'S AUTHORIZATION

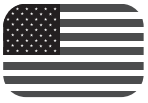
The EUROPEAN UNION in its Rules, Chapter III Article 13 deals with this matter and mentions the following acts as subject to breeder's authorization:

Acts subject to the breeder's Authorization

Chapter III Article 13

- Production or reproduction (propagation).
- Improvement with propagation purposes
- Offering for sale.
- Sale or other form of marketing.
- Export from the Community.
- Import to the Community
- Storing for any of the abovementioned purposes.

UNITED STATES OF AMERICA in Section 111 5 a) rules as "acts" the following:



Acts subject to the breeder's Authorizatiion

Section 111 5 a)

- Sale or marketing, offer, exposure for sale, delivery, exchange, dispatch for import or export or any other transfer of possession.
- Import and export
- Propagation or reproduction before its marketing
- Use of the variety in the production of hybrids or other varieties.
- Use of the seed which has been marketed as "non authorized propagation"
- Distribution or spread of the variety to third parties for reproduction purposes.
- Improvement of the variety for its propagation.
- Storing for the abovementioned purposes.
- Instigate or actively induce to perform any of the abovementioned acts.

From reading the American legislation, we can notice that certain types of acts arise, which are included in the breeder's right, and which are interesting to mention, because they are different from the UPOV models.

For instance "delivery or any transfer of the material", "use of the variety in the production of hybrids or different varieties", "use of the seed which has been marketed with "non-authorized propagation", "distribution or spreading of the variety to a third party for reproduction purposes" and "instigate or actively induce to the performance of any of the acts" listed by the rule.

Chapter V, Article 24 of the **ANDEAN PACT** in its Common Regime considers the following acts as the ones requiring authorization:

Acts subject to the breeder´s Authorization

Chapter V Article 24

- Production, reproduction or propagation.
- Preparation with reproduction or propatation purposes
- Offeringforsale.
- Sale or any other act involving the introduction in the market of the material with marketing purposes.
- Import and Export
- Storing for any of the abovementioned purposes
- Comercial use of ornamental plants or parts of plans as propagation material with the purpose of producing ornamental plants and parts of ornamental plnts, or cut flowers.

It is interesting to note as an inclusion to the Andean Community of Nations system "the commercial use of ornamental plants or parts of plants as propagating material with the purpose of producing ornamental plants and parts of ornamental plants, fruit or cut flowers", which shows the importance given by these country to said species".

The **ARGENTINE REPUBLIC** ruled the acts subject to the breeder's authorization not in its Act, which did not provide them, but in its regulatory decree Nª 2183/91, Article 4 which reads:

Acts subject to the breeder´s Authorization

Decree 2183/91 Article 41

- Production or reproduction.
- Improvement with propagation purposes.
- Offer.
- Sale or any other form of marketing available in the market.
- Import andExport.
- Advertising, samples exhibition.
- Exchange, transaction and any other form of marketing.
- Storing for the abovementioned purposes.
- Any other delivery for any reason.

In the case of Argentina, it is necessary to highlight the inclusion of other acts, besides the ones contemplated by the UPOV Acts, such as "advertising and exhibition of samples" and "other deliveries for any reason", of the reproduction material, which extend the scope of the breeder's right even beyond the Act of 1991.

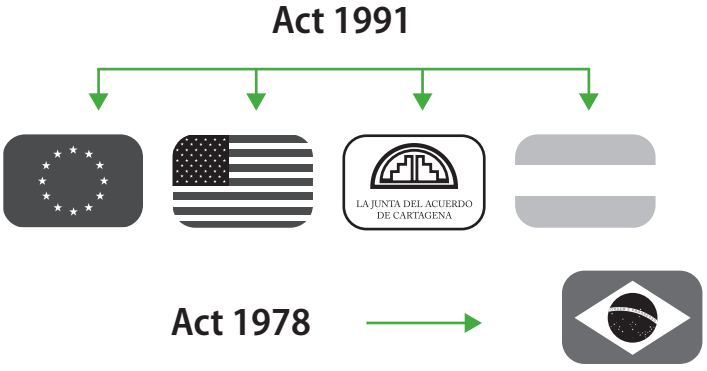
The **FEDERATIVE REPUBLIC OF BRAZIL** in Section III, Article 9 understands as acts only the different forms of marketing of the material, when restricting them to "production with commercial purposes" "offering for sale" and "marketing" in a broader sense.

Instruments subject to approval of the Breeder

Section III Article 9

- Production with commercial aims
- Offering for sale
- Commercialization

As a result of the above mentioned, it arises that with regard to the breeder's right scope, the legislations of the European Union, United States of America, Andean Community of the Nations and the Argentine Republic follow the guidelines of the UPOV Act of 91, whereas the Brazilian legislation lines up with the content of Act of 1978 restricting it to acts related only to the marketing of the material.



2) MATERIALS AND VARIETIES INCLUDED IN THE BREEDER'S RIGHT

With regard to this item, the European Union (Article 13 of the Community Regulation), United States of America (Section 111) and the Andean Pact (Article 24) are framed within the content of the UPOV Act of 1991 including not only the protected variety, the ones that do not present distinctive character and the varieties which production requires the repeated used of the protected variety, but also they include in their legislation the essentially derived

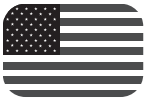
varieties and the product obtained from the harvest, including entire plants and parts of them, adding the community rule to the "components of the variety."

Materials and varieties involved in the breeder's right

Article 13 - ACT 1991

- Protected variety.
- Varieties which do not present distinctive character.
- Varieties which production requires the repeated use of the protected variety.

* Essentially derived varieties.
- Components froom the variety.
- Harvested material.
- Product obtained directly from the protected variety material.



Materials and varieties involved in the breeder's right

Section 111 - ACT 1991

- Protected variety
- Varieties which do not present distintive character
- Varieties which production requires the repeated use of the protected variety
- Esentially derived varieties
- Harvested material including plants or parts of plants

Materials and varieties included in The breeder's right

Article 24 - ACT 1991

- Protected variety.
- Varieties which do not present distinctive charcter.
- Varieties which production requires the repeated use of the protected variety.
- Essentially derived varieties.
- Product from the harvest, including entire plants and parts of them.

Argentine Law (Articles 20 and 25) maintains the varieties detailed in Act of 1978, and the Brazilian rule (Article 10, 2) is a mixture between the Act of 1978 and 1991, including not only the ones provided for in the text of 1978 but also the essentially derived varieties.

Materials and varieties included in the breeder's right

Article 20 and 25- ACT 1978

- Protected variety.
- Varieties which do not present distinctive character.
- Varieties which production requires the repeated use of the protected variety.

Materials and varieties included in the breeder's right

Article 10 - 2° - ACT 1978 + ACT 1991

- Protected variety.
- Varieties which do not present distinctive character.
- Varieties which production requires the repeated use of the protected variety.
- Essentially derived varieties.

3) With regard to the **RESTRICTIONS TO BREEDER'S RIGHT,** we will review how the Acts of 1978 and 1991 of the Upov Convention deal with the subject.

a) Exhaustion of the Breeder's right

The international legal systems regulate this issue in two ways: that the exhaustion of the right adheres to exploitation acts performed only in the territory of the State (national or territorial exhaustion of the right) or the one produced in any part of the world (international exhaustion of the right).

In this sense the European legislation stipulates a regional exhaustion, that is to say: within the territory of the union (Article 16); the American law stipulates the national exhaustion in its Section 111 d) and the Andean Pact in Chapter V, Article 27 the international exhaustion of the breeder's right.

In contrast with the above mentioned, the Argentine and Brazilian legislations do not have a specific precept that rules this assumption.

RESTRICTIONS TO THE BREEDER'S RIGHT
EXHAUSTION OF THE BREEDER'S RIGHT

		Chapter V		
Article 16	Section 111	Article 27	No	No
↓	↓	↓		
National Community	National	International		

b) Restrictions to the breeder's right

In this framework the above mentioned legislations would be divided into two big groups: whereas some of them include a wide range of public interest matters, others are limited to consider it solely from the point of view of the seeds. This last meaning that the State must assure the provision of seeds in high volumes and at reasonable price to satisfy the public needs. In the first group, we find the **European Union** legislation which includes as public interest matters the following: morality and public order, public security, protection of health and people, animals or plants, protection of the environment and industrial or commercial property and the preservation of the competition, commerce or agricultural production; the **Andean Community of Nations** which in broad terms deals with national security or public interests and the **BRAZILIAN** legislation that establishes as restricting conditions not only the availability of the crop in the market at reasonable prices, but also the need for agricultural policies, national emergency cases, the abuse of economic power and cases of non-commercial public use.

Restrictions to the breeder´s rigth

Article 138

- Public Morality.
- Public Order.
- Public Safety.
- Protection of health and people, animals or vegetables.
- Protection of the environment.
- Protection of indusrial or comercial propery.
- Preservation of the competition, comerce and agiclural prodution.

Limits to the breeders right

Section 44

- Ensure replacement of the public needs and seeds in quantity and reasonable prices
- Supply public needs of variety on a reasonable price

Chapter VI

- Ensure an adequate exploitation of the protected variety
- National sequrity or public interest.

Restrictions to the breeder`s right

Article 28

- Make sure that the public needs are satisfied in terms of quontity and prices.

Article 28 and 36

- Availability of the crop in the market at reasonable prices.
- Need for agricultural policies.
- National emergency case.
- Abuse of economic power.
- Non-commercial public use cases

c) Exceptions to the breeder's right

	Breeder	Private acts with non commercial purposes	Acts with experi-mental purposes
	YES - Art. 15	YES - Art. 15	YES - Art. 15
	YES - Section 114	YES - Section 114	YES - Section 114
	YES - Art. 25	YES - Art. 25	YES - Art. 25
	YES - Art. 25	NO	NO
	YES - Art. 10º III	YES - Art. 10º I	YES - Art. 10º III

Exceptions to the breeder's right

	Farmer	Others
	YES - Art. 14	
	YES - Art. 113	From the Intermediaryç- Section 115
	YES - Art. 26	
	YES - Art. 27	Consumption - Art. 27
	YES - Art. 10º I y IV	YES - Art. 10º II

From the attached charts, it arises that every legislation has stipulated in their articles "the plant breeder exception" (EU Art. 15; American Legislation, Section 114; Andean Pact, Art. 25; Argentina, Art. 35 and Brazilian Legislation Art. 10ª I and IV)

Private acts with non-commercial purposes and acts with experimental purposes have been included by all of the mentioned legislations except for Argentina (EU Art. 15, USA Section 111 a) and 114; Andean Community of Nations Article 25; and Brazil Art. 10ª 1 and III)

At the same time, the Argentine legislation has included specifically as an exception to the breeder's right the use of propagation material as consumption, whereas the American legislation in its Section 115, has stipulated the so called "exception of the intermediary".

d) Farmer's exception

Now, I will try to explain briefly how these legislations have dealt with the famer's exception.

• THE EUROPEAN UNION

This exception is specifically included in the Community Regulation of the agricultural exception Nª 1768/95.
The definition of the farmer exception adopted by the community regulation is similar to the content of the UPOV Act of 1991, when it mentions that it shall benefit from the same, the farmers who use the product of the harvest of a protected variety with propagation purposes in its own exploitation and defines as its own exploitation, a part of or the entire process of exploitation approached by the farmer or under his direct responsibility, whether owned or leased.

R (CE) 1768/95

- Farmer.
- Use of the product of the harvest of a protected variety.
- With propagation purposes.
- In its exploitation.

→ **OWN EXPLOITATION**

- The entire exploitation process or part of it.
- Personally or under its direct supervision.
- Own or leased.

The European regulation clearly establishes the application scope extending it to fodder crops, cereals, potato, oilseeds, and textile.

Within the regulation, two types of farmers are individualized: **the small farmer,** who is not forced to pay royalties and those who are not included in the above mentioned category who must pay **fair compensation** to the breeder.

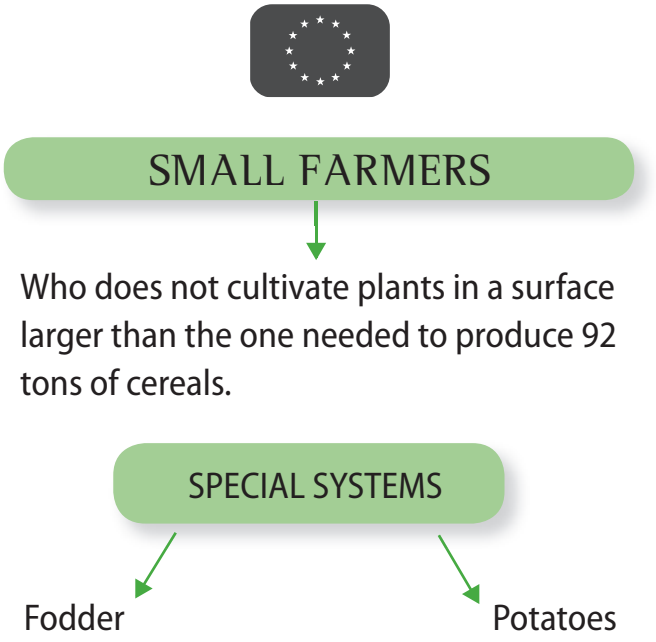
CATEGORIES

Farmer	→	He//She must pay a "fair compensation"
Small Farmer	→	The payment of royalties is not obligatory

This **fair compensation** must be established by means of an agreement between the farmer and the holder and, in case there is no agreement, then the amount to be paid by the farmer shall be in an amount lower to the one charged for the production under license by certified seed of the lowest category for equal variety and in the same area or, otherwise, the amount shall be lower than the royalty included in the sale price of the seed in the area, provided that this is lower than the price at the place of its production.

This compensation must be paid once the farmer uses the harvested product with propagation purposes in his/her field.

Small farmer (the one exempt from payment obligation) refers mainly to those who do not cultivate plants in a surface larger than the one needed to produce 92 tons of cereals.



A special criteria is established for fodder and potato species, but for both it is based on an obtained surface and production unit.

At the same time, the European regulation, stipulates different related issues, such as:

- the non-existence of quantitative restriction in relation to farmer's exploitation
- that the control of the agricultural exception rules is in the hands of the breeders, not being able to request the assistance of official bodies.
- the specific regulation of the proceedings to request information to the farmers, processors, breeders, their associations and official bodies.
- the provision of a sanction for infringements to the rules, which consists of a civil compensation for damages before a court of law, of four times the value of royalties charged under license.

• Plant Variety Protection Act Amendments of 1994 - THE UNITED STATES OF AMERICA

The Farmer's exception is stipulated in Section 113 of the rule, with a definition similar to the one included in UPOV Act of 1991, because it considers as included "the person who stores the seed, originating from the seed or as a result of the seed, obtained with the consent of the owner of the variety, for propagation purposes and uses it in the **production** of a crop, in its exploitation or **sells seed** for purposes other than its reproduction through the **"normal commercialization channels".**

Please note, that the American Law does not make reference to the farmer, but only to "person" which implies a wider sense of the concept and gives place to the assumption that the seed can be sold, but whenever the destiny is not seed, for instance grain and provided that such sale is done in they way and place stipulated for this type of transactions.

SECTION 113

A person
Who stores seeds
Originating from the seed or as a result of the seed, obtained with the consent of the owner of the variety
For propagation purposes
And uses it in the PRODUCTION of a crop or
Inn its exploitation ó
And SELLS seeds for purposes other than reproduction thogh the "normal marketing chanels".

• ANDEAN COMMUNITY OF NATIONS

The Andean Community of Nations in its Article 26 includes this subject defining "those who store and sow the product obtained from the planting of a protected variety for its personal use." As it can be observed, the UPOV guidelines are followed in the definition. It is not clearly defined the person subject to the benefit when it is referred as "those who" but also it does not clearly explains how the concept "personal use" must be understood, supposing that these issues will be regulated by national rules.

Andean Pact Artticle 26

Those who Andean Pact Article 26
Store and sow
The product obtained from the planting of the protected variety

EXCEPTION

Commercial Use

Species

Fruit

Ornamental

Forest

Porpagation or reproduction material

Entire plans and its parts

• IN ARGENTINA

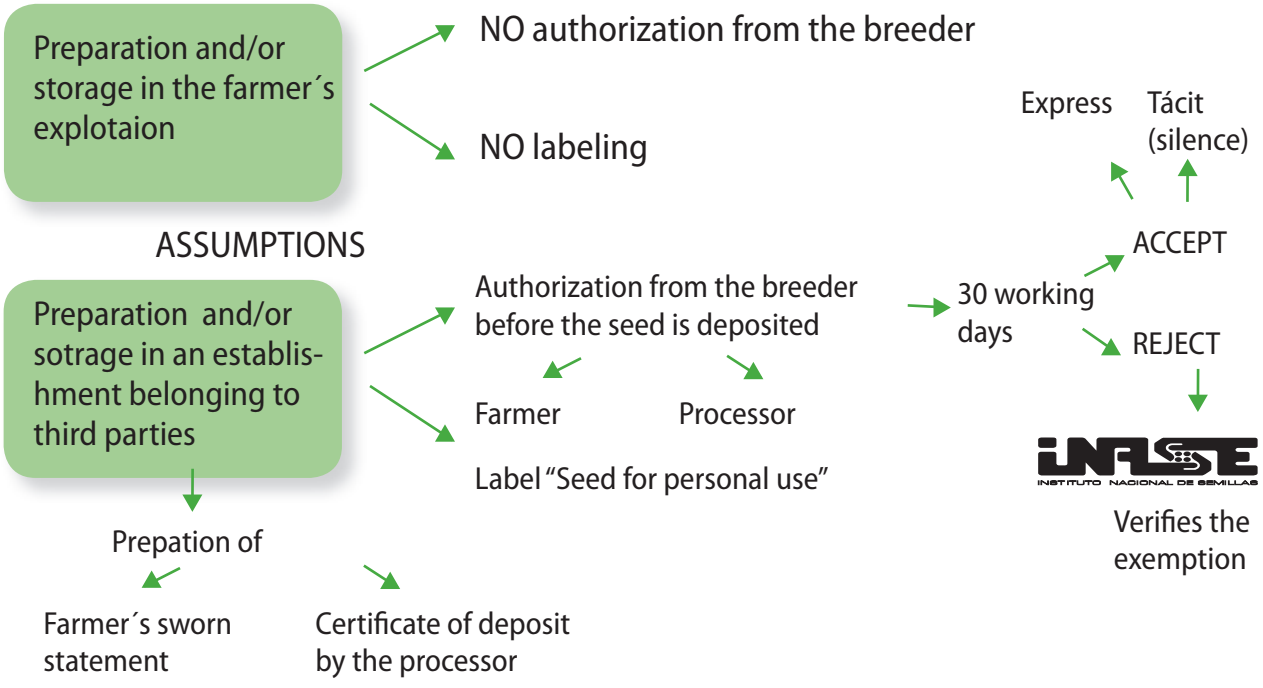
Argentina has different rules to regulate the farmer's exception.

The seeds law in art. 27 states that" if a farmer stores and sows seed for his personal use does not require the authorization of the breeder.
The decree Nº 2183/91 establishes "The authorization of the breeder of a variety shall not be required, in accordance with the provisions of Article 27 of Law Nr. 20.247, when a farmer saves and uses as planting material on his own! holding or estate, the product of the harvest which has been obtained by planting in such place, a protected variety.
Measures adopted in connection with the "farmer's privilege" providedfor in Article 27 of Law No. 20.247 in the Resolution 35/96.
Article 1. (The Directorate of the National Seeds Institute decrees that:) The conditions determining eligibility for the "farmer's privilege" provided for in Article 27 of Law 20.247 are the following:
(a) To be a farmer.
(b) To have acquired the original seed legally.
(c) To have obtained the present seed from that legally acquired;
(d) To set aside from the harvested grain the amount of seed that will be used for subsequent sowing, distinguishing it by variety and quantity, prior to processing.
There shall be no farmer's privilege where the farmer has acquired seed for sowing otherwise than by setting it aside himself, whether free of charge or for consideration (purchase, exchange, donation, etc.).
(e)The purpose of the seed set aside to be sowing by the farmer on his own farm and for his own use.
Purposes other than sowing by the farmer shall not be covered by Article 27 of Law No. 20.247.
The purposes of sale, permutation or exchange by the farmer himself or through an intermediary are expressly excluded.
The exception shall benefit the farmer alone and not third parties.

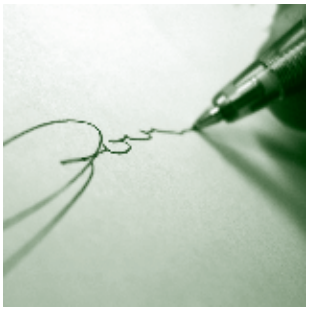
Act 20.247 Article 27°	Decree 2183/91	Resolution 35/96
• Who • stores and • plants seeds for its own use.	• Farmer • stores and uses as seed in its exploitation, regardless of the tenure of same.	• Farmer • stores the grain individualizing the seed per variety and quantity, before it is processed. • Identity and individuality of the stored seed, since it is removed from the establishement, then processed and deposited until it is sowed. • The destination of the stored seed shall be the planting by the farmer in its own exploitation for its own use.
	• The harvested product as a result of the planting of a protected variety in that place.	• Exploitation: the different areas of a same holder, reglrdless of its tenure regime • Having legally acquired the originating seed. • Having obtainned the current seed from the legally acquired one.

Neither the breeder's authorization under Article 44 of Decree No. 2183/91 nor labelling of the seed under Article 9 of Law No. 20.247 shall be required in the case of the farmer setting aside, packaging, storing, depositing and sowing seed in any of the plots that constitute his farm without altering the boundaries thereof.
For the purposes of this Article, "farm" means the various plots of land of one and the same owner, regardless of the nature of the tenancy.
In the event of the seed having to be moved from one plot of land to another that belongs to the same owner, the move shall be recorded in the relevant documentation (waybill, consignment note, guide, etc.)
Where the seed present on the land or farm of the farmer is covered by the concepts of "exposed to the public" or "delivered to users for whatever reason" provided for in Article 8 of Decree No. 2183/91, the seed shall be labelled and the owner shall have the authorization of the owner of the cultivar, in the case of protected varieties, depending on the various situations provided for in Article 41(c), (d), (g), (h), (i) and (j) of the said Decree.
The farmer who delivers seed to a third party for processing and/or deposit with a view to his own use thereof shall take responsibility for its identity (variety of the species), and shall so state on the identification label.
The breeder-owner shall inform the farmer in a recorded communication of his acceptance or rejection of the request for permission within a period not exceeding 30 working days following the date of receipt thereof.
The silence of the breeder in response to the request for permission shall be considered acceptance thereof on expiry of the aforesaid period.

Resolution N°35/96



Farmer's exception



Farmer's Exception in the Argentine Law

This paper was created by **Mrs. Carmen Gianni** and it was published in the book "Variedades Vegetales en Argentina" (Plant Varieties in Argentina): The seeds trade and the breeder's right", Latín Gráfica Publisher, October, 1998, page 77.
This paper has been modified in January, 2010.

Exceptions to the Breeder's Right. Scope of the Breeder's Right. The "erga omnes "right. Article 27 of Law No. 20 247 Seed and Phytogenetic Creations law. Resolution 35/96 of the National Seed Institute. Conditions.

One of the most problematic interpretations in the Argentine law in relation to seeds and the proprietary rights of the creators of plant varieties has been and continues to be, without a doubt, the farmer's exception, included in Article 27 of Act 20,247.

I. • The so-called exception of personal use by the farmer is a restriction of private nature to the property right granted to the creators of new varieties included in Chapter V of said Act.

Act 20247 did not define the scope of the property right on new varieties.

Chapter V stipulates that the property right on the creation or discovery implies that no <<other person can reproduce or sell the seed without his au-

thorization>> and Article 27 establishes the general principle which states that all the deliveries, for any reason, of seeds of a protected variety, require the authorization of its owner.

The Act only mentions a property right on the plant variety or Phytogenetic creation, so it was necessary to understand same with the scope established by the Civil Code in its Article 2513 when referring to <<the right of possessing the thing, dispose of it, use it according to a regular exercise.>> Such description does not totally agree with the nature of rights we are dealing with, so that is why the statutory decree 2183/91 came into the picture to fulfill this legal gap.

According to Article 41 of the decree, the property right on a plant variety is a right <<erga omnes>> which entails the obligation by third parties to avoid producing, reproducing or commercializing the variety without the inventor's prior consent.

The creator or discoverer and developer shall grant his prior authorization for the following acts: production or reproduction; improvement for propagation purposes; offer, sale or any other way of commercialization, export, import, advertising, exhibition of samples, exchange, transaction, storing for any of the abovementioned purposes or any type of deliveries.

The Article has considered the entire process of production and commercialization of the seed, guaranteeing in this way that at all stages, the breeder will be completely aware of the use given to his seed by a third party and thus, he will be able to exercise the right granted by Law.

The Article considers a wide range of acts, valuable consideration implying a commercial, lucrative activity, gratuitous acts such as public donations of seed by the Governments with development purposes, deliveries by the producers to storage facilities or cooperatives for its sorting and cleaning, exchange transactions between producers, etc.

The act provides four exceptions to the creator's right; three of private nature and one of them of public interest.

The exceptions are: plant breeder, the farmer, use or sale of the product obtained from the new variety as raw material or food and the declaration of public interest of the new variety, by the Executive Branch, whenever it is necessary to ensure an appropriate replacement in the country of the obtained product, in quantity and price, stipulating the granting of mandatory licenses.

Article 37 stipulates that the administrative authority shall sanction those who identify or sell seeds of new varieties which propagation or commercialization had not been authorized by its owner.

The jurisdiction of the Federal Justice settles disputes which may arise between the owners and the users of the varieties, because of licenses conditions, royalties, etc.

Article 27 of Act 20247 stipulates the so called farmer's exception for any farmer who stores and sows seed for his personal use.

Decree 2183/91 states: << According to Article 27 of Act 20,247 the authorization of a breeder of a variety shall not be required, when a farmer stores and uses as seed in its exploitation, regardless of its tenure regime, the harvested product result of the sow of a protected variety in that place. »

II. • During the period when the Regulatory Decree was enacted, around 1990/91, there existed a "de facto" situation in relation to the rights of property and the seed of the farmer.

Argentine Situation in the nineties with regard to the Farmer´s Exception

1990

Breeders position

*Breeders can´t take their seed out of the farm. If they do, the farmers loses the benefit.

COMMERCIAL SEED

Farmers must clean and storage their seed in their farms and can`t take them out.

Argentine Situation in the nineties with regard to the Farmer´s Exception

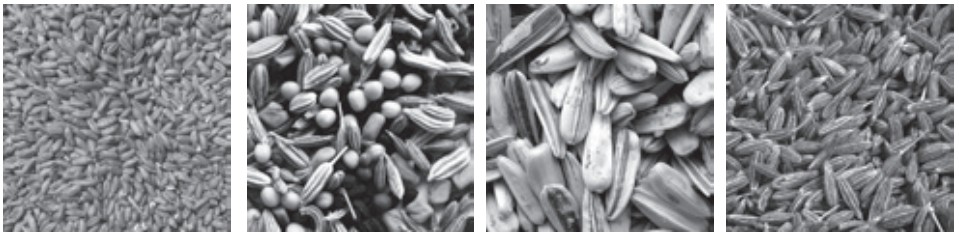
Farmers` Associations

As a result of being farmer his seed is automatically included in the legal benefit.

The "Farmer´s seed" does not need identification

The "farmer´s seed" does not needto be controlled nor conditions must be established to it

The mixture of seeds of different farmers in an undifferentiated way is included within the legal benefit.



• Any communication addressed to the breeder brought about a payment and authorizations were not admitted without a subsequent valuable consideration.

• Breeders considered that it does not exist in the market or in the deposits another seed than the commercial one, and as such, royalties had to be paid.

• Thus, by virtue of the interpretation made by certain breeders of protected plant varieties of the Article 44, Decree 2183/91, correlating it with Article 27 of Act 20,247 it was understood that any seed which was removed by the farmer from the land where it had been harvested, even the seed for personal use, required their authorization and the payment of royalties.

• It was understood that from the term <<store>> it arose the obligation of keeping the seed in the land. Consequently, if the producer removed it from its exploitation land, whatever the reason for its transport, even for its processing, then it was no longer a seed for personal use, and should be identified as commercial seed, and as such, required the payment of royalties.

The confusion between the role of farmer and other workers in the seed market arose because of the benefit of Article 27 which extended not only to the farmers but also to service providers, such as storage facilities, processors, and cooperatives, not being clear their role with regard to labeling and authorizations.

• The consideration that just by being a farmer implied that any seed used by him was for his personal use, without the need of complying with any other requirement.

• It was not relevant which was the origin of the seed of the farmer (purchase, exchange, etc.)

• Also, it was not relevant if the seed kept or not its identity from the harvest of the grain until its delivery to the processor (It was very frequent the exchange of seeds between the different producers of a same cooperative classifying it per variety or mixing it and depositing it in common recipients).

• Much less important was the destination that the farmer would provide for such seed (if he would sow the seed, sell it, or deliver it for consumption or exchange it with some neighbor)

The abovementioned list of circumstances is only illustrative; several other confusing and conflicting activities can be added.
The purpose of this enumeration is to demonstrate the complicated and difficult framework being faced and the need to adapt the rules to this complex reality.

III. • In view of this situation, the I**NASE had to face the difficult task of analyzing the "personal use" issue and that is when the principles that subsequently would be reflected in said Resolution 35/96 were set forth.**

It was established the following:

• The label process is related to the seed trade and not with the problems of the rights of the breeders, their authorizations and the payment for the use of their plants varieties

• Argentine legislation rules both aspects in only one text. The interpretation must be complete in order to complement both aspects, without forgetting that each one of them has its own principles, actors, and effects.

• The farmer's exception is a right granted by the Law and its execution must be subject to the compliance of regulatory requirements, and its interpretation is restrictive.

• Farmer is synonym of user of seeds.

• The exception cannot benefit a person other than the farmer and especially not those who are in conditions, because of their particular situation, of commercializing seed from the farmers as it is the case with processors and depositaries.

• The exception is not a benefit granted to the users for their condition as such, but it also requires the storing and sowing for their personal use of the seed in their exploitation.

• The issues which arose from the exercise of property rights of plants varieties between owners and users (amounts of royalties paid, scope of the licenses' agreements, conditions of the authorizations, etc.) are regulated by private law.

• INASE is in charge of applying the rules of Act

20,247 with the restrictions set forth with regard to its competence and, when necessary, enact those regulations considered as essential to assure the compliance of the legal purposes.

- The storage mentioned in Article 27 of the Act 20,247 and Article 44 of Decree 2183/91 does not refer to any particular physical place, but it implies that the farmer's seed must originate from the grain obtained from the sow in the exploitation of a protected variety.

- For this purpose, the farmer prior to the delivery of the seed to a third party for its processing or deposit, will have to separate (store) the grain obtained from its exploitation, the seed he shall use for his subsequent sow in his own land, individualizing it per variety and quantity.

- The decision of the farmer to store from his own grain its own seed is called "the original intention of the farmer", which means the act of separating from its grain the seed, identifying it per variety and quantity, prior to any delivery activity.

If the seed sowed by the farmer was obtained by a different means than the one previously mentioned, then the <<store>> concept indicated by the regulations does not apply.

- The seed from the protected variety (original seed) must have been legally acquired in the market.

- The stored seed must keep its identity with regard to the variety itself (varietal identity and volume) as well as individualizing its owner during the whole process that starts with the removal of the seed by the farmer, its delivery to the processor for cleaning, processing and deposit; its removal until the moment of the sow.

If during this process the seed of a producer is mixed with seed of another or if it is exchanged, then the seed is no longer his seed as thus, it does not satisfy the requirements mentioned in Article 44 of Decree 2183/91.

- The destination given to the seed stored by the farmer is the sow in his exploitation and for his personal use.

- The Farmer's exception is accomplished with the sow of the stored seed.

It is not included within the scope of the farmer's exception, the farmer who having legally acquired the original seed, having harvested it, stored from its grain the new seed and having kept its identity during the entire improvement and storage process, decides not to plant it and proceeds with its sale, exchange or deposit either directly or by means of an intermediary.

The exception does not apply either for the case when having fulfilled the prior stages, the farmer decides to plant it in a land which does not belong to him.

- The <<exploitation>> concept included in Article 44 of Decree 2183/91 is not synonym of an unique field, but it can include different fields of the same owner, whatever the tenure regime of same.

- If the seed coming from a protected variety does not cross the borders of the farmer's field; thus maintaining the farmer his possession right on the field, then the breeder's authorization is not required.

- If the farmer is the owner of fields in different places, whatever the distance between them, and the seed is transported from one field to the other for improvement, processing, storing, or harvesting purposes, without any third party intervention, the breeder's authorization is also not necessary.

- Pursuant to Articles 35 and 37 of Act 20,247 if the farmer's seed is exposed to the public or delivered to the public for any reason, then it shall be labeled and for that purpose it shall count with the authorization of the owner of a new variety.

- If the farmer decides to improve and/or store the seed set aside for his personal use, coming from a protected new variety in a cooperative, a storage facility or deposit of third persons, whether these are individuals or legal entities, then this act constitutes a delivery to a third party, who generally renders services for which it receives a compensation.

The delivery, for any reason, generates according to Article 27 of Act 20247 the obligation of requesting the variety's owner authorization

This situation does not change the fact that the seed is destined for personal use, which is unknown at the moment of its improvement or deposit, since the sowing of the seed by the farmer has not been

completed in its exploitation.

With this assumption, the owner shall grant or not the authorization or shall subject it to consideration when the personal use is credited after the sow season.

NATIONAL INSTITUTE OF SEEDS

Resolution INASE Nº 35/1996

IV.- **Taking into account the abovementioned reasons the NATIONAL SEEDS INSTITUTO (INASE) enacts Resolution 35 on February 28, 1996,** which includes in its Articles 1 to 3 the above mentioned criteria.

- The objective of this rule is not only to establish the conditions of the origin of the farmer's exception, but also to create a system for granting authorizations by breeders. Likewise it regulates the activities of intermediaries, when clearly establishing the obligations and responsibilities of the processors who intervene in the processing of the seeds covered by this legal benefit.

- Breeding farms must give their consent in relation to the authorization requests by the breeders, when applicable, and whether this is positive or negative, they shall grant it within 30 business days counting from the date of the notice of the request.

- Breeder's silence in face of the farmer's request shall be interpreted as an acceptance, according to Article 918 of the Civil Code.

- The establishment of express rules that regulate the seed activity of the seed processors with regard to the seed issues of the farmer was crucial, because up to the moment of enactment of the rule, the limits of this activity were unclear and favored confusion: farmer and processor were the same at the time of having access to legal benefits.

- Normally processors and depositaries, in the case of storage facilities and cooperatives show in their facilities the seeds from its own production, those destined for sale whether they belong to them or to third parties, and the seeds from the different farmers which normally are taken for its processing, improvement and storage until the date of the sowing by the farmer.

This is to illustrate that the seeds can be found in public places where potential buyers can have access to them and perform commercial acts (purchase and sale, exchange, etc.).

All these seeds, in these assumptions, are exposed to the public and shall be delivered to users in the terms of Article 9 of the Law 20247 of Seeds and Phytogenetic Creations, meaning that they should be labeled.

Those seeds are shown to the public because they are available for delivery so that they can be sown. They are in places where advertising acts are performed, exhibition of samples, presentations, exchange, offer, among others, whether these are fields, storehouses, warehouses, , etc. and regardless of the recipients that keep them: bags, containers, silos, etc. and even bulk containers (Article 8, Subsection a) Decree 2183/91).

Additionally, farmer´s seeds deposited in facilities and/or fields of intermediaries, whether these are storage facilities, cooperatives, processing plants, etc. shall be at some point delivered by the farmers to them for their sowing.

Farmers to whom their own seed is returned are the users established by the Article 9 of the Seeds and Phytogenetic Creations Act and the return of the seed to the producer is "the delivery for any reason" that this rule contemplates.

All these issues have been ruled by Resolution 35/96, which established the obligation of the breeder of submitting a sworn statement to the processor and a certificate of deposit at the moment of the delivery of the seed.

It is also established as an obligation by the processor (in the case the seed is deposited) to put a special label for farmer's seed which is different from the commercial label. Also to verify the exactitude of the name, domicile, id number and deposit date included in the producers' sworn statements, if the farmer is requested the breeder's authorization and to file the mentioned documentation in less than 180 days.

The farmer shall have the obligation to deliver the sworn statement to the processor, request the breeder's authorization and to state the varietal identity of his seed.

The Resolution stipulated INASE´s intervention only for the case when the breeding farm denies the farmer's authorization. In this case, the farmer, without the need of prior notification shall credit before the application agency the requirements of the exception included in the rule.

This intervention of the state agency has the purpose of verifying the extremes required in the regulation by the farmer or processor, but it that does not replace the activity that must be performed by the owners of the varieties in the exercise of their rights derived from the property title granted.

CONDITIONS
•Being a farmer
•To have legally acquired the original seed
•To have obtained current seeds from the legally acquired seed
•To sow his own seed in his own exploitation
•To use the own seed for personal use. It can not be sold or exchanged
•To keep his seed separated and identified by variety and quantity
•The farmer's seed shown in public must be specially labeled .

V. • The enforcement of the administrative rule caused doubts and comments from the involved sectors.

• EInitially it was interpreted that by virtue of Article 3 it was impossible for the farmer to dispose of his seed because it was necessary to obtain the authorization of the owner of the variety before removing the seed from the field.

• This is not that what the rule stipulates. The farmer shall only request the authorization, being able to remove the seed after having performed the request.

It was said that the process of the authorization request was difficult and required doubled efforts (by the farmer as well as the processor). Both had to request the same authorization from the breeder.

In this case the authorization request of the farmers and the processors stipulated in Articles 3 and 10 were mixed up, considering that both were the same thing.

In the framework of Resolution 35/96 the requests contemplated in the mentioned articles are different. They shall be fulfilled by different persons, in different times and they are based on different budgets.

The authorization of Article 3 must be requested by

the farmer prior to the removal of the seed from its field. The information mentioned in Article 5 must be included and then it must be sent directly by the farmer to the breeder by a reliable means. It is based on Article 41 Subsection j) of the Decree 2183/91.

The authorization request of the processor stipulated in Article 10 is subsidiary of the previous one and in the case same is not fulfilled it must be sent by the processor when the farmer delivers him the seed for processing. It is limited to request the authorization of the breeder in order to process and store the seed that the farmer destined for personal use.

This request is based on the mentioned Article 41 Subsections b) and i)

- It was assumed that proprietary breeding farms could arbitrarily deny authorizations preventing the farmer from producing his own seed.

The refusal by the breeding farms cannot be arbitrate, because Resolution 35 clearly states which are the requirements to be fulfilled by the farmers in order to be benefited with the exception; thus fulfilling this way a legal gap that gave place to contradictory interpretations.

At the same time, in the assumption that the breeding farms deny their authorization, then the INASE comes into the picture as guarantor of the fulfillment of the rules by both parties.

VI. • The Argentine Republic was the first country with exception of the European Community, to enact a rule that would regulate the different aspects with regard to the exercise of the farmer's exception.

Currently, after more than 14 years of application it can be stated that the rule has fulfilled the purpose that originated its enactment: establishing a proceeding for the exercise of the rights of the breeders and farmers, pursuant to Article 1 of the Act 20247; to guarantee the right of both to enjoy their goods (their inventions and their seeds); to provide accountability for the market when establishing rules for those who, because of their activity, are immersed in the farmer's seed issue and clearly determine their responsibilities.
Anyway, this is just the beginning.

- The appearance of new characters in the market, such as sow pools and other associative forms between farmers make us wonder whether a new legal framework should be adapted to the new reality.

Therefore, the role of the farmer contemplated in the legal exception must be defined. This seems clear and simple but for over 14 years the sectors involved have not reached an agreement as to who is the subject of the right contemplated in Article 27.

This uncertainty generates a legal vacuum that gives place to many arbitrary actions to the detriment of its own actors, whether these are the farmers themselves who in many opportunities were sued unfairly by the owners of the seeds or obliged to pay for concepts or circumstances that were not applicable, as well as the breeders, who couldn't have access to the returns of their discoveries due to an undifferentiated mass of "farmers" which included not only that person who, according to the legislators, sows his seed for personal use but also economic groups that make money doing business with the new inventions without compensating or paying royalties to those who created them.

- On the other hand, the farmer's exception deserves a new analysis in relation to some species. This analysis should be adapted to the reality of the production of that other specie, because an analog adaptation of a rule thought for cereal is insufficient and inappropriate to prevent the abuses of the indiscriminate reproduction of other species, infringing this way the legal purposes which inspired its enactment.

This is the case of the nursery, ornamental and tree plants and of the new biotechnological developments.

- Likewise, there are also doubts surrounding the survival of this exception, because of the advances in the granting of patents on living beings, among them plants.

If the national patents law does not extend in order to contemplate the right of the farmer to provide his seed a personal use and also the scope of this right, then the benefit granted to the farmers as the first selectors and keepers of biodiversity shall remain not only at dead point but also it shall increase the amount of conflicts among biotechnological, classic breeders and users sectors, and specially farmers who shall damage the seed trade and its derived products both at national and international level. As a consequence of this, the national economy will suffer, as it was the case with Monsanto in 2006.



Farmer´s exception in the market of the Argentine Republic

Application of INASE Resolution N° 35/96

This article was developed by **Mrs. Carmen A. M. Gianni** as Director of the Legal Affairs Bureau of the NATIONAL SEEDS INSTITUTE (INASE), Eng. Roberto Viola as Coordinator of the Area of Preliminary Investigations and Mr. José Antonio Piana as Advisor to that Bureau in the Year 2004 and was submitted for consideration of the NATIONAL SEEDS COMMISSION (CONASE) during that same year.

This article has been modified on January 2010.

INASE resolution N 35/96. Definition of Breeder. Definition of origin. Definition of farm saved seed. Definition of. Farmers mandatory rules. Procesor and depositary mandatory rules.

I. The aim of this article is to clarify different aspects that refer to the farmer´s exception in our country, and especially the INASE Resolution N° 35/96 that sets forth the conditions and regulates the proceedings to make this legal benefit effective.

For the alleged reasons appearing on Act Nº 20247 on Seeds and Phytogenetic Creations, stated in the submission note dated March 30th, 1973, it is expressed in Chapter V, paragraph four, that the "breeder-seed's -user" relation, (being the latter a farmer, multiplier, seed trader, etc.) is a private right, when establishing that "the price of sale of the plant variety shall be freely established between the ownership title holder and the user itself "(seed multiplier or farmer), and adds that the problems that might arise between them shall be solved by the Federal Justice, simple system and similar to the one existing in the country as regards the intellectual property rights on inventions.

For this reason the breeder, by the right of property granted by the law, is who establishes the conditions in relation to the marketing and use of his varieties, among them: payment of royalties, form of payment (Article 42 of Decree 2183/91) and it is not the responsibility of the NATIONAL SEEDS INSTITUTE (INASE), but of the Federal Justice, to solve the problems that could arise regarding this issue.

The NATIONAL SEEDS INSTITUTE (INASE) must intervene in those particular cases where the sanctioning power is exercised, which is implicit in the policing power that the law grants in this subject matter (Article 45 Law 20247) in order to ensure the legality of the seed circulating in the market with regard to its identity and quality, as well as the protection of the intellectual property rights of the varieties protected in the "Registro Nacional de Cultivares" ("National List Registry").

And it is by the application of the policing power by the State, that it becomes necessary to determine the scope of Article 37 of Act 20240 on Seeds and Phytogenetic Creations, especially in relation with the farmer's exception regulated in Articles 27 of said Act and 41 and 44 of Decree 2183/91.

The abovementioned situation becomes effective when the INASE verifies, exercising its power of police of commerce, that a person is in possession of a protected variety seed without the breeder's authorization, and as a result of that, he would be infringing Article 37 of Act 20247, and this person affirms that his situation is contemplated by the farmer's exception stipulated in Article 27, and therefore such possession is not subject to penalties.

For this reason, it was necessary to determine the admissibility requirements of such "farmer's exception" and the procedure to the fulfilled by this person, in order to exercise his right and evaluate if the case under review constitutes an offense according to the Article 37 of the abovementioned law.

In case, an article that stipulates administrative criminal penalties for the cases of alleged violation of the breeder´s right is not included in the text of Act N° 20247 on Seeds and Phytogenetic Creations, as it is the case of Article 37, then the INASE shall not have to intervene in the subject, as it happens in the majority of the countries with a breeder's right legislation with no sanctioning powers by the Governmental Agencies.

With regard to the breeders' right system in force in our country, the requirements that a farmer must fulfill in order to benefit from the exception of Article 27, Act 20247 and its legal and technical interpretation are of exclusive competence of the State and these shall not be fixed, modified or altered under any condition or interpretation by the breeders in order to license their varieties.

As a result of the abovementioned, if the farmer fulfills the requirements laid down by the legislation in force in relation to the farmer's exception (in this case the INASE Resolution N° 35/96) in order to exercise his exception right, then that means that he did not infringe Article 37 of Act 20,247.

Consequently, the INASE shall not exercise his sanctioning power against the farmer, implied in the policing power awarded by the law, in order to ensure the legality of the seed circulating in the market, without considering the private conditions that the farmer had previously agreed with the breeder, who shall turn to the competent authority in order to file any claim derived from the property right awarded by law, such as: damages, misuse of trademark, etc.

In case the breeder pretends to collect royalties by the farmer's own seed, even when the situation of the farmer is included within the exception provided by Article 27 of Act 20,247, it will be the Federal Justice which will determine if the regulation of Article 27 prevails or not over the payment agreement convened by the farmer for the use of his own seed.

II.- The purpose of Resolution N° 35/96, according to its recitals, is to establish the admissibility requirements as regards the farmer's exception and its conditions, in order to guarantee the exercise of this right by the farmers in harmony with the rights of the breeders, trying to achieve a fair and balanced system for both parties.

Furthermore, a labeling system was stipulated for those cases where the farmer needs to process and deposit his seed in third parties´ establishments and, in this case, determining clearly which are the responsibilities and obligations of the farmer and of the processor.

The non-compliance of its regulations is considered as a violation of Chapter VII of the Act Nº 20,247.

Therefore, if the farmer does not fulfill the conditions set forth by Article 1º of INASE Resolution Nº 35/96, he shall not benefit from the legal exception of Article 27.

On the other hand, if INASE verifies that the farmer has identified, seed 27 of a protected variety without the authorization of its owner, and his situation proves not to be within the scope of Article 27, he shall be sanctioned with a fine as it is stipulated by Article 37 of the Act Nº 20247.

With regard to intermediaries, processors, sorters, and/or depositaries who do not comply with the obligations established by the INASE Resolution Nº 35/96, they could be sanctioned with a fine and accessory penalties of suspension and ineligibility in the Registry of Commerce and Inspection of Seeds in charge of the agency.

The administrative jurisprudence of INASE has understood that:

- The personal use, farmer's right, should be restrictively interpreted, as it refers to an exception of the breeder's right of property granted by Act N° 20247.
- If a seed of a protected variety is identified without the breeder's authorization, that implies a violation of Article 37 of Act N° 20247, except for the case when "personal use" is proved.
- In order to determine the application of Article 37, Act N ° 20247 it should be understood that "to identify" means doing two or more different things, that would appear or be considered as only one; to know if one person or thing is the same assumed or sought after. Therefore, it identifies who obtains the seed of protected variety from a grain delivered by the farmers, as it is being recognized that such seed belongs to the protected variety, which is precisely the one sought after.

III.- In order to be analyzed, the INASE Resolution Nª 35/96 can be divided into 3 stages, taking into account the place where these activities are developed, the "characters" involved and the status of the propagation material of the protected variety.

(a) First Stage.
Place: Farmer's land.-
Main character. the farmer
Status of the material: cultivations and/or grains in its original conditions.

i. Concept of farmer.

It has not been defined, until this date, the concept of farmer contemplated by Article 44 of Decree 2183/91, regulatory of Act N° 20247, being this definition essential for the interpretation of the farmer's exception.

Notwithstanding that, the administrative Jurisprudence of INASE considered that "a S.A" [similar to public limited company] which was only the operator of a mutual fund and that, as such, received fees for its work, was not the farmer described in Article 27 of Act 20,247…and added: "personal use and own exploitation are then two elements that characterize this character and it is important to emphasize this, because in practice, there appear surrounding the image of the farmer, other individuals who collaborate with the attainment of a final result, but said collaboration does not constitute a "personal use" or "exploitation".

The processors and depositaries of seeds, tractor drivers and contractors who perform activities of sowing, plowing and harvesting in third parties´ establishments; the technical advisors, the administrators of agricultural fields and many other people who perform activities related to the agricultural exploitation are not within the scope of the "farmer concept" adopted by the regulations of the Seeds Act, because the activities performed by them are not considered as "personal use" or "exploitation".
A characteristic that seems to be fundamental in order to establish those who work for their own exploitation, is the "business risk", that is to say, those who assume the risk and who benefit when the exploita-

tion generates benefits, but above all, those who are harmed whenever the exploitation originates loses, being able to state that the beneficiary of the law is only that one person who assumes the risks of his own agricultural exploitation, whether this is done by himself, or by means of third parties…."

ii. Concept of origin (Article 1 subsection).
In order to benefit from this exception, the first requirement that needs to be fulfilled is that the farmer, when he initiates the cultivation, had legally acquired the seed by means of a purchase or another way, from the breeder or another person with his consent, or whether this is a propagation of the seed legally acquired included in the farmer's exception.
This requirement shall be proved submitting the original invoice, and it assumes the purchase or delivery by the breeder or by a person authorized by him of the seed to be used by the farmer for sowing during some stage of its propagation.

The administrative jurisprudence of INASE considered that:

- In order to prove the "personal use", it is necessary to demonstrate that the seed was legally acquired.
- The seed received in order to perform tests has not been legally acquired, in order to credit the "personal use".
- The seed obtained from the grain acquired by third parties is not a legal acquisition, with the purpose of determining seed for personal use.

iii. Concept of own production (Article 1 subsection c)
This concept implies that once the farmer legally obtains the original seed by the farmer, he must plant it in a field owned by him.

For that purpose, he shall have to prove, if necessary, the fulfillment of the abovementioned items: that he owned a field, that he had the deed of property of said field, and that he planted there the seed acquired and the harvest of the respective grain.

He shall credit not only the sale or delivery by the breeder of the original seed with the pertinent documents, but also the ownership of the land from where he got the grain produced by planting the legally acquired seed. He shall do this submitting the deed of the property or relevant contracts.

iv. Concept of Storage: (Article 1 ° Subsections d) and f)
As expressed by Resolution N° 35/96 in its Article 1 Subsection d) the "storage" considered by Article 27 of Act N° 20247 consists of separating from the harvested grain, as from the legally acquired seed, the seed that is going to be used for its planting in its own exploitation and for its own use identifying it by quantity and variety.

This "storage", that is to say the amount and the variety of the seed that he will use for himself, shall remain unalterable during the whole process that starts with the harvest of the product until the new sowing, going through the stage of improvement and deposit.

For example: if the farmer, once the wheat grain is harvested originating from the sowing of the wheat seed legally acquired or derived from a propagation within the scope of the farmer's exception, in its own exploitation, decides to store 20 quintals of seed of the Buck Ñandú variety, then only the 20 quintals of this variety will be, prima facie (if these requirements are met) covered by the farmer's exception.

These 20 quintals of seed for personal use shall be kept separately from any other material, owned or belonging to third parties, from the time when it is removed from the field and during the time it is being processed and stored, in case the farmer takes his seed to be processed and/or deposited in third parties´ establishments removing it from his field and delivering it to a storage facility, cooperative, etc.

This differentiation is what we call ORIGINAL INTENTION.

This seed shall not be mixed nor exchanged for seeds of other origins or belonging to other people, even though they are of the same variety and quality.

If this requirement is not met, there will not be storage of seed and, as a result, the farmer's exception shall not be applied.

- Thus, the INASE resolved that it cannot be destined for personal use, without the authorization of the owner of the plant variety, the seed obtained from another acquired from such owner with the purpose of controlling and commercializing the production derived from it and over which royalties must be paid. Furthermore, the fact of delivering seed to the farmers for the performance of tests does not imply that once these are carried out, the seeds can be destined for personal use.

v. Concept of "sufficient notice" (Article 3°)
Article 3° of the INASE Resolution N° 35/96 does not clearly determine, unlike its Article 12, which is the term considered as sufficient to request the authorization of the breeder of the variety.

Said article states that "in case the farmer decides to improve and/or store the seed set side, for personal use, of a protected variety in a cooperative, storage facility, plant or deposit belonging to third parties, whether these are individuals or legal entities, he shall have to request with sufficient notice the authorization of the owner of the variety by a reliable means before removing the seed from his field".

With regard to this point, two stages have been mixed up: (1) when the breeder is notified and his subsequent authorization, and (2) when removing the seed from the field.

The regulation forces the farmer to provide the breeder sufficient notice concerning the removal of his own seed from his field, in order to transport it to third parties´ establishments for its processing, improvement and/or deposit.

The purpose of this regulation is to inform the breeder that there exists seed from his protected variety that, though it will be destined for the farmer´s own sowing, same will be –(in the middle of the process and whenever the period of the farmer's exception has not expired) in third parties´ establishments which do not belong to the farmer and where acts of commerce, exposition, exchange of seeds, etc can take place, and which require the obligation of labeling and the breeder's authorization, pursuant to Article 9 and 27 of Act 20,247 and 8 ° Subsection a) of its regulatory decree, with the purpose of performing a follow-up, whenever it is necessary.

According to Article 27 of Act N° 20,247 and 44 of Decree 2183/91 the farmer that stores and sows "his own seed" in "his own exploitation" for "his personal use" does not need to request the breeder's authorization, as he keeps the control and availability of the seed included in the legal benefit during the entire time needed for the execution of the process mentioned by said regulations.

But if "for any reason", such as sorting, cleaning, improvement, etc. of the seed, he "delivers his seed to a third party", this fact shall mean that the breeder's authorization is required, according to the Article 27 of Act N° 20247 and Subsections b), i) and j) of Article 41 of Decree 2183/91, as the exception of Article 27 refers to the farmer and does not extend ipso facto to other people apart from him.

But the abovementioned does not mean that the farmer cannot move the seed from his field and take it to be processed and improved to his cooperative or storage facility, as it is sometimes incorrectly stated and interpreted.

If the farmer did not fulfill his obligation of notifying the breeder by a reliable means concerning the removing and transport of his own seed, then it is the obligation of the processor or depositary to notify the breeder that he is in possession of seed belonging to a farmer who states that he will give it a personal use, and request his previous consent, according to Article 41 Subsections b) and i) of Decree 2183/91 and 10 of INASE Resolution N° 35/96 at the time of its receipt and delivery by the farmer.

The administrative jurisprudence of INASE considered that:

- It is not appropriate to perform an evaluation and verification of the personal own set forth in the third paragraph of the Article 12 of the Resolution N° 35/96, if the interested party has not requested in due time and form the authorization of the owner of the plant variety, pursuant to the conditions established in Article 3° of the abovementioned regulation.
- Not requesting the authorization of the owner of the plant variety with a sufficient notice, prior to the removal of the seed, prevents the verification of its origin.

(b) Second Stage. (Article 3 and Subsequent).
Place: Establishments belonging to third parties or owned, in the case the farmer is at the same time a seed's operator.
Main characters: the farmer and the processor and/or depositary.
Status of the material: seed in its original conditions or finished seed.

During this stage there are different obligations which need to be fulfilled by the farmer as well as by the processor and / or depositary.

i.- Farmers´ Obligations
The obligations of the farmer are:
- Deliver the sworn statement to the processor and / or depositary containing the data listed in Article 5° of the INASE Resolution N° 35/96.

- Deliver to the processor and / or depositary a copy of the authorization from the nursery owner of the variety or the authorization request per each protected variety signed by him.
- Declare the varietal identity of the seed for personal planting.
- When he considers it pertinent and in case the seed remains deposited, to deliver the labels of seed for personal use set forth in Article 9 of Resolution N° 35/96 to the processor and/or depositary.

The administrative Jurisprudence of INASE considered the following:
- If the seed for personal use is not exhibited to the public, it shall not be labeled.
- The seed for personal use is not exhibited to the public if the inspectors only found samples kept on a file.
- It is not exposed to the public the seed for personal use of two farmers who do not sell seeds, deposited in a storehouse located in a town that they rent as warehouse.
- It is exposed to the public the seed of two farmers, which personal use has been verified, if the seed is deposited by them in an open storehouse they rent, which is located within the commercial facilities of an agro-commercial company.

ii.- Obligations of the processor and / or depositary

The following are considered as obligations of the processor and/or depositary
- Being registered in the National Registry of Commerce and Seeds Inspection, if applicable.
- To request the farmer's sworn statement as well as the breeder's authorization at the time of the delivery of seed owned by the farmer.
- To complete the deposit certificate required by Article 8.
- To label the farmer's seed according to Article 9.
- To request from the breeder, in the case the farmer does not have the breeder's authorization, his authorization to improve and store the seed.

The Administrative Jurisprudence of INASE understood the following:
- It is considered as commercial seed, the one over which it was alleged but not proved the personal use, if it is deposited in a commercial environment.
- It shall not constitute a duty of the processor or depositary but of the farmer to credit the personal use.
- The processor or depositary who requests the authorization of the breeding farm in order to process or store the seed of the farmer alleged for personal use, complies with the obligation set forth by Article 10 of the Resolution N° 35/96.

(c) Third Stage
Place: Farmer's Field
Main character : the farmer
Status of the material: finished seed, cultivation, and grain.

The destiny of the stored seed is the planting by the farmer for his personal use and exploitation.
The farmer shall credit that he sowed the seed in a field entirely owned by him.
Furthermore, he should credit that the variety used is the same that he stored and that he used the whole of the stored seed or otherwise, indicate what he did with the surplus of seed.
The seed cannot be exchanged, donated, or mixed with seeds from other producers, etc.

The Administrative Jurisprudence of INASE understood the following:

- If the stored seed of the variety with property title in force exceeds the amount that is indeed destined for personal use, and the destination given to that surplus cannot be verified for reasons attributable to the interested party, who did not inform the use he would give it in due time and form, then it corresponds the application of sanctions, as it is understood that the seed was identified without the breeder's authorization and the personal use or other use was not proved without authorization.
- The person who partners with a farmer who offers his seed for personal use cannot benefit from the personal use exception, because as we are referring to a seed for personal use and not for the use of third parties, the use cannot be shared.
- If it is so required and the possibilities are given to do it, the farmer must be able to prove that he has given the seed a personal use.

BREEDER EXCEPTION

SEED - PRODUCING CROPS

Farm when was obtained legal seed
Tenure of farm

Grain harvest → Tenure and acreditation of late

INDIVIDUALIZED FOR EACH VARIETY AND QUANTITY

HARVESTED SEED

SAVED SEED → Third parties storages
Declaration of saved varieties and quantities on

PROCESSED SEED

STORAGED SEED

SEED MOVEMENT

1) REGISTRATION ON THE RNCyFS
2) SWORN STATE MENT OF FARMERS
3) CERTIFICATE OF DEPOSIT
4) LABEL
5) ARCHIVE DOCUMENTATION OF 2 AND 3
6) AS LE FOR THE BREEDERS AUTHORIZATION

→ Reporting dates of entry and exit of seeds in advanced

SOWING OF SEED → Seed sowing verification in cach field 30 days in advance to the sowing verify tenure of farm

CULTIVATION FOR OWN USE

Sur plus goes → Verification of late

HARVESTED GRAIN

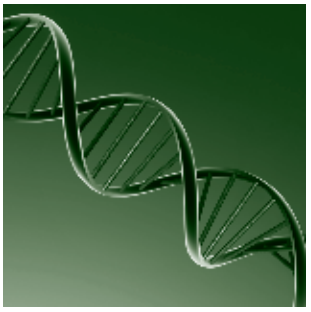
STORAGED OF HARVESTED MATERIAL

Followed up until loss of identity or until change of late

FATE OF HARVESTED MATERIAL → Establishement of own use

Intellectual Property Rights Of Plant Biotechnology Innovations

Breeders' Right and Patent System


Intellectual Property rights on Plant Biotechnology Innovations

This article was published by INASE in the special edition of the INASE Bulletin, dated September, 2004. It was written by **Dr. Carmen A.M. Gianni,** who, at that time, was Director of the Legal Affairs Bureau at the above mentioned body, and it has been updated for January 2010.

The plant Breeders´rights and the Patent System. Intellectual Property Rights System. Beneficiaries. Invention. Object of the invention. Guidelines on patenting. The UPOV Act of 1991. The patentability of living material. Criteria.

I.- BREEDERS' RIGHT AND PATENT SYSTEM.

Biotechnology has been defined as "the commercial application of living organisms or their products, which involves the deliberate manipulation of their DNA molecules."

This definition implies a series of laboratory techniques developments that, in the last decades, have been responsible for the scientific and commercial interest in biotechnology, the setting up of new

companies and the reorientation of research and investments in existing companies and universities.

In farming, biotechnology aims at overcoming the bounding factors of farming by breeding plant varieties resistant to poor weather conditions (droughts, acid soils), illnesses, and plagues with a view to increasing the process of photosynthesis, nitrogen fixation or nutrient absorption. Another goal is the development of more productive and/or nutritious plants by improving their protein and amino acid content, and the manufacture of microbial pesticides (insecticides, herbicides and fungicides).

Due to the appearance of these economic and technical phenomena some decades ago, judicial science has considered necessary to bring in changes in the purpose, scope, and duration of the rights granted to inventors and creators.

This situation encouraged many countries either to reform their industrial property laws taking into account issues that were beyond the scope of the above mentioned rights a few years ago or to enact laws in the case of those who lacked protection rules. (Some examples in Latin America are Decision N. º 344 of the Board of Cartagena Agreement; the Industrial Property Law N. º 9.279, 14th May, 1996, Brazil; and the Mexican Industrial Property Law, 17th May, 1999).

These changes considered the following three points:

- Further development of farming protection: the patent system has now been extended to living matter, plants, and animals.
- Universalization of the minimum protection standards.
- Strengthening of the rights of creators and inventors.

At the national and international levels, nowadays there are two industrial property systems for the new biotechnologies related to living matter: the patent system and the breeders' right system.

INTELLECTUAL PROPERTY RIGHTS SYSTEM

Biotechnological Developments

- Invention Patents and Utility Models Act N° 24.481. Modified by Act N° 24.752

- UPOV Convention for the Plant Variety Protection

- Seeds and Phytogenetic Creations Act N° 20.247

Our country protects these different innovations through the **patent right stated in Law N.º 24.481 on Patents and Utility Models (henceforth LP) and its Ruling Decree N° 260/96 (henceforth RLP), which is enforced by the NATIONAL INSTITUTE OF INDUSTRIAL PROPERTY (INPI) and by the breeders' right system established by Law N° 20.247 on Seeds and Plant Genetic Creation for plant varieties, which is enacted by the NATIONAL SEEDS INSTITUTE (INASE).**

The aim of intellectual property rights systems is to encourage the development of new technology innovations, protecting them by means of an exclusive right granted to its creator for a certain period of time with a view to preventing non-authorized third parties from using and/or commercializing his innovations without the creator's consent. The main purpose of these innovations is to encourage the development and the social well-being of the whole community.

INTELLECTUAL PROPERTY

BENEFICIARIES

• Protecting the technological innovations	• Encourage the development and social welfare
• Inventor	• Entire society

The main social purpose that justifies granting exclusive rights is clearly stated in Article 7 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (ADPIC) of the World Trade Organization that states that "the protection and compliance of the intellectual property rights must contribute to the promotion of technology innovation, the transfer and the distribution of technology in the reciprocal interest of producers and users who are familiar with technology so that they favour the social and economic welfare and the balance of rights and obligations."

In the patent system, for a product or procedure to be patentable, it must be an invention according to the Law on Patents.

The Law on Patents states that every human creation that enables to transform matter or energy for human progress is an INVENTION" (Article 4).

An invention will only be patentable if it fulfills the following three requirements:
a) the invention is "new";
b) the invention shows "inventive step";
c) the invention is "capable of industrial application".

INVENTION

"Every human creatin which enables transformig matter or energy for human progres"

PRODUCTS PROCESS

Technical Ideas materialized in products or production processes

ORDER OF PROTECTION
what protects ?

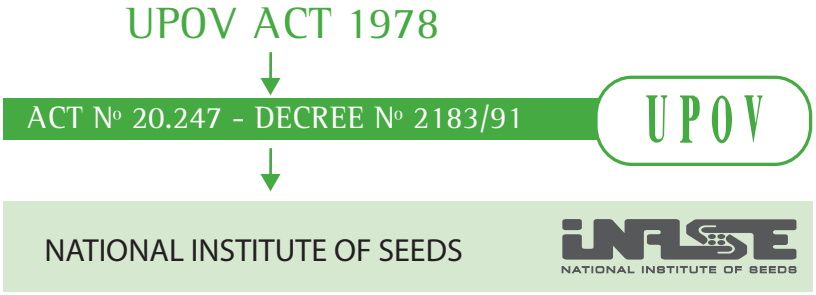
The invention must be of a "technical nature", as it must be related to the technical field. In addition, in order to be patentable, it must imply a technical improvement or it must be useful or profitable compared to the previous product.

The patent lasts 20 years from the date of the filing of the application and the right of the patent holder has some exceptions: purely experimental scientific research or purely experimental technological research, test or teaching.

By means of Act 24376, the Republic of Argentina ratified the International Convention for the Protection of New Varieties of Plants adopted in Paris (French Republic) on 2nd December, 1961, with the amendments passed in Ginebra (Swiss Confederation) on November 10, 1972 and on October 23, 1978, becoming a full member of the Union.

Such Convention creates a "sui generis" form of intellectual property rights protection that is effective and specific for new plant varieties or "breeds" and that makes sure that the member states recognize the breeders' achievements on the basis of uniform and clearly defined principles. This enables their members to protect their varieties in the other member states as they will be treated in the same way as the locals.

At the domestic level, the Republic of Argentina has a normative body for the intellectual protection of plant varieties regulated by Act N. º 20.247 on Seeds and Phytogenetic Creations, its regulatory Decree N. º 2183/91 and Decree 2817/91 that states the breeders' right (person that creates or discovers and develops a variety) on a commercially new plant variety, different from the existing ones, uniform and stable for a period of 20 years.

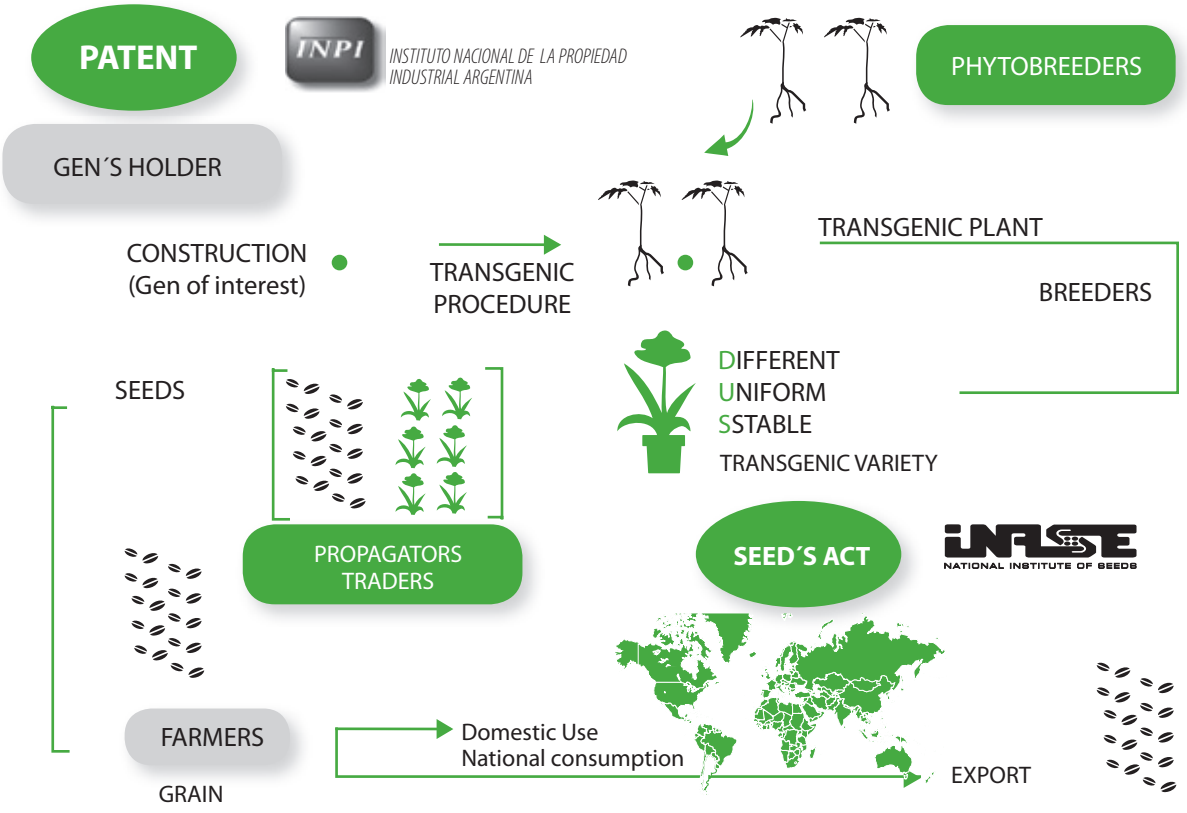


The exclusive breeders' right has three exceptions: the consumption exception, the farmer's exception that enables him to use the seed of a protected variety to sow it in his land and for his own use, and the breeder´s exception that authorizes a breeder to freely use a protected variety (as long as he does not use it repetitively) as a germplasm source in order to create and commercialize a new plant variety.

The Republic of Argentina has an "effective sui generis system" in order to protect plant varieties as stipulated in Article 27 3 b) of the Agreement on ADPIC composed of the above mentioned legal rules and those effectively enforced by INASE.

The following chart explains the invention process of a transgenic plant variety and its relationship with the national intellectual property rights systems in force in the different stages.

As it can be seen in the chart, the patents system and the breeders' right system are far from being opposites since they complement each other to effectively protect technological innovations.



II. GUIDELINES ON THE PROTECTION OF BIOTECHNOLOGY INNOVATIONS

On 18th October, 2001, the joint resolutions of the Secretariat of Industry and the Secretariat of Agriculture, Livestock, Fishing and Food N. º 810 and N. º 99 were enacted for the strict observance of the national rules that regulate industrial property protection in the field of biotechnology. These resolutions instruct the Head of National Institute for Intellectual Property (INPI) to lay down "Guidelines on Patentability" that "guide the examiner and are known by the applicant". In turn, Article 3 states setting up a working group that will deal with the patentability of living matter and natural substances, due to the concurrent competence of the former Secretariat of Industry and Secretariat of Agriculture, Livestock, Fisheries and Food.

The Guidelines on Patentability were passed by the NATIONAL INSTITUTE OF INDUSTRIAL PROPERTY in Resolution N. º 243, on 10th December, 2003. With regard to living matter, they state the national guidelines for the protection of biotechnological innovations, define their technical aspects, determine the national and international rules that regulate the different aspects of industrial property and lay down their judicial interpretation of some suppositions.

The guidelines on living matter protection described in the guidelines and their technical and judicial aspects were ratified by Messrs Secretaries of Industry, Trade, and Mining and of Agriculture, Livestock, Fisheries, and Food at the time. Therefore, the systems of intellectual property rights in force in our country complement each other and work together in order to protect biotechnology inventions effectively.

When it comes to the intellectual property rights of plant biotechnology innovations, Argentine legislation is made up of: the Agreement on Trade-Related

Aspects of Intellectual Property Rights (ADPIC), Act N. º 24.481 on Patents and Utility Models (LP) and its ruling decree 260/96 (RLP), the International Convention for the Protection of New Varieties of Plants (UPOV)- Act 78 passed in Act N. º 24.376, Act N. º 20.247 on Seeds and Phytogenetic Creations and its ruling decree N. º 2183/91.

Los criterios sustentados en las mencionadas Directrices son los siguientes:

1. Every human creation that enables to transform matter or energy for human progress is an invention.

2. An invention of a product or procedure is patentable only if they are new, involve an inventive step and are capable of industrial application.

3. According to the LP, all living matter and substances existing in nature are not inventions.

4. Living matter and substances existing in nature, even if isolated, purified and characterized, are still discoveries and thus are not patentable.

5. Living matter of plants, their propagation material and their parts or components that make up a whole individual are not considered inventions and thus are not patentable.

6. Plant varieties are not patentable and are protected by a "sui generis" system, the breeders' right system stated in Law N. º 20.247 on Seeds and Phytogenetic Creations and the UPOV Convention, Act 78 passed in Law N. º 24.376.

7. Living matter of animals, their parts or components that make up a whole individual are not considered inventions and thus are not patentable.

8. Isolated microorganisms in nature are considered discoveries and thus are not patentable; however, microorganisms whose natural estate has been modified are patentable as stated in Article 27. 3. b) of ADPIC.

9. Other isolated living matter classifications different from those previously described such as multicellular fungi are not patentable. However, if they have been modified, they are patentable.

10. The smallest unit made up of living matter is the cell and all the matter that forms the cell, disregarding its structural complexity, is considered substance.

11. Those cells that form a whole individual, either an animal or a plant, are not patentable by virtue of Article 6 g) of LP and 6 RLP.

12. Substances whose natural state has been modified and synthetic substances —different from natural substances— are patentable (for instance: DNA, plasmids, proteins, enzymes, lipids, sugar, virus, phages, pryons etc., modified).

13. Essentially biological processes, that is to say, the series of stages necessary for the production (breeding) or the reproduction of plants or animals, that mainly take place on their own and that exist in nature, are not patentable.

14. Exclusion article 6 RLP does not apply to microbiology procedures .

III. UPOV: 1991 ACT

UPOV

From the first version of the agreement (1961), there have been major advances in different fields of biology that substantially influenced the plant variety breeding procedures as well as the reproduction and propagation procedures. This fact and the knowledge derived from the experience acquired for thirty years —the period during which the UPOV Convention has been in force—, were important reasons to consider updating the rule. The last revision was carried out in the Diplomatic Conference on March, 1991, known as 1991 Act, UPOV Convention.

THE UPOV CONVENTION

ACTS

1961
1972
1978
1991

Some of the relevant topics on 91 Act, UPOV are:

UPOV
PROTECTED GENERA AND SPECIES
ACT 1978
PROGRESIVE PROTECTION
IN FORCE: 5 SPECIES
IN 8 YEARS: 24
ACT 1991
ALL SPECIES
MEMBER STATES: 5 YEARS
NEW MEMBERS: 10 YEARS

a) Now protection must be granted to all botanical species and genera.

The Republic of Argentina, by virtue of the national law, nowadays considers the possibility of protecting all botanical species and genera.

b) Farmers' exception or privilege

1978 Act implicitly creates the so-called farmers' privilege, but it is in 1991 Act that the farmers' exception is explicitly mentioned.

According to Article 15.2 of the UPOV Convention (1991), each contracting party is empowered to restrict the breeders' right for all varieties, within reasonable limits and safeguarding their legitimate interests, with view to allowing farmers to use, in their own land, the crop resulting of growing the protected variety in their own land for reproduction or propagation purposes.

In our country, this legal mechanism is already stated in Act 20247 which acknowledges farmers' exception in Article 27 by stipulating that "those who keep and grow seeds for their own use do not infringe upon the property right of a breeder", and in Article 44 of Decree 2183/91 by establishing that "the breeder's authorization is not necessary when a farmer stores and uses in his own land the crop harvested as the result of the growing a protected variety in that place".
INASE Resolution N.º 35/96 describes the prerequisites to enforce the above mentioned exception

c) Essentially derived varieties protection

1991 Act introduces an original concept by regulating in the fifth paragraph of Article 14 that the dispositions that mention the assumption where it is necessary the breeder's authorization shall also be applied to varieties essentially derived from protected varieties when these are not, in turn, essentially derived varieties.

This agreement explains that there are different ways of breeding an essentially derived variety, for instance: by selection of a natural or induced mutant, or of

a somaclonal variant, the selection of a variant individual from plants of the initial variety, backcrossing or transformation by genetic engineering.

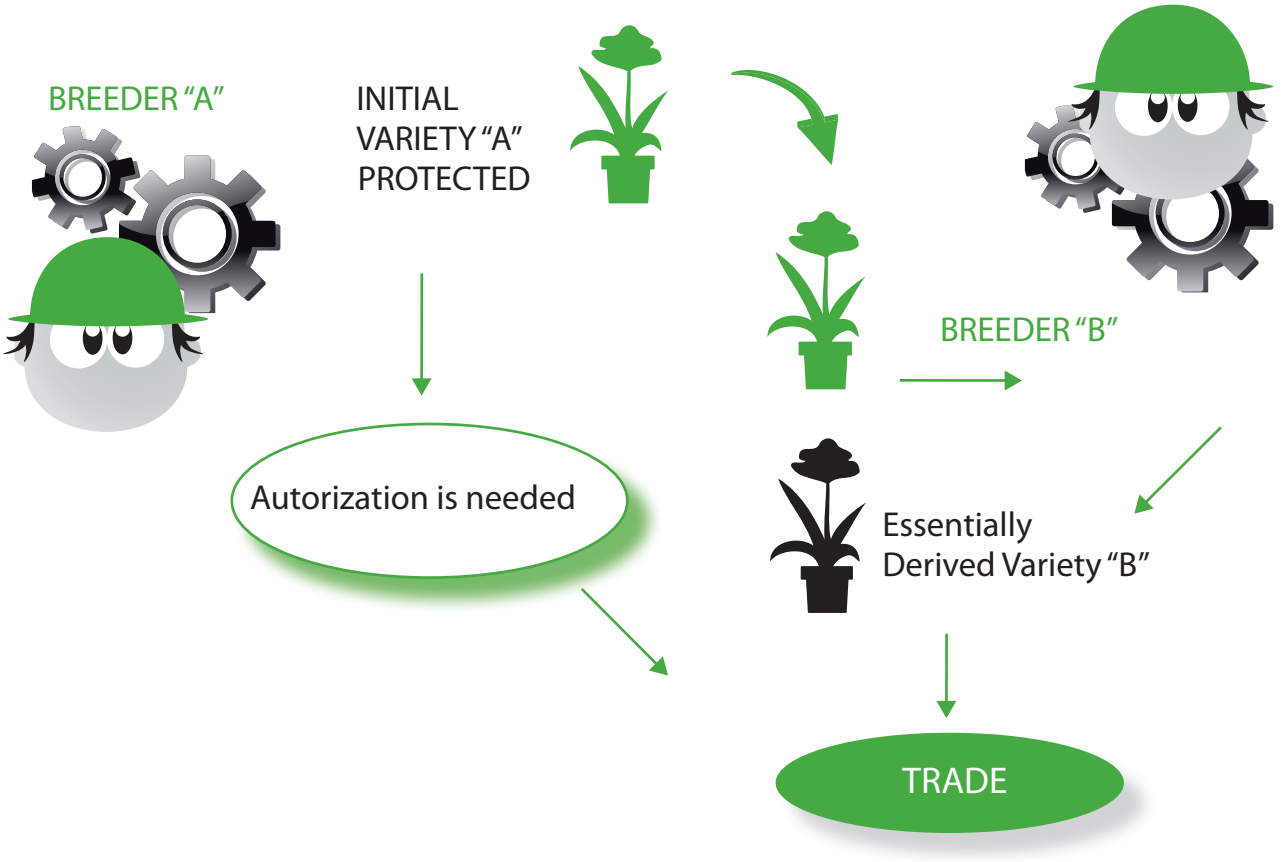
The system established in 1978 Act matches the technical and scientific development of that time; hence, a single difference in an important character between an already registered variety and a new variety that clearly differentiates from the previous one is enough to register this new variety.

This situation was considered unfair for traditional breeders compared to breeders applying new technologies since the mere insertion of a gene in an existing plant variety implied the possibility of registration —as the variety was different from the previous one— and it was not necessary to ask for authorization to the initial varieties' owner nor to compensate them for their inventive step.

Nowadays, this situation affects not only breeders of private initial varieties, but also state bodies or organizations that are breeders of varieties. It also plays a part in the case of public varieties, which are the germplasm that biotechnologists use to develop new transgenic varieties.

Traditional plant improvement has been analyzed, and its deriving benefits are at risk.

The new concept introduced in 1991 Act resolves those inconveniences and it has been implemented in different countries by stipulating that if the new variety clearly differentiates in, at least, a character, the protection derived from the breeders' right cannot be dismissed as long as all the remaining requirements are met. The right is granted, but the variety cannot be commercialized without the initial variety holder's authorization.



d) Extension of the protection terms

1978 Act established a minimal protection term of 15 years, and of 18 years in the case of vines, forest trees, fruit trees and ornamental trees. 1991 Act extended it to 20 and 25 years respectively.

Our country has established a term of 20 years for all the species.

IV.- POSITION OF THE NATIONAL MINISTRY OF AGRICULTURE, LIVESTOCK AND FISHERIES AND OF THE NATIONAL SEEDS INSTITUTE - INASE- ON THE PATENTABILITY OF LIVING MATTER

INASE NATIONAL INSTITUTE OF SEEDS

Ministry of Agriculture, Livestock and Fisheries
Presidency of the Nation

Position of the MINISTRY OF AGRICULTURE, LIVESTOCK AND FISHERIES

1.- Patentable:

- Inventions- Art. 4º Patents Law
- Modified microorganisms

2.- Not patentable:

- Discoveries.
- Living matter andwhat already exists in nature
- Plants and animals, whether their parts, components and reproduction material have been modified or not,
- Plant varieties protected by an intellectual property "sui generis" system, which is the breeders´right sytem of UPOV.
- Essentially biological processes for the production and/or reproduction of plants and animals nor implicit biological processes in animal, plant and human reproduction.
- Biological or genetic material already existing in nature and its replication.

INPI Resolution 243/2003 passed the guidelines for patentability. These guidelines describe the patentability criteria and show the position of the MINISTRY OF AGRICULTURE, LIVESTOCK AND FISHERIES and of the NATIONAL SEEDS INSTITUTE.

In short:

- **Cannot obtain a patent:** plants, animals, plant varieties, plants components and parts, anything that is a potential plant, animal or vegetal variety (cells, seeds, embryos, tissue, etc.), non-modified microorganisms and the non-modified genetic matter.

- Plant varieties are not patentable and are only protected by the breeders' rights system issued by UPOV.

- **Can obtain a patent:** microorganisms and genetic material that have been modified by humans, except when they are identical to those that exist in nature. These guidelines are based on the fact that our country produces agro food and agricultural raw material, and that it is competitive in the international market.

Increasing specialization, investors, and the adoption of new technologies have enabled the country to increase its productivity —even double its grain harvest— and to diversify the resulting crop.

This has also improved food supply for inhabitants and has had propagating effects which include substantial topics such as creation of employment, the expansion of different regional economies and the development of a strong local industry and international trade.

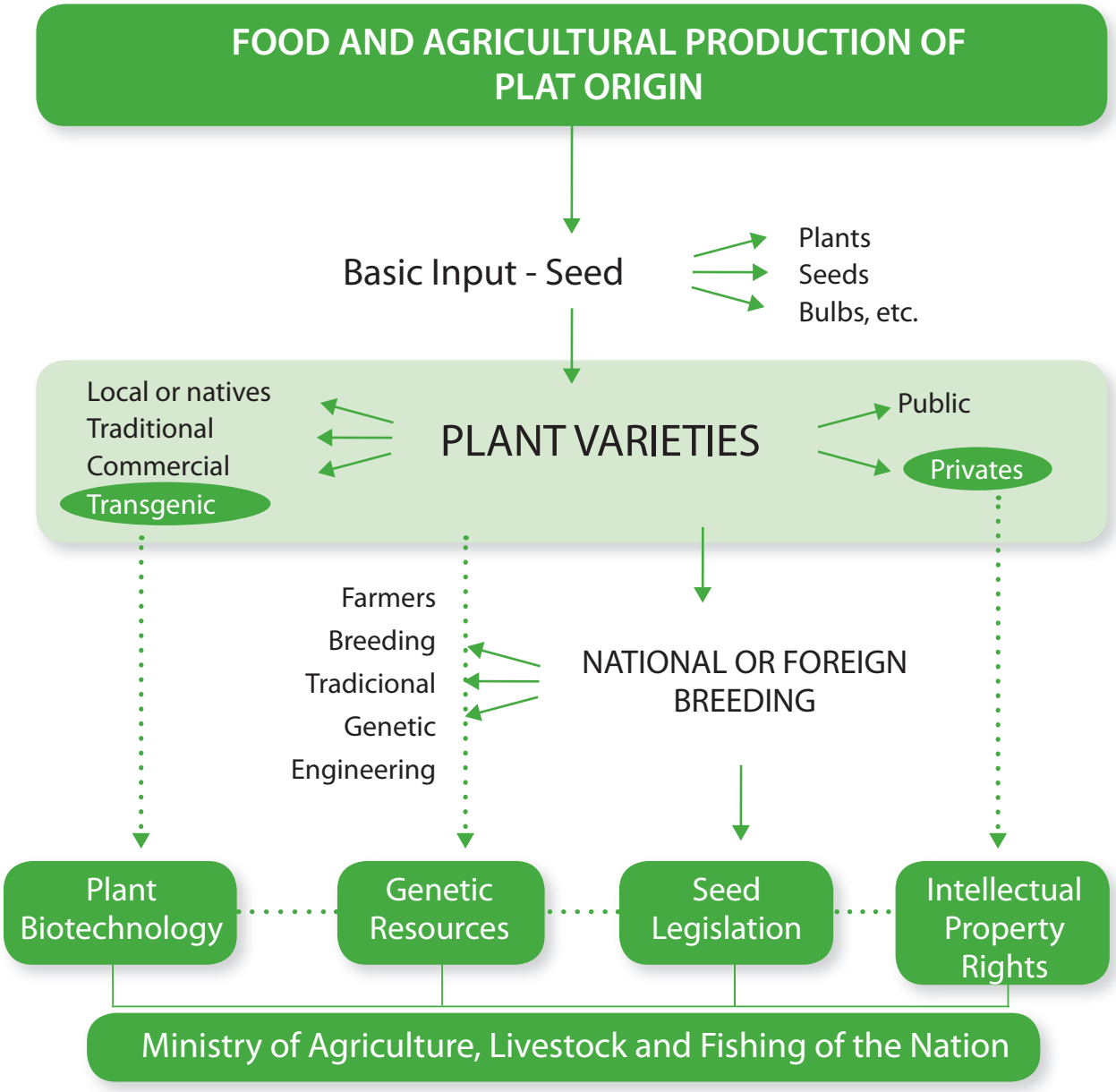
The development of plant varieties that enables us to go on improving farming production quality and quantity is fundamental; and it requires fair and equitable protection of the rights of those who work to achieve such development, including public entities as well as private companies.

Moreover, as illustrated in the chart attached, free research on plant breeding constitutes the heart

of the development of new plant varieties. As all farming and food production come from their seeds, development must be protected by safeguarding the free exchange of germplasm without hindrance.

Therefore, our country has clearly chosen to protect plant varieties through the breeders' right system since, thanks to plant breeding and farmers' exceptions, it adapts to our farming conditions.

Farming protection by means of a patent system implies the creation of strong monopolies in a field of utmost importance for our country, conditioning free research and the development of new seeds and varieties to a private individual's decision and radically abolishing the breeders' right to store seeds in his land for his own use. As a consequence, it is advisable to specifically exclude it in the case of plant varieties and all the field of plants.





Relation between Patents, Breeder´s Rights and Genetic Resources

Presentation given by **Dr. Carmen A. M. Gianni,** the 2nd of June of 2005, as the Director of the Legal Affairs Office of the NATIONAL SEEDS INSTITUTE in the 1st Forum about "Intellectual Property Rights for the protection of agricultural biotechnology" organized by the NATIONAL INSTITUTE OF INDUSTRIAL PROPERTY (INPI) and the NATIONAL SEEDS INSTITUTE (INASE) in Buenos Aires, Republic of Argentina.

Current status. General problems. Complexity of relations between actors. Goverment policies. Enforcement systems. Opposition and nullity. From the transgen to the transgenic plant. Convention on Biological Diversity. The UPOV Act of 1978.

In recent times, it has long been talked about intellectual property rights in our country; whether it was about patents or breeder's rights, this subject has gone beyond the academic and legal environment to specifically set up in real life, particularly in the field of agriculture.

In this constant flow of information in different forums and the media, there are mistakes and misunderstandings which prevent considering the subject with the necessary objectivity in order to analyze the different social actors, specify their rights and duties and make an approach of the existing problems of our country, so as to take measures of national policy which consider and solve them.

The purpose of this presentation is to clarify some of the topics mentioned before.

I.-ANALYSIS OF THE CURRENT SITUATION

The society in the Republic of Argentina and in the world, has certain prejudices about intellectual property rights in general and biotechnology in particular, which can be summarized as:

1.- A high ideology and polarity of the subject.

In this way, intellectual property rights, especially patents and breeder's rights, are identified as tools which are privately used by transnational companies, in order to take over the technologies and genetic resources of the developing countries and label every entity or people involved in their subject as "anti-national"

2- Existence of several related social actors, in most of the cases, with opposed interests.

In this way in the topic that concern us, appear the owners of the biological and genetic resources, which could be the National State; the Provinces and the municipalities; private owners as well as local and indigenous communities; holders of genes patents and microbiological procedures; national and foreign researchers; national and foreign breeders; seed producers, farmers; consumers and lastly, the national State as a public body of regulation and control.

3- Due to all of the abovementioned, the arguments in favor or against intellectual property rights answer to different interests of the involved sectors, thus; it is very difficult to carry out an analysis of real, objective situations of public interest.

On the other hand, every measure adopted by the State bodies in that regard will affect a certain area. Such area will question that measure and it will try to change it to its benefit. This problem will cause the reaction of another area, following a chain of unresolved problems "ad infinitum"

4- Ignorance of intellectual property rights, either in their doctrinaire aspect as well as the tools they provide to society, users and, even worse, within the scientific area and other sectors involved, with the exception of the specialists of the subject.

This happens because of the lack of specific training plans at tertiary and business educational level, and because of the lack of seriousness, partiality and the high error level with which these subjects are addressed directly or indirectly by the different sectors, in particular mass media and decision makers on national and international policies.

5- Extrapolation of normative models of other countries, which economic and social situations are totally different from the Argentine ones and from legal systems, in many cases, are impossible to apply to the national context.

6- The generalized belief that the compliance of intellectual property rights in other countries, especially the developing ones, is absolute or better than in our country, and therefore, that their legal systems in force are better than ours.

7-The perception of most people that patent systems and other intellectual property rights are immutable and impossible to change and that instead of adapting them to the reality of each country, this reality should be adapted to the regulations, whatever the price.

8- It is believed that intellectual property rights and agricultural biotechnology are isolated and self-sufficient worlds; that the resolution of their problems are the only and the most important ones, and that the policies and decisions, either from the State or private, can be taken individually and without taking into account the context where they are established, and the effects they produce in a whole.

CURRENT SITUATION
• High ideology and polarity of the subject.
•Existence of several social actors with opposing interests.
•Lack of objectivity and general interest arguments.
•Ignorance of intellectual property rights.
•PI foreign systems are better than the national ones.
•Extrapolation of regulating models of other countries.
•Ignorance of intellectual property rights.
•PI and biotechnology are isolated and self-sufficient worlds.

II.-GENERAL EXPLANATION

1.- In order to understand the problem of intellectual property rights and its relation with agricultural biotechnology, we should analyze the nature of the object that concerns us: PLANT VARIETIES and especially TRANSGENIC varieties.

Modern agriculture is based on the use of COMMERCIAL VARIETIES.

These commercial varieties arise from processes of recombination and selection of elite or high performance germplasm, either public or private. Such germplasm is just a portion of the group of crop genes or base germplasm, which has derived from the domestication carried out by all the farmers of the world throughout the human history from the total variability of the original species and their wild components.

Traditionally, the variability of the elite or high performance germplasma has been incremented with genes coming from the base germplasma (example, old, rural or landrace varieties) of wild kinds of such crop and finally with mutant genes (example, resistance to illnesses in some crops, such as corn, sunflower, soy, among others). Then, they continue with wide crossing, interspecific or intergeneric hybridization; artificial mutagenesis and somaclonal variants which are parts of the methods used by the breeders and which they still use to acquire useful characters or genes to incorporate to their crops when same are not present in the elite germplasm.

This fact highlights the great strategic importance for the entire society of the exploration, recollection, evaluation, and maintenance of genetic resources of crops in germplasm banks

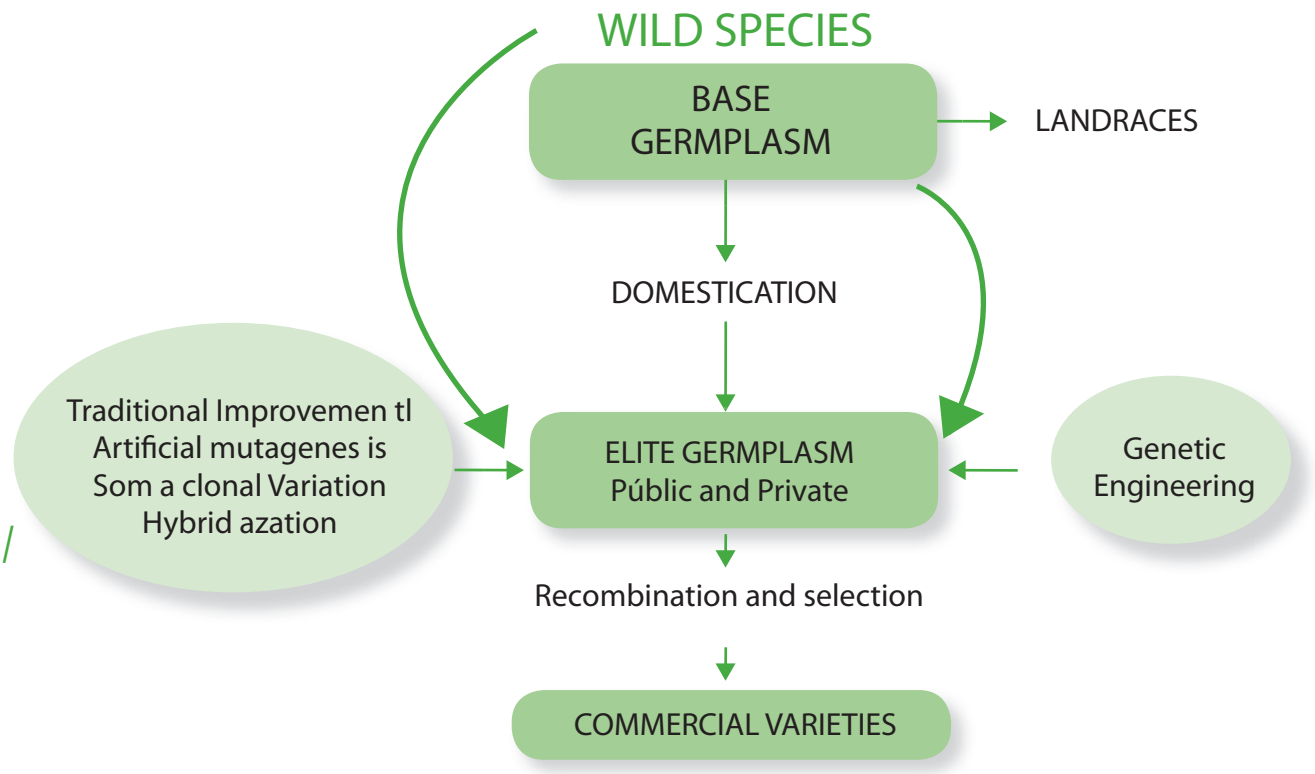
The free access, exchange, and usage of such resources by the breeders has been and still is essential to meet the short and long term needs of our agriculture.

In the last decades, a new tool has diversified this group of methods used by traditional breeders: genetic engineering

Its most outstanding features, in relation to the other methods mentioned are: it allows overcoming the barriers to hybridization (that is to say that, the gene incorporated to the variety can originate from any organism without any kind of restriction), it is focused, it requires the usage of intensive capital, meaning important economic investments and a deep knowledge about basic disciplines.

Despite these differences, genetic engineering as well as traditional methods is still a necessary tool when the character is not within the limits of the crop variability and its inclusion is essential. For this reason, both types of improvements do not exclude each other but they complement each other.

As it can be seen, in the field of agriculture, it is more noticeable the fact that the invention is not the result of a visionary who has developed his creation at the mercy of his individual abilities. On the contrary, each inventive step is the result of an incremental input with the individual effort and contribution of the entire society and which is originally based on materials provided by nature.



2.- Reinforcing this mixture in the development of plant biotechnological creations between individual creativity and social input, and focusing not on the product but on the process, is what gives rise to a transgenic variety.

By means of genetic engineering, we can identify a desirable characteristic
which cannot be incorporated to the crop through traditional methods.

So, another organism with the desired characteristic is individualized, its desired gene within its genome is identified, then it is cloned and introduced inside the cells of the plants to be modified.

The "Gene" to be incorporated is a construction which is introduced to crop genotypes by means of the transgenic process.

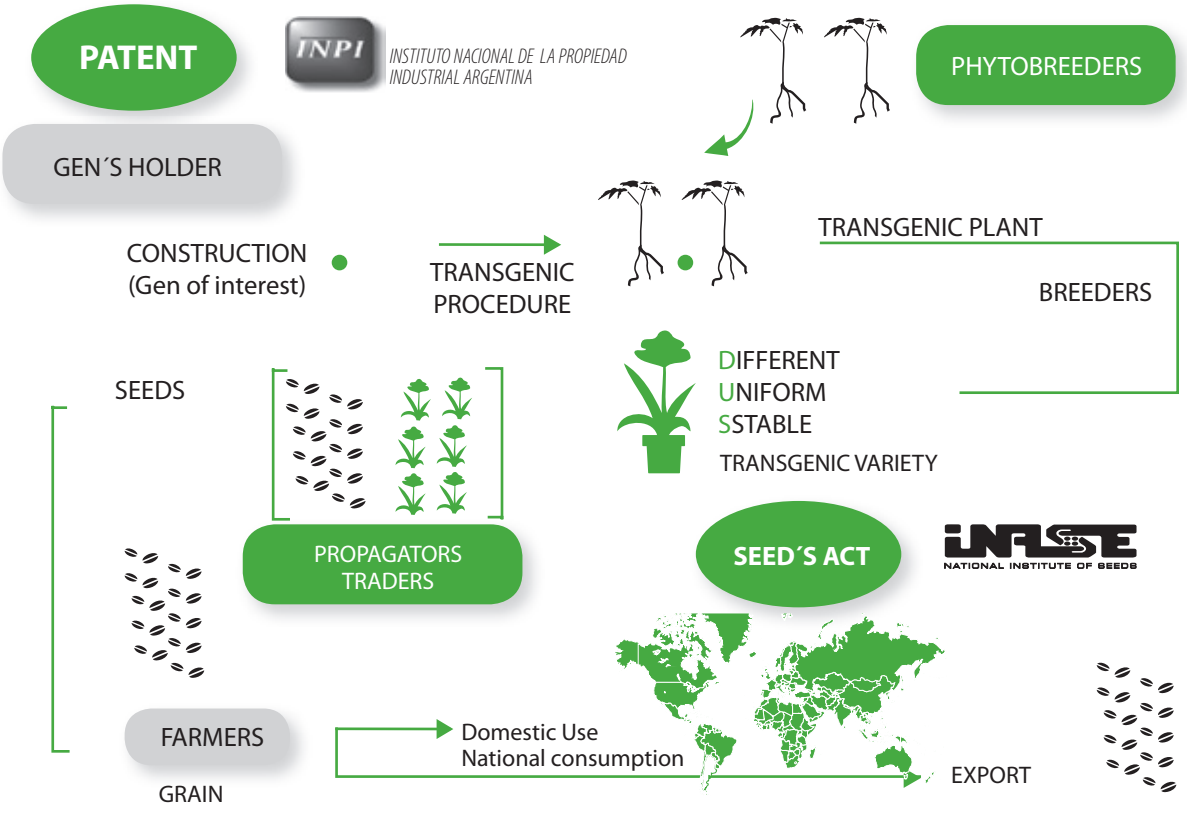
The plant variety to be modified is a plant which can be a public or private commercial variety or a native variety.

After the transgenic procedure, several independent transformation events must be selected until obtaining a plant with the new character.

So, this stage is mainly made up of two elements: the construction (or transgen) and the plant, and a special procedure which makes possible the union between both elements (the transgenic process).

The modified plant is not a laboratory product, as in the case of pharmaceuticals, but it derives from two parents, which are also two plants from nature, which can exist in the public or private domain and which transmit their genetic heritage to the new plant.

The selected events are incorporated to the conventional improvement method through the breeders, who after several years will get a new different uniform and stable plant variety.



From this transgenic plant variety, a seed is obtained by means of consecutive propagations. This seed can be exported or it can be internally used and destined to the farmers who will sow the seed to obtain grains, which can be exported or otherwise used in the domestic market in way of raw material: flours, oils, etc, food products which will be used by the consumers.

As it can be seen, the process starts with one or two social actors but then includes the entire population of the country.

In the Republic of Argentina, the construction and transgenic process, as regards inventions, is protected by the patent system administered by the NATIONAL INSTITUTE OF INDUSTRIAL PROPERTY (INTELLECTUAL IMPROPERTY), an autarchic organism within the scope of the Secretariat of Industry, Commerce, and SMEs of the MINISTRY OF PRODUCTION. On the other hand, the new transgenic plant variety and its propagating material are legally protected by the Seeds and Phytogenetic Creations Act No20.247, regulated by the NATIONAL SEEDS INSTITUTE (INASE) which works within the scope of the SECRETARIAT OF AGRICULTURE, LIVESTOCK AND FISHERY.

The chain which starts from the plant variety and involves breeders, multipliers, traders, farmers and the whole country as a symbol of common benefit, is the one described by the Seeds and Phytogenetic Creations Act of our country, in order to achieve the social and economic welfare by means of a higher and sustained development of our agriculture, better foods as well as higher incomes coming from the export of raw materials.

As it can be seen, this process is like a train, where all wagons are indispensable and important. So that this train can work properly, there needs to be a balance among all the wagons, since the predominance of one over the others or its malfunctioning, will produce adverse effects in the entire group.

Now that this description has been developed, we will specifically analyze the problems arising from INTELLECTUAL PROPERTY RIGHTS in a general way and the different stages of the process.

III.- GENERAL PROBLEMS

GENERAL PROBLEMS - INTELLECTUAL PROPERTY

- State Policy.
- Promotion and protection of local innova tion.
- Complexity o f the rela tions between social actors.
- Establishment of the limits of the rights (exhaustion).
- Implementation of an interna tional compliance s ystem.
- International procedures of oppostion and nullity of DPI.

1.- **The Intellectual Property Rights do not belong to a certain sector, but they constitute a State policy aimed at promoting the creative activity of the innovators for the common interest of the entire society.**

If intellectual property rights had as its sole objective to satisfy a private interest or the interest of only one sector, it would not fulfill the goal for which it has been created and therefore, its use should be reviewed.

A State policy in the subject matter should be based on two main elements: (i) the promotion of technological innovation through legal systems which assure intellectual property rights to the developers (ii) and the transfer and spreading of technology to users.

As an example of the abovementioned, we can quote the "Agreement on Trade-Related Aspects of Intellectual Property Rights", known as ADPIC or TRIPS.

Article 7 named "Objectives" states that "the protection and compliance of intellectual property rights should contribute to the promotion of technological innovation and the transfer and spreading of technology in the reciprocal benefit of producers and users of technological knowledge, in such a way that they promote the social and economic welfare and a balance of rights and duties.

It is the duty of the State to stimulate technological developments in the areas of national interests, duly protecting the inventors by means of legal systems which grant and help them to execute their rights; determine which will be the protected objects, the scope of the powers of the holders and assure the balance of rights and duties.

For this reason, the arguments put forward by the media and certain areas, in relation to absolute and excluding private rights, criticizing the State intervention as a regulatory body in these subjects, are incorrect.

2. A lot has been written about the use given by transnational companies to the intellectual property rights systems as tools to impose their technologies in the developing countries, generating monopolies which hinder the creativity of the national scientific community.

Independently of the validity and certainty of these arguments, not being my goal to refute or ratify them, there is a very important aspect which has gone unnoticed in this speech and which is necessary to highlight.

Scientific activity will not be promoted; especially

the one coming from national public entities, if later on the value arising from its resulting products is not analyzed.

Although people question the economic purpose of patents and other instruments of intellectual property rights, the countries with the most productive innovation systems have very complete intellectual property rights regimes.

Besides, the different social actors related to the development and marketing of new technologies in developing countries, are perfectly familiar with, and use smartly, the intellectual property rights systems of their own country and of the countries where they will produce and market their inventions.

This is a competitive element ignored or not used efficiently in developing countries.

When associating foreign elements with the intellectual property rights, we are forgetting and disdaining that these systems are useful tools for local research and that they can be used to protect, promote and encourage that research at a national and international level.

When it comes to seeds and biotechnologies, the lack of protection clearly conspires against the national interest.

If intellectual property rights systems are not used to protect local innovations, international companies will continue to sell their products in our market without having to pay revenues for the work performed by local researchers. At the same time, national research companies will not be developed, or funds for breeder's programs responding to the needs of the country and of the farmers will not be created.

An efficient national policy on intellectual property rights should determine what needs to be promoted and protected in the country; the existence of legal systems which guarantee it, and training for its usage in the public and private research centers.

These are the elements which will allow the country to have solid structures of creation, production, and innovating commerce in the agricultural field.

INTELLECTUAL PROPERTY

PROMOTION

PROTECTION

LOCAL INNOVATION

National Policy on Intellectual Property Rights

- What is incentived and protected
- Establishment of legal systems protecting it
- Training in research centres.

3.- Domestication and material selection activities in the plant world to turn them into varieties with commercial value did not start with the modern biotechnology, but it has been developed from the beginnings of mankind. As a result, varieties with certain features have been achieved, such as resistant agronomic yields, and nutritive values of the same or higher importance than those incorporated by biotechnology.

This allowed our country to keep a leadership position in the agricultural field.

The several problems arising from the relationship between seed developers and users, on the one hand, and between breeder companies on the other are not new. An example of this are the existing differences for the use of the farmer's own seed, the use of lines derivatives or varieties protected by other companies and the illegal seed market trade which puts at risk the quality and identity of the seed given to the producer. All these events are still present in Argentina and in almost in every country of the world, and probably they will continue throughout time with other modalities or in other contexts, because they are inherent to human nature and to the easy reproduction and improper use of seeds and their components.

The introduction of biotechnology incorporated new social actors to the scene and made the relationships even more complex, especially between the owners of transgenic events and the plant varieties´ breeders, and also between the latter and seeds users, superimposing in practice different types of "property rights", which make the solutions of the problems originated in this exchange more difficult.

SAME PROBLEM WITH MORE PLAYERS

	CREATION PRODUCTION COMMERCE	USERS	
BEFORE	Phytoproducers Breeders SeedProducers Traders	Farmers	
NOW	Owners of genetic and biologicalr esources Owners of genes Owners of transgenesis procedures Phytoproducers Breeders SeedProducers Traders	Farmers Consumers of food products Exporters Importers	 Seed Grain

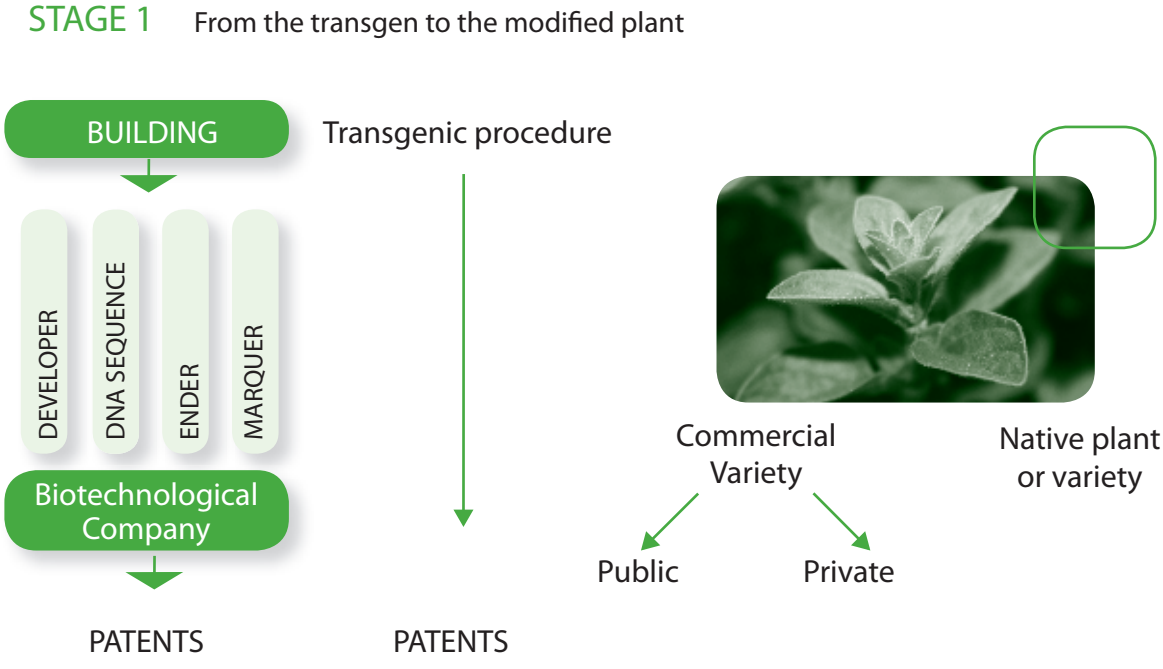
4.- We have been intensively working at both, national and international level trying to continue applying rules which are more precise regarding the granting and the scope of intellectual property rights and trying to eliminate ambiguities and existing gaps in legal texts.

Establishing the moment when and place where these rights end, does not get the same attention, at both national and international level.

The EXHAUSTION OF INTELLECTUAL PROPERTY RIGHTS, in some cases it has not been specifically contemplated at the national level or its interpretation and application is a difficult task. By contrast, at the international level, the existence of different non-harmonized systems (international, regional and national) create situations of legal uncertainty and discriminatory treatments between the different countries, especially between the developed and developing countries.

Furthermore, at the international level, it has not been implemented a compliance system allowing the holders of intellectual property rights to prosecute the offenders in the different countries, especially when their goods are moved across frontiers. Moreover, at the same level, there is a lack of an effective and economic procedure which allows exercising the right to enforce and request the nullity of rights of third parties and users, in case of improper granting.

These issues should be addressed at national and international level, in order to reach the abovementioned balance between the rights and duties of technology suppliers and its users.



IV. SPECIFIC PROBLEM

Once explained the general problems, I will summarize now the problems specifically originated among the owners of different intellectual property rights in agricultural biotechnology.

IV.1. STAGE 1
FROM THE TRANSGENE TO THE MODIFIED PLANT

To sum up, there are two elements in this stage: the construction (or transgene) and the plant where this transgene will be incorporated through the transgenic process.

In general, the transgene belongs to a single owner, the biotechnological company.

As we said, the plant material to be modified is a plant, which can be a private or public commercial variety or a native plant or variety.

In the Republic of Argentina, the construction or transgene with its new function or character which must be known and have industrial usage, is patentable.

The transgenic procedures to change the genome of a plant, whether they are microbiological or not biological, are also patentable, but not the by-product, since in this case it is a plant and it is not a patentable material in our country.

The transgenic plant is not patentable per se in Argentina, but its property can be requested by means of the breeder's right system, if its homogeneity, difference, and stability can be verified.

A .-GENE-RELATED ISSUES

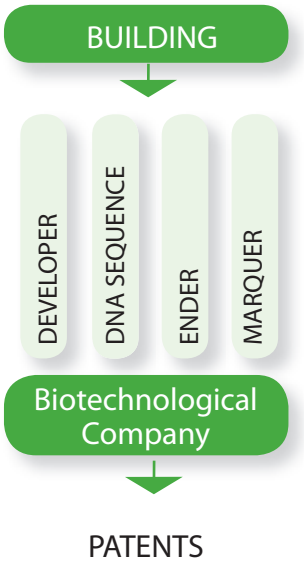
In general, in a developed world, the patents covering genes are not generally confined to a gene sequence.

The patent request claims, first, a gene or protein, considered in itself, corresponding to this sequence; second a vector or plasmid incorporated to the sequence and then an organism (for example, a plant or an animal) which has been transformed by means of said vector.

The protection for gene patents should only contemplate the construction by means of its DNA sequence and the resulting character of this construction expression in the plant.

In this way, the protection merely focus on that element which was really invented, that is to say, the modified gene as a new product and its new industrial application, allowing third parties to achieve the character by other means (natural variability, mutagenesis, transgenic process but with a different gen) or to find a new and different industrial application for the modified gene.

So, the scope of a patent right on a modified gene should include the construction and the function or the known character and the one where its industrial application has been applied.



Function or character + Industrial Aplication

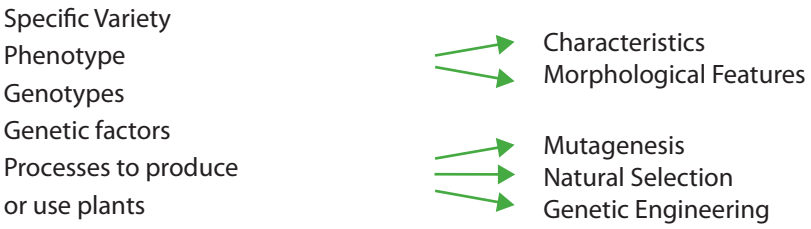
PATENTS OF GENES

B.- PLANT-RELATED ISSUES

Why not patenting a plant?

- The plants´ patents in developed countries not only cover the specific variety but also they can include its phenotype, including morphological features or characteristics, its genotype or other genetic factors such as the processes to produce and use such plants.

PATENTS OF THE PLANTS



Being this the case, the claim patent on the plants facilitate the appropriation by the owners of public or private materials gens or native resources, since their claim extends towards the genotype and phenotype of the plant used for the transgenic process, not invented by the owner of the gen. Besides, because of the vertical scope of the patent, when the plant is patented, the morphological and genotypic features derived from its originators are excluded.

This implies an extension of the property right to products not created by the inventor, but which already existed in nature or which belonged to third parties.

We should not forget that the plant has in its genome approximately 30 to 40 thousands of genes which would be inserted and not available in a patent, merely because someone invented or modified a gene within those 30 to 40 thousand.

Another problem posed if a plant is patented is that if someone other than the owner of the patent discovers a plant variety or a natural mutant, these elements will be included in the plant patent. As a result of this, plant-breeding research will be discouraged.

By protecting only the event (that is, the used gene included in the plant in such place of its genome), then the rest of the genes will be automatically "liberated" (the rest of the genotype) of the plant used for the transgenic process for its use in the research by third parties

In this point, there appears the issue of biological and genetic resources; the traditional know ledge associated to them and its access.



Convention on Biological Diversity

The Convention on Biological Diversity, which came into force on December 20, 1993, brought a paradigm change in the world of genetic resources establishing a new international regime. The goals of said regime are: to promote the conservation of biodiversity, the sustainable use of its components and a fair and equitable distribution of the benefits arising from the usage of said resources.

From these three goals, the last one is the most important and innovative one, since it tries to keep the balance between the countries owners of technologies and the countries rich in biodiversity, assuring that the appropriation of the first of the resources of the second, will be made by means of an agreement between provider-user. In such agreement, it should be expressly stated the prior consent of both, the country originator of the resource and the traditional and indigenous communities, in case the resource is found in its territory.

Likewise, by means of this agreement it should be granted the access to technology for the conservation and sustainable or derivative use of resources and its transfer, including derivative technologies (art 16 and 19).

Article 16.5 specifically establishes that State Members should control that the intellectual property rights support and are not contradictory to the Convention´s objectives.

In this framework and in relation to intellectual property rights and the access to genetic resources, three matters are under review at international level:

- Assure the prior justified consent by the originator countries and local and indigenous communities as a real and effective distribution of the benefits derived from the research and commercial usage of these resources.

In this sense, within the CDB frame, Bonn's Guidelines have been adopted in relation to the access to genetic resources and distribution of benefits resulting from its usage. Besides, in different organizations, it is being evaluated, at the international level, the ob-

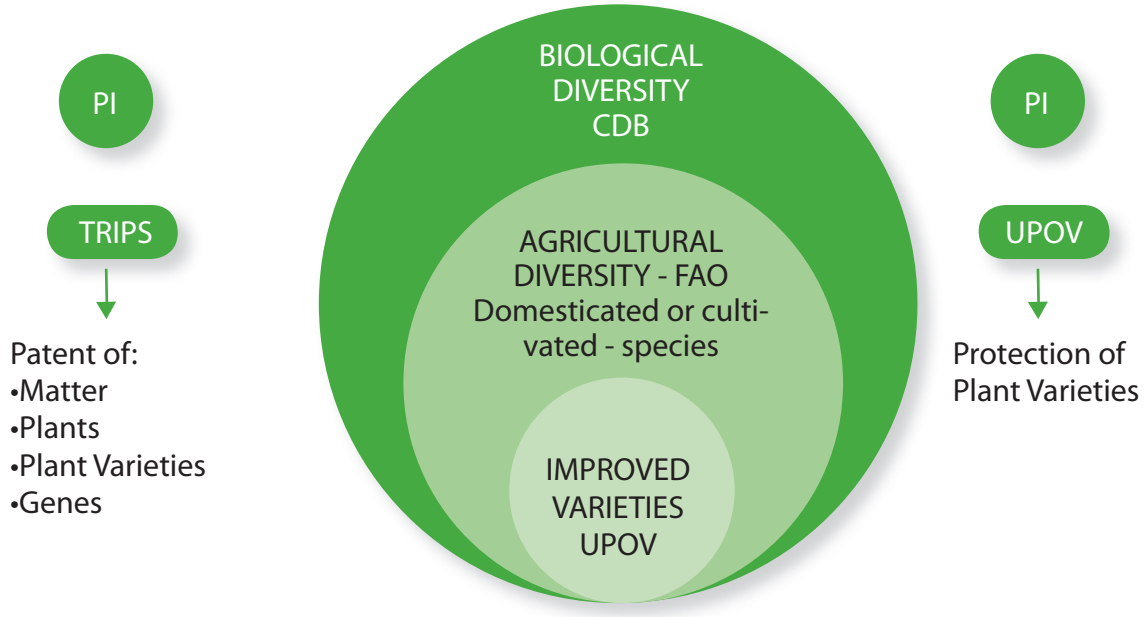
ligation to spread the origin of the resource in patents applications and a certificate of origin, the institution of an international regime about access and participation of benefits, and above all, an appropriate enforcement either for the non-fulfillment of the prior justified consent or the non-equitable distribution of these benefits.

- Secondly, it is being discussed if INTELLECTUAL PROPERTY RIGHTS systems, in general, and the patent system in particular, are compatible with the policy of access to genetic resources. Therefore, the relation between the Convention on Biological Diversity and the TRIPS Agreement is also being considered, in order to check whether they are compatible, complementary or opposed.

- And third, an international framework has been established which guarantees the free exchange of genetic resources related to food and agriculture: the International Treaty on Phytogenetic Resources for Food and Agriculture of the Food and Agriculture Organization of the United Nations (FAO), which entered into force on June 29, 2004.

So, to summarize, the relation between intellectual property rights and access to Phytogenetic resources can be appreciated in this chart:

ACCESS AND PROPERTY OF BIOLOGICAL RESOURCES



The Convention on Biological Diversity considers all the rules that enable the access to the elements of such diversity. According to TRIPS, this diversity could be totally patented if the countries would stipulate so in their national legislation and as long as they fulfill the patent requirements, unless these would be simple discoveries

The access to genetic resources for agricultural and food usage nowadays has a specific international rule, which is the International Treaty on Phytogenetic resources for Food and Agriculture of the Food and Agriculture Organization of the United Nations.

The modified products derived from these resources could be patentable, since the International Treaty expressly forbids protecting only by intellectual property rights the resources obtained within its orbit "in the way they were received".

Within the agricultural resources, there exists for the commercial plant varieties a sui generis protection system. It is the breeder's right system of the International Union for the Protection of New Varieties of Plants (UPOV), which allows protecting them, freeing the use of the germplasm of the protected varieties for its breeding or the personal use of the seed by the farmers.

In the Republic of Argentina, the focal point for the implementation of the Convention on Biological Diversity is the Secretariat of Environment and Sustainable Development, and for the UPOV Convention-Act 1978, to which our country has adhered, is the NATIONAL SEED INSTITUTE (INASE).

As regards genetic resources for food and agriculture, by means of Resolution No 693/2004 of the former Secretariat of Agriculture, Livestock , Fisheries and Food, the National Advising Commission on Genetic Resources for Food and Agriculture was formed (CONARGEN) as an advisory entity to the Minister of Agriculture, Livestock and Fisheries with respect to all of the abovementioned resources.

On June 10, 2002, our country subscribed the International Treaty on Phytogenetic resources for Food and Agriculture, but it has not yet been ratified by the National Congress.

Likewise, even when our country has adhered to the Convention on Biological Diversity, it has not yet been enacted, at national level, a law providing access to genetic resources and protecting traditional knowledge in the framework of this Convention, which would regulate the appropriation and use. There only exist certain provincial rules which are unclear and in some cases incomplete, and which do not address the subject as a whole.

At national level, actions have not been taken to analyze the compatibility of the rules and/or principles of access with intellectual property rights and balance their regulations as well as their practical implementation.

At the same level, it has not been analyzed nor it exists a specific rule related to the access and distribution of the benefits of commercial plant varieties present in the public domain and which are frequently used as a germplasm basis for the creation of new commercial varieties.

These measures should be taken as soon as possible.

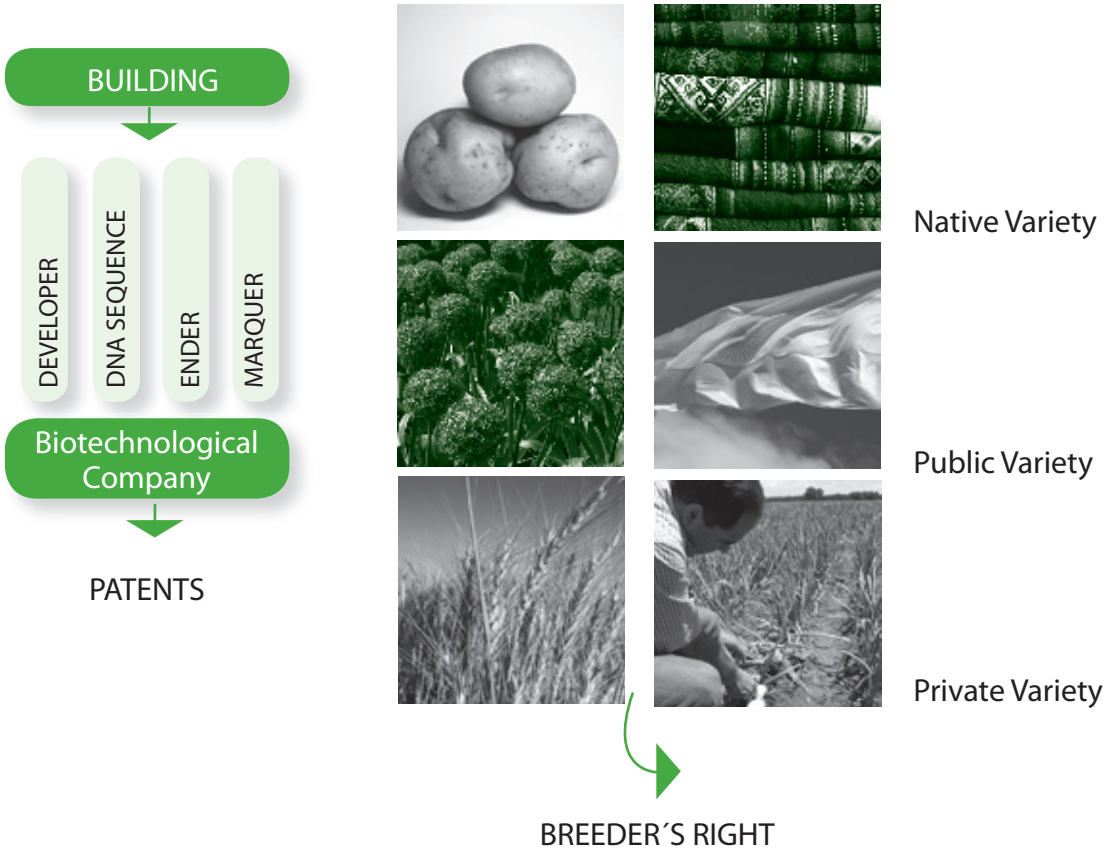
STAGE 2

FROM THE TRANSGEN TO THE NEW TRANSGENIC VARIETY

There are two elements: the modified gene and a conventional plant variety, which can also be a public or private variety protected by the breeder's right.

There are also two social actors which are generally two different persons: the holder of the gene and the breeder of the conventional variety.

STAGE 2 From the transgene to the new transgenic - plant variety



PROBLEM

a) Need of an interrelation and a parallel growth between biotechnologists and conventional breeders.

The development of genes and transgenic events expressing functions or effects unknown in the agricultural field imply an invention of great magnitude, for its scientific activity, as well as for its economic investment. So the need for an appropriate and efficient protection cannot be discussed.

But in order that the invented genes have an agronomical value, they need to be incorporated to a high performance germplasm.

The modified gene, however complex it is, means nothing without the plant variety where it is expressed.

The plant variety without the modified gene has its own existence and value and it can imply a significant advance in the agricultural field, as it happened during the entire pre-biotechnological history.

In the agricultural field, the sole existence of biotechnological companies developing events of last generation does not guarantee the economic success of the country or the acquisition of excellent varieties and seeds, but it is accompanied by a similar growth of companies dedicated to the crea-

tion of advanced plant varieties.

This imbalance situation has been accentuated with the appearance of new technologies.

The patenting of a gene produces a situation of unbalance, since while breeders would not have access to the gene, the biotechnologist would have access to all existing varieties, public or private, insert them its gene and from there obtain a new independent protection for those varieties without compensating the original breeder.

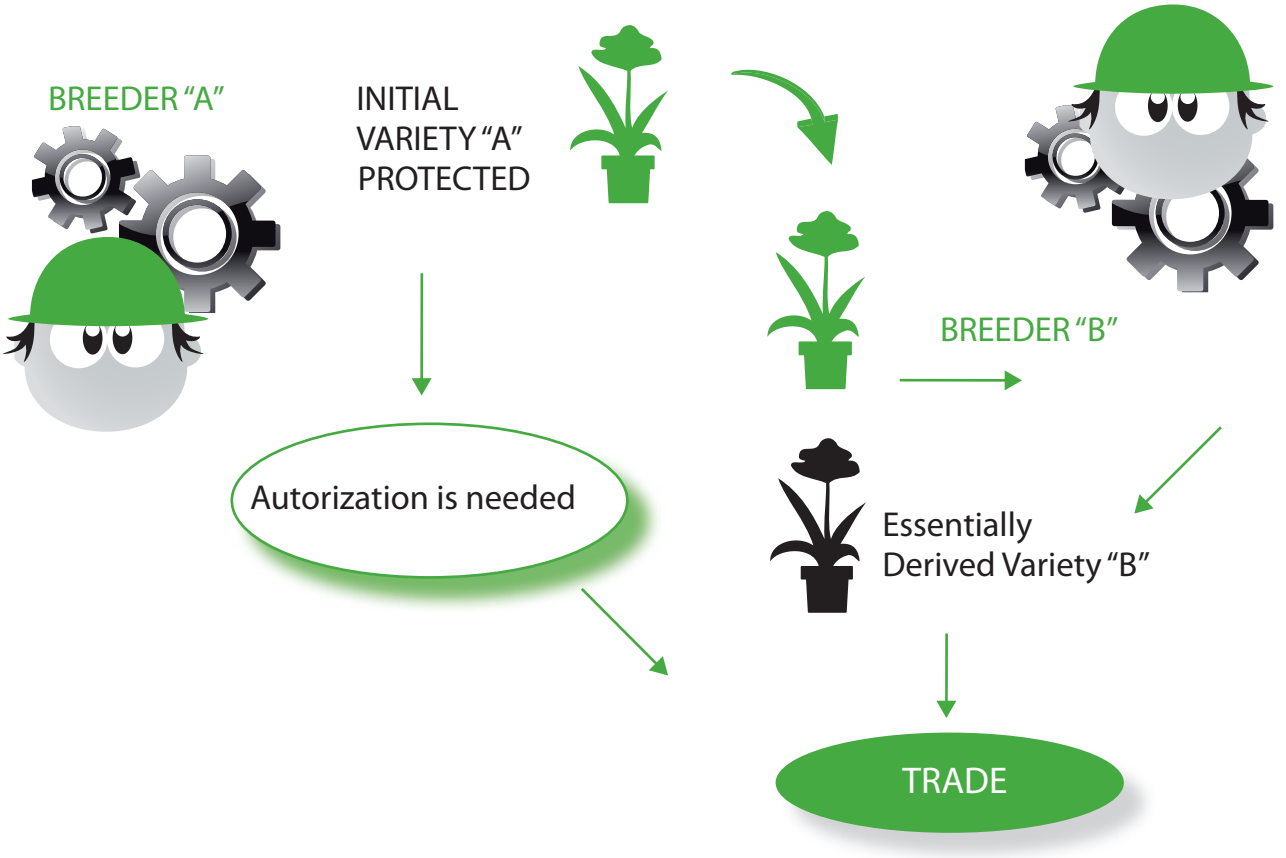
The current Argentine legislation on plant varieties does not envisage the solution to this problem, whether it is by means of Act nº 20.247 or the UPOV Act of 1978.

The UPOV Act of 1991, article 14.5 introduces an original concept: the "essentially derived variety".

The UPOV Convention states that the scope of the breeder's right for a variety extends to any variety essentially derived from it.

An essentially derived variety is a variety which mainly derives from the protected variety and keeps its essential characteristics. Nevertheless, it is still a different variety.

The same convention explains that there are different ways to obtain an essentially derived variety, for instance: selection of a natural or induced mutant, or a somaclonal variation, or transformations by means of genetic engineering, among others.



With this provision the balance between conventional breeders and biotechnologists is reestablished, since the patent holder on the gene cannot exploit its new variety without the authorization of the holder of the initial variety.

The concept "essentially derived variety" should be immediately incorporated to our national legislation as a tool to promote and protect the activities of the breeders of conventional varieties and the national agricultural patrimony represented by public varieties.

b) Why not patenting PLANT VARIETIES?

Patents on plant varieties are accepted in some countries like the United States of America and Japan.

In these cases, the patents can protect hybrid plants and plant inbred lines. Seeds and processes used to modify plants genetically and obtain hybrids can also be patented.

The UPOV Convention by means of Act of 1978, in its 2nd article banned the accumulation of the protection through the breeder's right, with that of the patents for the same species and botanical genera.

The Republic of Argentina through the Seeds and Phytogenetic Creations Act No 20,247 has opted to protect by means of the breeder's right system, the varieties of all the species of the plant kingdom, providing an effective coverage adapted to its special characteristics.

For the abovementioned reasons, we consider that it should not be accepted the patenting of plant varieties and its propagating material, the seeds, even when the double prohibition established in the UPOV Act of 78 has been eliminated. In this way it is ratified that the breeder's right system is the only efficient tool to protect plant varieties in Argentina, regardless of its traditional, conventional, or transgenic nature.

To this effect, a national rule should be enacted that clearly expresses the abovementioned.

UPOV ACT 78

DOUBLE PROTECTION PROHIBITION

Each State of the Union can recognize the breeder´s right stipulated in this Convention by means of the granting of a particular protection or patent. However, every State of the Union which national legislation accepts both ways of protection, shall apply only one of them to a same genera or botanical specie.

↙ PATENTS

↘ BREEDER´S RIGHT

c) Exception of the breeder

As we have seen in the first charts, the free research in breeding is the center of development of new plant varieties, which seeds are the basis of all agricultural and food production. Therefore, it must be protected assuring the free exchange of germplasm which serves as base.

Article 25 of the Seeds and Phytogenetic Creations Act and its equivalent, article 5, subsection 3 of the UPOV Act of 1978 adopt the so called " breeder´s exception" which refers to the possibility the selector has to take a protected variety, investigate it, obtain a new variety, register it and market its propagating material, without requesting an authorization of the owner of the protected variety or paying him royalties.

The only situation not contemplated in this exception is the hybrid lines or all those materials which are given a repetitive use in order to market of the variety.

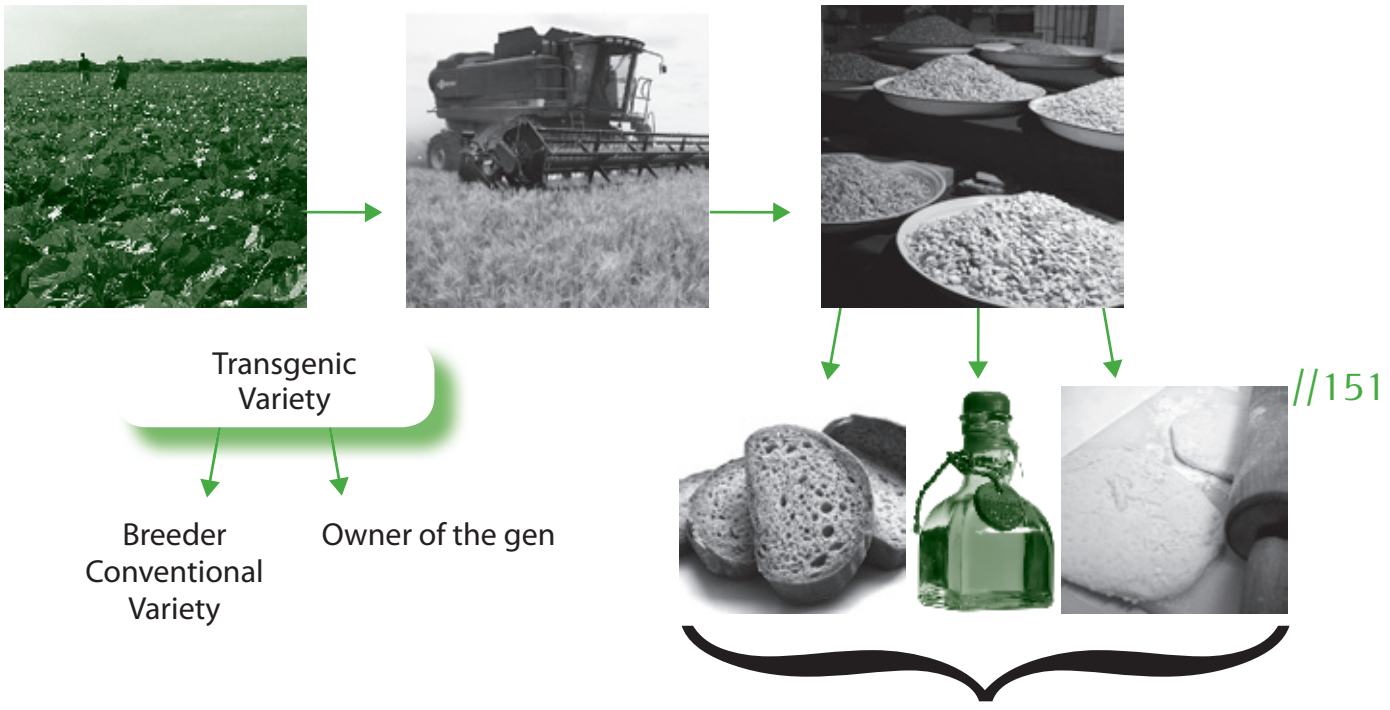
In the patents´ right there exists a principle stating that the investigation with academic purposes should be free, and for this reason, it is stipulated in the patent legislation, the so called "experimentation exception". However, this exception is generally limited to the academic environment, without including the market launching or the exploitation of the object obtained experimentally by means of biological reproduction.

In this way, the patent holder can prevent, for instance, the variety propagation, even experimentally, test crossings and any subsequent research and development with the crossings made, as well as the use of the material as originator of another variety.

This exception is the essential difference between the patents system and the breeder's right. This is the one providing the distinctiveness and adaptation of the intellectual property rights to the agriculture, and it is also the one which prevents the creation of monopolies on germplasm, guaranteeing its free availability, its use and exploitation for the entire scientific sector with no discriminations.

It should be envisaged in the patents legislation, the existence of mandatory licenses or a specific provision like in the Mexican Patent Law, so that the holders of gene patents cannot oppose to the research and the acquisition of new plant materials which would increase the variety heritage of the country.

STAGE 3 FROM THE TRANSGENIC VARIETIES TO THE USERS



STAGE 3: FROM THE TRANSGENIC VARIETY TO THE FARMERS

We have an object which is the transgenic variety, made up of a transgene plus a conventional variety and its derived propagating material: the seed and two owners: the owner of the gene, holder of a patent and the owner of the conventional variety, holder of breeder's right.

Opposite to them we have the user of the seed, a farmer, who at the same time produces a new object derived from such seed which is the grain and which will be turned into flour, oils, etc- These new objects will end in the hands of the consumers, as the last social actors of this chain.

a) Gen owners - breeders relations

As it was explained before, the modified gene, however complex may be, without the plant variety where it is expressed means nothing. It needs the plant in order to exist and acquire all its technological value.

For this reason, the holders of genes are continuously seeking for high performance commercial varieties and entering into license agreements with the breeder companies of such varieties in order to investi-

gate, try out, test and then register the new transgenic variety and market its seed.

Once the license agreements are entered into, the new transgenic varieties are registered in the National Cultivar Property Registry lead by the NATIONAL SEEDS INSTITUTE (INASE), under the name of the breeder companies, which are the holders of the new plant variety protection and its propagating material.

Due to the breeder's work in transgenic varieties, the gene is not simply added to the conventional plant variety, but a new creation takes place. This new element, in our case is the transgenic plant variety or Phytogenetic creation, defined in article 2 b) of Act No 20247, which according to article 20 constitutes a good.

As it was correctly established in the Novartis III case in December 1999, the Appellate Body of the European Patent Office (EPO), a gene modification is not enough to change all the genome of a plant, being a newly defined variety not only because of the gene but for the totality of its genotype and specially, according to the UPOV system, for its phenotypic characteristics.

Article 2328 of the Civil Code states that those things which existence and nature are determined by another thing, from which they depend or to which are joined are accessory. Article 2520 adds that the property of a thing simultaneously includes the accessories found in it, naturally or artificially joined.

So when the gene is incorporated to a plant variety it becomes part of it as an accessory thing (article 2327 of the Civil Code).

The gene is an accessory since it is not self-sufficient and it is only expressed when it is part of the plant variety. On the other hand, the plant variety has its own existence and value.

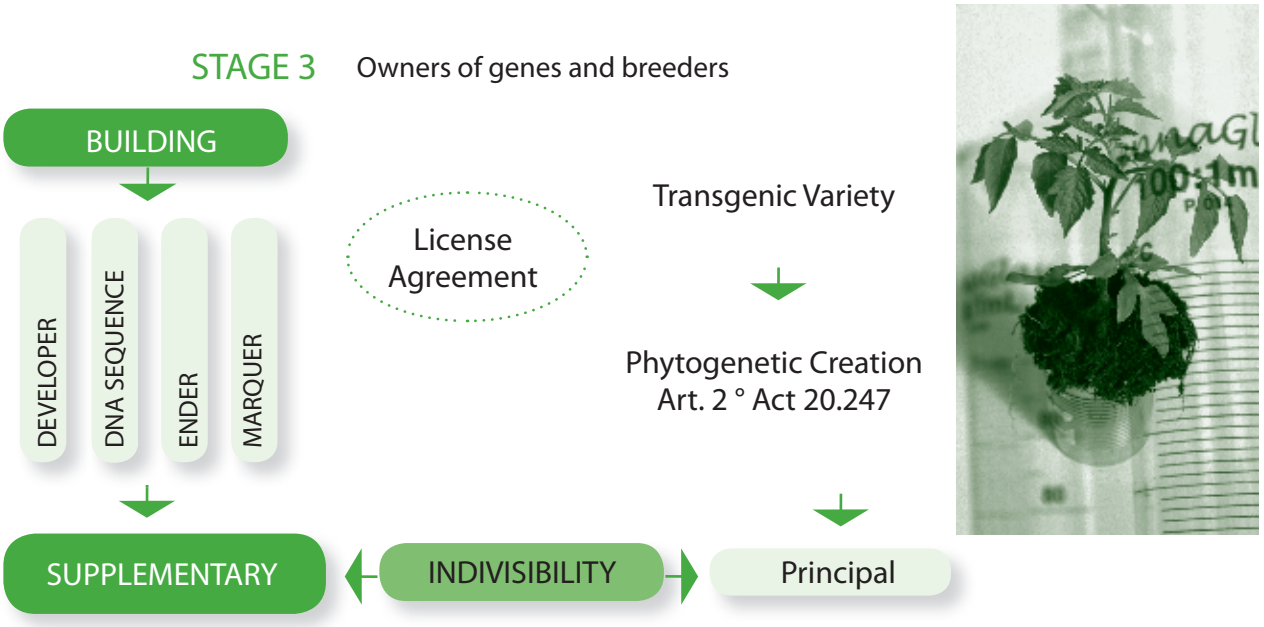
This new genetically modified variety posses certain genetic, morphological, and agricultural characteristics which are the result of the interaction of all its genes and the environment, among them, the created gen. It is this physical unity, indivisible as it is, over which an intellectual property right is obtained by means of a breeder's right system regulated by the Seed and Phytogenetic Creations Act No 20,247 and the UPOV Act 1978.

This same indivisibility condition is present in its propagating material- the seed- according to the terms of article 2 of the abovementioned Act.

Therefore, it is established that:

- The legal relation, in the case of transgenic varieties and seeds, is between the owners of the genes and the breeders. The situations derived from this relation, among them payments for the reciprocal use of its creations, must be resolved between them, not being enforceable to third parties.

- For the abovementioned reasons, when seed companies market the seeds of transgenic varieties, in the seed price they are incorporating the value of all its elements and its respective intellectual property right, which are extinguished with the payment of the seed price by the user.



b) Breeder – farmer relation

- Privilege, exceptions or farmer's exception

In our country, the Act 20,247 recognizes the so-called "farmer's privilege or exception" in its Article 27, when establishing that the property right of a variety is not affected by the person who stores and sows seed for his personal use. Article 44 of Decree 2183/91 states that the breeder's authorization of a variety shall not be necessary whenever the farmer stores and uses as a seed, on his own holdings, the harvested product obtained as a result of planting a protected variety in that place.

Moreover, by means of Resolution No 35/96 of INASE, the requirements to make effective such prescription were established.

This benefit is:

- An exception to the property right of plant varieties´ developers, since Act No 20,247 of Seeds, does not regulate it autonomously, but within Chapter 5 denominated "National Cultivar Property Registry"

- A positive right, that is to say, the farmer who fulfils the conditions demanded by the regulations in force acquires ipso facto such right and the breeder cannot restrict or prevent it.

The conditions to be framed within this benefit are:

a) To be a farmer

In principle, a farmer is the person who works the land or who is responsible for the risk of the agricultural company.

b) To have possession of the land, either in property, rent, commodatum, donation, etc not only of the land where he got the seed but also of the land where he is going to use it.

c) Having stored seed for his personal use

During the 90s breeders, when interpreting this article, said that the storing concept implied the impediment of the farmer of removing his seed from the land in order to improve it.

If he did it and as the seed was not stored on his own holdings, the breeder's exception could no be applied, and the seed would then be considered as commercial having to

pay the pertinent royalties.

This brought about severe criticism from the farmers, which saw the abovementioned interpretation as abusive, especially when the producer went to his cooperative to improve and deposit his seed until the moment of the sow.

A balance needed to be established between both sectors and a legal interpretation according to the farmer's reality needed to be provided. Therefore, the concept of storage mentioned in the decree, was not referring to the physical place where the seed was found, but was related to the concept denominated as "Original intention".

The "original intention" is the act of will of the farmer who stores the harvested grain, on his own holdings, obtained from planting a protected variety for his own personal use, individualizing it according to variety and quantity.

The seed stored by the farmer per variety and quantity should be kept individualized during the process, which starts with the sow of this seed, continues with its improvement and deposit, and ends with the new sow.

It is also considered that the farmer can freely move the seed between the different lands he has, without being excluded from said exception.

d) The original seed must have been legally acquired.

e) The grain or the harvested seed should be used by the farmer holding intellectual property rights for his personal use and not by third parties.

c) Relación entre el titular de la patente del gen y los usuarios. Situación del productor agropecuario

The genetically modified events for commercial use in our country (nowadays there exist only those denominated as 1st generation), protect the crop in relation to plague control, either of weeds or insects.
The patented invention consists of the construction in itself and the characteristic conferred to the plant, for example, resistance. This characteristic is expressed throughout the crop development and the farmer is the one who benefits from this modification during that period. This benefit starts with the sowing and ends with the harvest.

Article 4, subsection e) of the Patent Law states that there will be industrial application when the object of the invention leads to the acquisition of a result and article 8 states that the patent will grant to its holder, when the matter is a product, the power of preventing third parties from using the product without his consent.

When the farmer sows the seed of a transgenic variety with patent rights for the gen and breeder's right for the variety, he is using both creations for his own use and thus obtaining a result for which he should compensate the inventors.

In practice, this happens with the purchase of the seed bag. The farmer, when paying the sale price of this bag, is cancelling the value of all the inventions therein contained, exhausting the holder's rights.

STAGE 3 Holder gen patent and farmer

SOW

Expression
Of the gen

HARVEST

Purchase of
Seed´s Bag

EXHAUSTION OF RIGHTS

Patent of
The gen

Breeder´s right
For the variety

The product of the harvest, in the case of autogamous species, can be resown by the farmer, in the next campaign or he can sell it as grains.

In the case of re-sowing, this resown product will be considered as seed again, pursuant to Act 20,247, and the producer should pay again the breeders for the new use of their invention, unless its situation is included in the farmer's exception, stipulated in article 27 of Act No 20,247.

At this point, the national patent system does not regulate any exception to the patent right for the use by the farmers of their own seed, as that stipulated in the Seeds Act, so if the exception is configured, the exception would be enforced to the breeders, but not to the patent holder of genetically modified events.

If this benefit is kept, the patents legislation should be reviewed, in order to be adapted to the Seeds Law.

In the second assumption-grain- if there is a legitimate purchase of the seed of origin, both rights have been extinguished.

The breeder's right holder cannot exercise its right again, since its right ends with each production cycle and also because article 27 of Act 20,247, envisages the "consumption exception" which allows using and selling as raw material or food the product obtained from the harvest of the phytogenetic creation.

As regards the patent holder on a genetic construction, he cannot allege that his invention has been used, since the characteristic by means of which it is claimed the

patented construction is not expressed in the grain but in the crop, and therefore the invention related to the grain lacks industrial application.

It does not exist in the world a clear criteria as regards the way in which the two legal systems work together: patents and breeder's rights in the above assumptions, especially when there is an exhaustion of rights

In this sense, it is necessary to extend national rules, and balance the regulations in order to avoid uncertain legal situations in the agricultural and seed market.

Vegetable Varieties and its denomination



Vegetable Variety Denominations in the breeders rights system and in trade

This article was prepared by **Dr María Laura Villamayor,** member of the Intellectual Property Rights and Phytogenetic Resources Coordination Unit, prior member of INASE's Legal Affairs Bureau.

The denomination. Applicable regulations. The 1978 UPOV Act. Decree 2183/91. Explanatory Notes on Variety Denominations under the Upov Convention UPOV INF 12/1; UPOV/INF/12/1. Exceptional change. Cases admitted. Comparative law.

A **"name" is the verbal denomination given to a person, thing or to a tangible or intangible, concrete or abstract concept to distinguish it from others.**

Plant varieties also need to have a denomination by means of this linguistic morphological system, so that they can be distinguished from one another.

Our country, regarding the protection of plant varieties, has adopted a "sui generis" protection system, which is the one created by the International Union for the Protection of New Varieties of Plants Convention (UPOV Convention) which was originated with the Act sanctioned in 1961, reviewed in the 1972, 1978 and lastly modified in 1991.

Said International Convention and in particular the Articles 5.2) and 20 of the Act of 1991 and the Articles 6.1) e) and 13 of the Act of 1978 and of the

Convention of 1961, envisage that *"plant varieties shall receive an appropriate denomination which shall be registered when the right is granted to the breeder. The variety denomination must enable the variety to be identified. The denomination must not be liable to mislead or to cause confusion concerning the characteristics, value or identity of the variety or the breeder's identity".*

Our country possesses multiple legislations on denomination of varieties. It has adopted the UPOV Act of 1978, the Seeds and Phytogentetic Developments Act No 20.247 and the Statutory Decree of such No 2183/1991.

Depending on the situation, different norms are applied. In the case of denomination of varieties requiring a property right, article 13 of the Upon Convention, Act of 1978 is applied.

If otherwise the registration is only required in the Commercial Registry, then article 17 of Act 20.247 and article 19 of decree 2183/1991 are applied.
Furthermore, the explanatory notes on denomination of varieties in accordance with the UPOV Convention, UPOV /INF/12/1 were established in order to provide a guide and interpretative criteria.

An important point concerning the denomination given to a variety and which is also closely related to it is the definition of "breeder" in order to determine which type of designation of these phytogenetic developments can be liable to mislead or cause confusion regarding the identity of a variety.

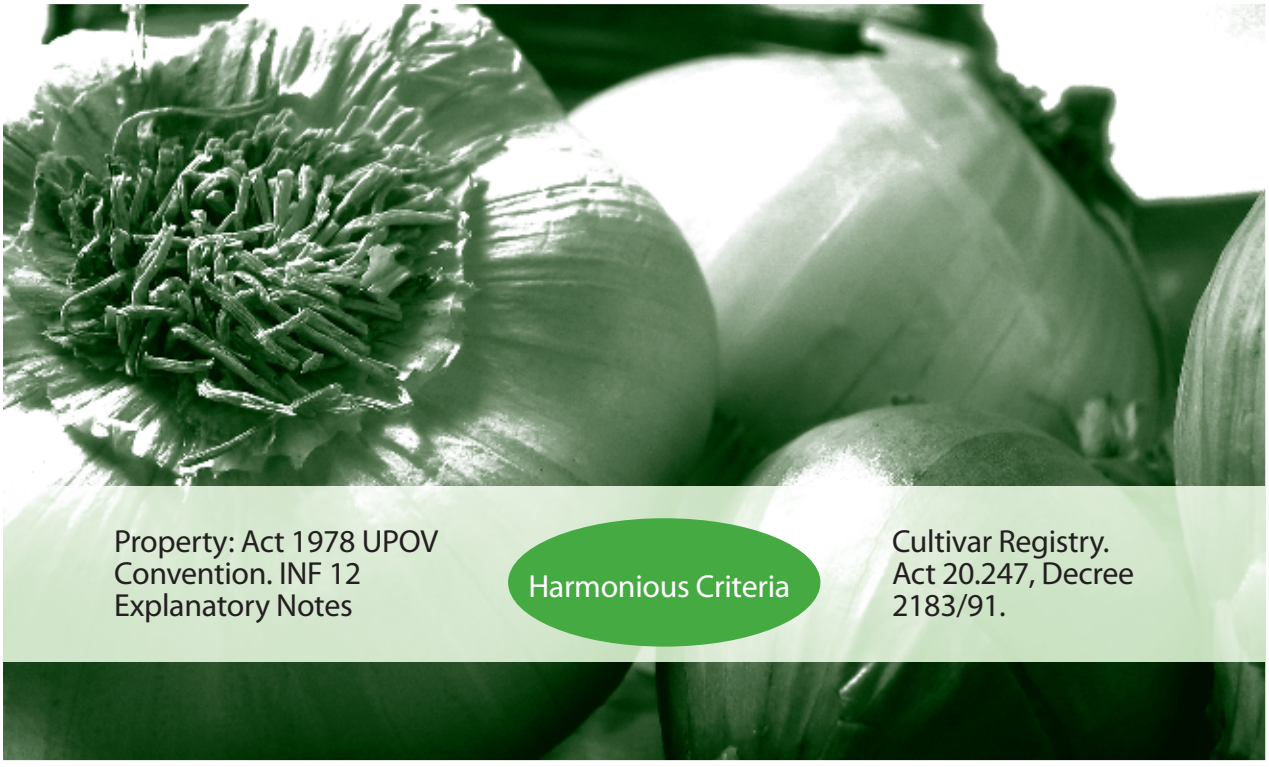
The UPOV Act of 1978 states that "the purpose of this Convention is to recognize and guarantee a right to the breeder of a new plant variety or to its successor in title". Decree 2183/1991 states that the "breeder" is the person who creates, or discovers and develops a variety.

The UPOV Convention Act modified in 1991, to which our country did not adhere, in its article 1 IV) defines the "breeder" as:

-The person, who bred or discovered and developed a variety (text 1991 upov act).

-The person who is the employer of the abovementioned person or who has entrusted his work, whenever the legislation of the Contracting Party provided so, or

… The successor-in-title of the first or the second person mentioned, depending on the case.



Then, the problem that arises is the following, if the denomination of a variety shall not lead to confusion about who is the breeder of such variety, and if we understand for "breeder" the person who discovers, develops and optimizes a variety or its successor in title, who in turn, is the person who has succeeded or subrogated for any reason to the right of another person or persons who could undoubtedly be the "purchaser or licensee" of a variety, then: Should it be requested the change of the denomination under which a variety is identified each time this person changes?

The Document UPOV /INF/12/1 "Explanatory notes on denomination of varieties in accordance with the UPOV Convention" states in its third paragraph of the preamble that "*...the approved denominations of varieties shall be established as generic designations and… shall be used even after the expiration of the breeder's right*". From these notes, we can appreciate the need of perpetuity and solidity of the denomination which could lead us to conclude that accepting to change the denomination with each new "Breeder" of such variety would be incorrect.

The principles established by the text of the Convention as regards denominations, shall be interpreted at the time when the variety is registered and they shall not be applied in the cases of possible changes of holders or new "breeders".

The denomination is forever, as well as the name of a person, being feasible to change it only in cases of exception.

The request to change the denomination of a variety already registered shall be exceptionally accepted. This is something which has been put into practice by means of the administrative jurisprudence of the Legal Bureau of INASE:

Such Bureau has accepted a change in the denomination of a registered variety when same "shall be a trademark registered by a third party to distinguish the class 31 (seeds), before the Trademarks Directorate of the National Institute of Industrial Property, which would prevent the free trade of the variety, being liable, at the same time, to mislead or cause confusion concerning the characteristics, value or identity of the variety or of the breeder. C/37/15 Addendum of the document C/37/15. "Reports of State and Intergovernmental Organizations´ representatives about the situation in the legislative, administrative and technical scope". This document was prepared by the INTERNATIONAL UNION FOR THE PROTECTION OF PLANTS"

The mentioned jurisprudence was later adopted by the UPOV in its "Explanatory Notes on Denominations of Varieties in accordance with the UPOV Convention"

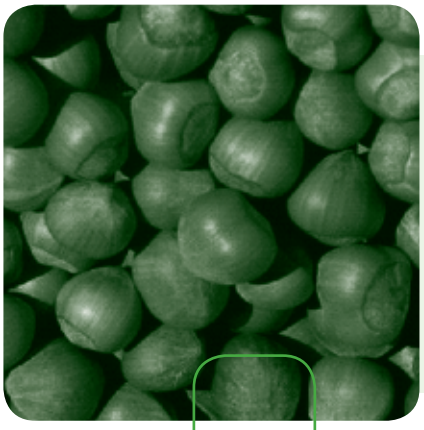
Furthermore, article 63 (3) (a) of the Regulation of the European Community No 2100/94 of the Board, dated July 27, 1994, in relation to the Community plant variety protection (OJL 227 from September 1m 94), page 1) pursuant to the abovementioned, states that "there is an obstacle to designate the denomination of a plant variety, in the case its use in the Community territory is preceded by a prior right of a third party. In the case of trademarks registered by a third party, it shall be notified to the Community Office about the trademark obtained prior to the approval of a denomination of a variety and which is identical or similar to the denomination of the variety and registered according to identical or similar goods of the variety.

Please note that the first information source of the Office to deal with prior rights is the one given by the proprietary of such right. However, if the information is obtained by other means, the Office would inform the applicant of the existence of this prior right and explain that said situation could become an obstacle for the registration of the variety with such denomination.

Whereas the prior right is commonly referred to the registered trademarks, there may be cases when the denomination of a variety could conflict with a denomination of Origin for products related to the agricultural field.

This case has arose before in our country with the denomination of a hazel variety registered in the National List Registry of INASE, when the Ministry of Agricultural, Food and Forestry Policies and the region of Piemonte of the Italian Government requested the possible denomination change of the mentioned hazel variety registered in the Commercial Registry, which would be infringing an Italian geographic designation.

The Italian Government informed that the region of Piemonte had registered the hazer of such region in 1992 with a specific designation of origin "Tonda gentile delle langhe". Therefore, it was clear that the existence in our country of a hazer variety which shall be commercialized with the same denomination could cause confusion concerning the geographic origin



TONDA GENTILE DELLE LANGHE

↓

TONDA GENTILE

PRIOR RIGHT

↓

DENOMINATION OF ORIGIN

of the product and cause economic damages to the local companies of Italy, as it arises from the file submitted to that effect. On the other hand, the variety "Tonda gentile delle langhe" had been registered in our country in the year 1997, 5 years after the denomination of origin had been granted.

The Director of the National List Registry demanded that it shall be indicated, in case there existed a registered plant variety from said hazel, the denomination under which it was identified in Italy. Consequently, the Ministry of Agricultural, Food and Forestry Policies clarified that this variety had been registered at European level with the denomination of "Tonda gentile". So it was requested to change the denomination of the variety registered in our country from "Tonda gentile delle langhe" to "Tonda gentile". This case was resolved with the consent given as regards the change of denomination of the variety registered in the National List Registry from "Tonda gentile delle langhe" to "Tonda gentile".

COMMUNITY PLANT VARIETY OFFICE

Once again, the Regulation of the European Community in its article 63 stipulates:

Variety Denomination:

1-When a community protection of a plant variety is granted, the Office shall approve the denomination of the variety proposed by the applicant according to subsection 3 of article 50, if according to the examination performed, the denomination is considered as admissible.

2- A variety denomination shall be considered as admissible when there is not an obstacle preventing its registration, according with the subsections 3 or 4 of this article.

3- It shall be considered that there exists an obstacle for the approval of a variety denomination when:

a) its use in the Community territory is not possible because of the existence of a prior right granted to a third party;
b) it would cause confusion to the users as regards the variety's identification or reproduction;
c) it coincides or can be confused with the denomination of a variety under which, in an official registry of plant varieties, appears another variety of the same specie or closely related or under which it was commercialized the material of another variety

in a member State or in a member State of the international Union for the Protection of Plant Varieties, unless that other variety has ceased to exist, and its denomination was not widely known.

d) it could be offensive in one of the member States, that is to say, contrary to public order.

e) It could be liable to mislead or cause confusion concerning its characteristics, the value or identity of the variety or of breeder or of any other party of this procedure.

GOBIERNO
DE ESPAÑA

MINISTERIO
DE MEDIO AMBIENTE
Y MEDIO RURAL Y MARINO

SPANISH PLANT VARIETY OFFICE

In the Spanish Office of Plant Varieties (OEW) there exist two legal institutions closely related: the Registry of Protected Varieties and the Registry of Commercial Varieties. In the latter, the varieties which have passed the technical examinations are included, and which, as a result, are suitable for its agro climatic conditions. Afterwards, they are transferred to the OCDE Catalogue and EU´s Common Catalogue, and they can be marketed in the entire European Union without any restriction.

Both Registries work with the same requirements as regards the denomination of a variety.

They determine that the denomination could not make believe that, because of its similarity with a widely known commercial denomination, different from a commercial registered trademark, a denomination of origin or a variety denomination, the variety is another variety, nor be liable to mislead concerning the identity of the applicant, of the breeder or of the responsible party in charge of the maintenance of the variety. The applicant cannot provide as a denomination of a variety a designation which already generates benefits that arise from a trademark right related to identical or similar products or a denomination which could cause confusion with said trademarks, unless he compromises to waive the trademarks rights at the moment when the variety is registered.

The denomination of a variety shall not be identical or similar to a denomination of origin recognized by some official authority, either permanent or in progress.

The Union for the Protection of Varieties of Plants establishes that each member of the Union shall register the denomination of a plant variety when the title of the breeder's protection is issued. Every person who in the territory of one of the members of the Union offers to sell material of the protected variety or commercializes reproduction material of said variety shall be forced to use the denomination, even after the expiration of the breeder´s right of such variety.

A trademark, commercial denomination or another similar designation could be associated to the denomination, with purposes of trade or sale, but said denomination shall be easily recognizable.

MERCOSUR

As regards denominations of varieties, the MERCOSUR/CMC/DEC No1/99 agreement of COOPERATION AND FACILITATION ON THE PROTECTION OF PLANT VARIETIES IN THE MEMBER STATES OF MERCOSUR about denomination varieties establishes that:

1. A variety shall only be object of request of the grant of a breeder's right if it has the same denomination in all the Member States.

2. Each Member State shall register the proposed denomination, unless it is verified that such denomination is not in concordance with Article 13 of the UPOV Convention, Act of 1978, or it is inappropriate in the territory of this Member State. In such a case, the breeder shall be requested to propose a new denomination.

3. The authority of a Member State shall inform the authorities of the other Member States about information related to the denomination of varieties.

4. Every authority shall provide its comments about the registry of a denomination to the authority which has informed said event.

5. It shall not be accepted as denominations of plant varieties, trademarks registered according to the rules in force in each Member State.

Contracts for the Plant Breeders Rights



The issue of contracts in Argentina Breeder

Presentation by **Dr. Carmen Gianni** representing the REPUBLIC OF ARGENTINA and the NATIONAL INSTITUTE OF SEEDS in the International Symposium on "Contracts related to breeders' rights" organized by the INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS in the headquarter of the UPOV, in Geneve, Switzerland on October, 2008 and co-written by **Dr. María Laura VILLAMAYOR,** attorney to the Intellectual Property Rights and Phytogenetic Resources Coordination Unit of the abovementioned Institute.

The Technology Binding Unit of the NATIONAL INSTITUTE OF FARMING TECHNOLOGY of the Republic of Argentina and the ARGENTINE ASSOCIATION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS (ARPOV) collaborated in this presentation.

This presentation was updated for January, 2010.

Definition. National Legislation. Comparative Law. Common Law System and Continental System. Hierarchy. Contracts in Argentina: Testing, Research and Development, Marketing, Private Sector, Breeder-Owner of biotechnology-Multiplier, Breeder, Breeder-Farmer. Public Sector, Research and Development, Technology Transfer. Collection of Royalties.

Today, contracts are a part of all people's lives. People enter into agreements on a daily basis, from large-scale operations, such as the purchase of real estate or company start-ups, etc. to everyday contracts which they make on numerous occasions without even realizing it and which relate to work, transport or the use of goods.

I.- LEGISLATIÓN

A.- In order to understand what a contract is and its role in a given country, it is necessary to analyze it within the corresponding legal system.

There are two main legal systems in the world:

1) On the one hand, the Anglo-Saxon system, known as common law, that was adopted first in England, then by the United States of America and other countries of the English-speaking world.

In the Anglo-American system, law is primarily customary, because it is fundamentally based on elements such as customs, practices and habits of a social group. As far as the application is concerned, case law is of paramount importance, whereas positive law is secondary.

Law takes into account the particular features of each community to which it applies, constantly adapting to social, cultural and economic changes.

2) On the other hand, there is the so-called continental system, which originated in Europe, particularly in France and Germany, and which consists of a system of written rules created specifically to regulate human behavior. These rules are ranked differently and are related to each other in hierarchical terms.

Law is the highest expression of the continental system.

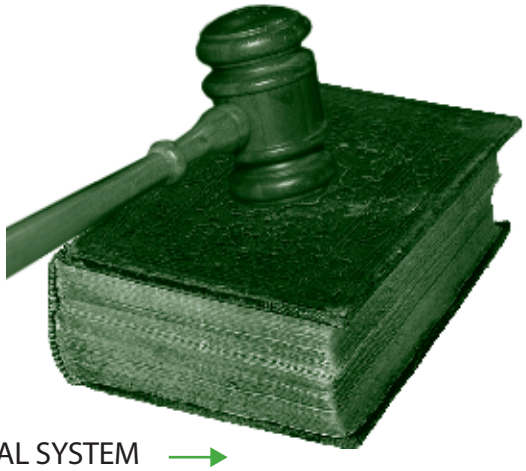
Here, the role of the judge is not to create law, as in the case of common law, but rather to interpret it and to apply its provisions to a particular case.

This is the system applied by the legal organizational frameworks based on the structure of Roman law, as in Europe and Latin America, including the Republic of Argentina.

América Latina y entre ellas la República Argentina.

COMMON LAW →

JURISPRUDENCE PREVAILS



LAW PREVAILS →

CONTINENTAL SYSTEM →

B.- The Republic of Argentina has a legal system composed of a legal framework based on written rules, which are structured hierarchically and which regulates the relationships between the State and its inhabitants and the relationships between individuals, as is the case with contracts.

The Argentine Republic adopted the democratic system as a form of government: a system of political organization primarily characterized by the fact that power is wielded by the people.

The democratic system adopted by my country is a

representative, republican and federal system.

It is representative because the people may only deliberate or govern through their representatives.

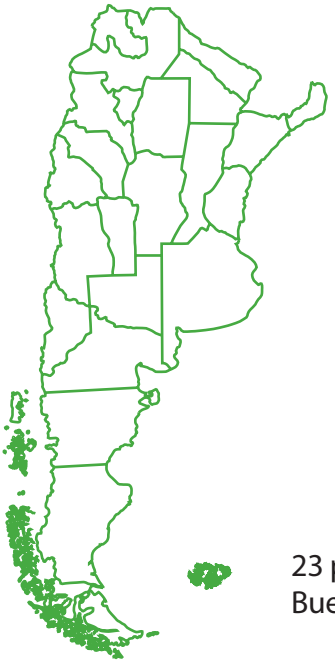
It is republican because it is a political system characterized by the separation of the branches of government, which must oversee one another. It has adopted the traditional tripartite division: Legislative Power, which creates law; Executive Power, which in charge of the administration; and Judicial Power, which interprets law and settles disputes.

Lastly, it is federal because various Provincial States existed prior to the foundation of the Nation and came together to form a National State of their own free will, delegating certain powers to the central authorities and keeping non-delegated powers for themselves.

ARGENTINE

Democracy

Federal



Representative

Republican

Legislature
Executive Power
Judicial System

23 provinces and
Buenos Aires City

Provincial Constitution

The Organic Law states which powers correspond to the provincial states and which ones to the Nation.

In Argentina, this organic law is the National Constitution, enacted in the year 1853 and last amended in 1994.

In turn, each of the 23 provinces of the Argentine Nation have enacted a Provincial Constitution of its own in order to establish its own local institutions under the representative, republican system and to regulate the issues under its jurisdiction.

C.- The National Constitution, is the fundamental legal order of the State, the most important set of rules in the hierarchy. As such, it takes precedence over all legislation: no law or act of an authority or individuals can be contrary to its provisions.

In short, the Argentine National Constitution establishes a hierarchical order in its text, whereby the highest rank is reserved for the Constitution,

followed by international treaties, including integration treaties; next are national laws, provincial constitutions and provincial laws; and lastly, official acts stemming from the Executive Power and administrative authorities (decrees, resolutions or provisions). They all constitute domestic public law.

At the bottom of the pyramid are contracts, the subject matter of this presentation, which are part of so-called "private law".

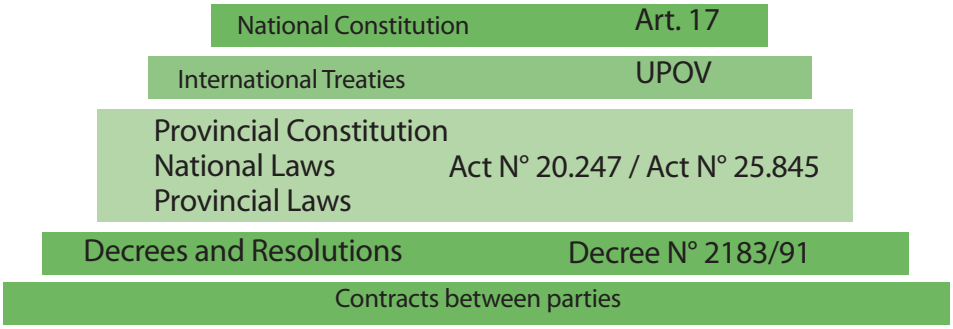
D.- If we transpose this hierarchical pyramid to the world of seeds and plant breeders' rights, the hierarchical regulatory system in Argentine law would be the following:

First of all, there is the National Constitution, which in Article 17 provides that "Every author or inventor is exclusive owner of his own work, invention or discovery for the period of time stated by law", giving plant breeder's rights constitutional rank.

Second, there is the International Convention for the Protection of New Varieties of Plants of the International Union for the Protection of New Varieties of Plants, 1978 Act, a treaty which the National Congress ratified by means of Act No. 24.376 of 1994.

The national law in force governing plant breeder's rights in Argentina is Act No. 20.247 on "Seeds and Phytogenetic Creations" (1973), which regulates both the intellectual property rights of plant varieties as well as the national and international seed trade. And it is in the third stratum of our pyramid.

At a lower level is Decree 2183/91 regulated by the Act on Seeds and Phytogenetic Creations; Decree 2817/91 and Act No. 25845/2004, which established the NATIONAL SEED INSTITUTE (INASE) as an implementation body and numerous rules laid down by the administrative authorities to regulate various aspects of breeders' rights and seed trade.



E.- Let us examine briefly how the Argentine legislation regards contracts.
According to the Argentine Civil Code, there is contract when various persons agree on a declaration of common intent designed to regulate their rights.

In Argentinean law, contracts may be categorized as follows:

- Legal agreements, whose immediate purpose is to establish relations between persons in order to create, modify, transfer, safeguard, or extinguish rights.

- Voluntary agreements, carried out within the legal framework, having the person implementing them with a certain intention. This must be expressed by means of a revealing act.

- Human agreements, who may be natural persons or legal persons; and the agreements are carried out by living people.

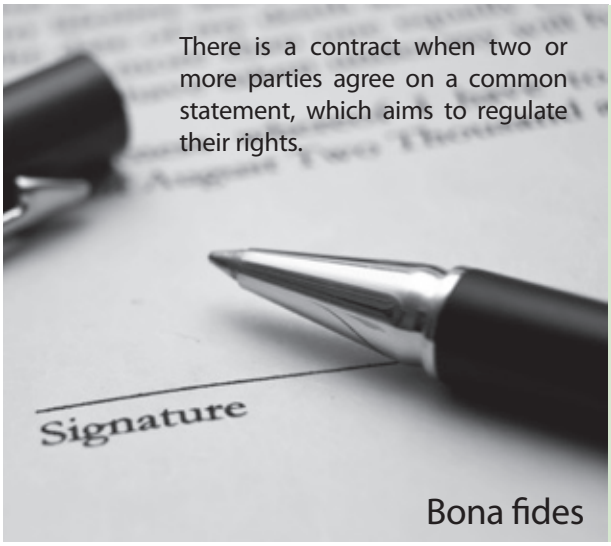
- Bilateral agreements, which require the participation of two or more persons who take on mutual obligations towards each other.

- Lawful agreements, given that specific agreements may not set aside law, compliance with which is ensured by public order and proper conduct.

- Onerous agreements, that is, agreements of a primarily financial nature.

In our country contracts must be made in good faith, a general principle of law, as reflected by the integrity and uprightness that must guide the acts of the parties concerned in the implementation of an agreement, contract, or process.

The predominant feature in contracts is "the principle of autonomy of free will", a principle embodied by the idea that if two persons freely negotiate all of the provisions of an agreement and manifest their will with discernment, intent, and freedom, they remain bound by the agreement as if they were bound by the law itself.



Contracts

Legal Acts
- create
- modify
- transfer
- save
- end rights

Voluntary
Human
Bilateral
Onerous
Legal

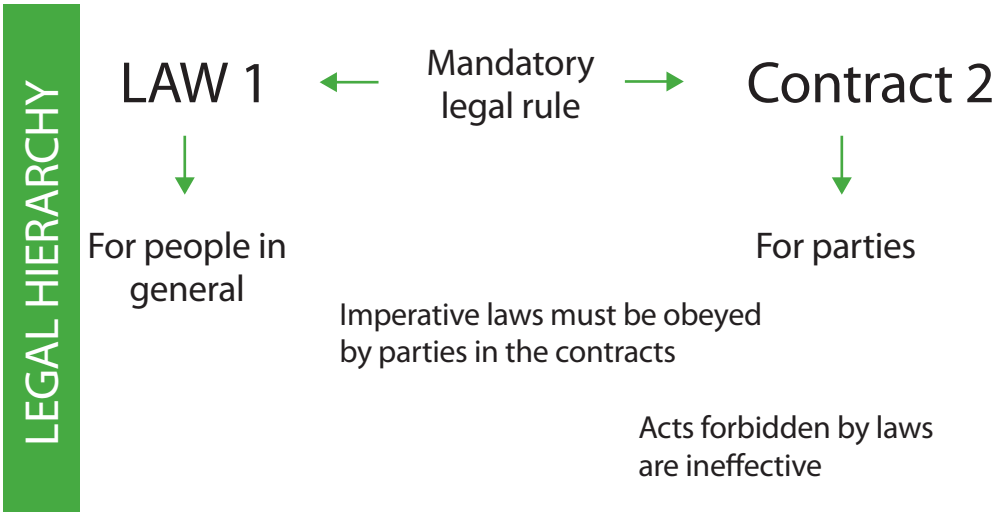
Contracts and law have a common denominator: they constitute a legal rule which persons must follow.

Yet within the Argentine legal order, there are profound and conclusive differences between contracts and law: law is binding upon all inhabitants as a general rule, whereas a contract binds only those parties which have signed it.

Contracts are subordinate to law.

Laws that are binding rules may not be ignored by the contracting parties, who are bound by them, regardless of what they have agreed in their contracts.

Agreements prohibited by law are void.



We can see that laws have precedence over specific agreements as well as the duty of compliance with their provisions, which individuals must observe when they enter into contracts.

II. CONTRACTS USED IN THE REPUBLIC OR ARGENTINA

Due to the new techniques applied to plant breeding, seeds have become the center where several scientific and technological factors converge. Since these factors made plant breeding more complex, it has become necessary to regulate the rights and obligations of long- standing actors and newcomers with regard to research and development (R&D).

INASE has no direct knowledge of the contracts entered into by individuals, for two reasons: first, there is no legal obligation to register such contracts in the implementation body; and second, INASE does not exercise control over their provisions.

Hence, in order to characterize the types of contracts that exist in our country, we have gathered information from the private sector and from the National Institute of Farming Technology (INTA), the official research body in the field of agriculture and the most representative public-sector breeder.

a) PRIVATE SECTOR

In the private sector we can differentiate between the following types of contracts, from the perspective of the contracting subject: (1) breeders and breeders; (2) breeders and gene patent holders; (3) breeders and multipliers; and (4) breeders and farmers.

CONTRACTS

PRIVATE SECTOR

- Breeder/Breeder
- Breeder/ Gene Patent Holder
- Breeder/Producer
- Breeder/Farmer

1.- Breeder - breeder

Contracts in this category cover the earliest possible stage of breeding by means of exchanges of germplasm. Companies share germplasm for trials and genetic manipulation as well as crossing and licensing of lines to obtain hybrids, etc.

In this category, we find the following, in ascending order:

1.1.- Trial contracts:

By means of this type of contract, a breeder (licensor) grants an exclusive license for a (cross-pollinating) line or a (self-pollinating) variety to another breeder (licensee) so that the latter may sow, grow a crop, harvest and evaluate the outcome.

When a line is involved and if the results are satisfactory, the licensee may apply for a license so as to move ahead with plant breeding or produce co-hybrids.

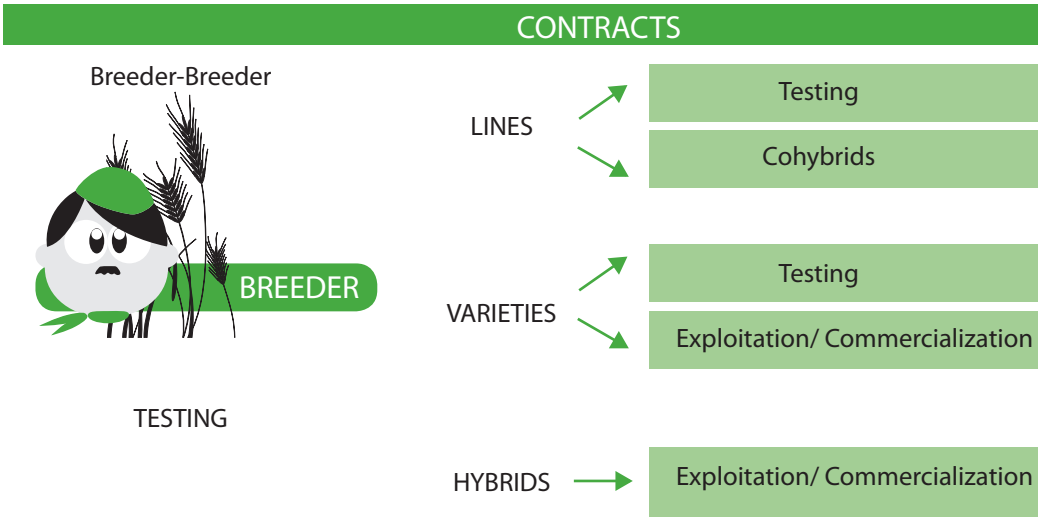
If the license is for breeding purposes, this presupposes permission to cross the germplasm with that of the licensor and to produce any type of genetic manipulation.

If the license is intended for the production of co-hybrids, the germplasm delivered by the licensor to the licensee may be used solely for this purpose and any other type of practice is prohibited.

In the case of a (self-pollinating) variety, if the results are satisfactory, the licensee may apply for a license to move ahead with plant breeding or a license for commercial use.

With regard to a hybrid, if the results are satisfactory, the licensee may apply for a license for commercial use.

Trial contracts are generally free and the licensee covers all of the growing-related costs. Riders relating to the prohibition of unauthorized acts, third-party confidentiality, the licensor's non-liability for the materials delivered, and the licensee's obligation to comply with all relevant regulations are frequently attached.



1.2.- Research and Development Contracts:
con la línea recibida y obtendrá un cohíbrido.

In research and development contracts, a breeder (licensor) grants an exclusive license for a line to another breeder (licensee), either for breeding purposes or to create a co-hybrid with another line provided by the licensee himself.

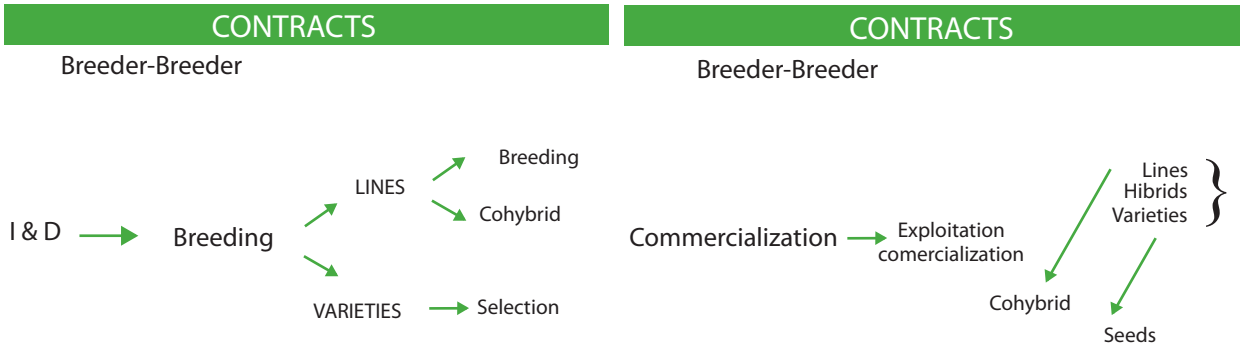
In the first instance, the licensee is authorized to perform all types of action with the germplasm delivered, unless the contract specifically stipulates otherwise.

In the second case, the licensee crosses one of his own lines with the line delivered and obtains a co-hybrid.

In the case of a (self-pollinating) variety, the license which the licensor grants the licensee authorizes

the latter to carry out breeding for selection or crossing.

As with trial contracts, these contracts are usually free of charge and the licensee covers all of the growing-related costs. Riders relating to the prohibition of unauthorized acts, third-party confidentiality, the licensor's non-liability for the materials delivered, and the licensee's obligation to comply with all relevant regulations are often attached. It is common practice to insert clauses covering any new discoveries by the licensee.



1.3.- Commercialization contracts

With this type of contract, a breeder (licensor) grants another breeder (licensee) right of commercial use of a (cross-pollinating line, a hybrid or a (self-pollinating) variety that is the property of the licensor.

The purpose of licensing a line is to enable the licensor to produce co-hybrids.

When the hybrid is licensed, the licensee gives the licensor both lines so that the hybrid may be produced.

When a variety is involved, the licensee supplies the basic seed so that the licensor may produce the certified seed for delivery to the farmer.

These contracts contain different provisions, inasmuch as they must:

- Regulate entries in the National List Registry (commercial catalogue) of the germplasm in question if it is not registered, and in the Owners' Registry, which jeans that it is necessary to define who holds title to the right. Both lines and varieties are always the property of the licensor.

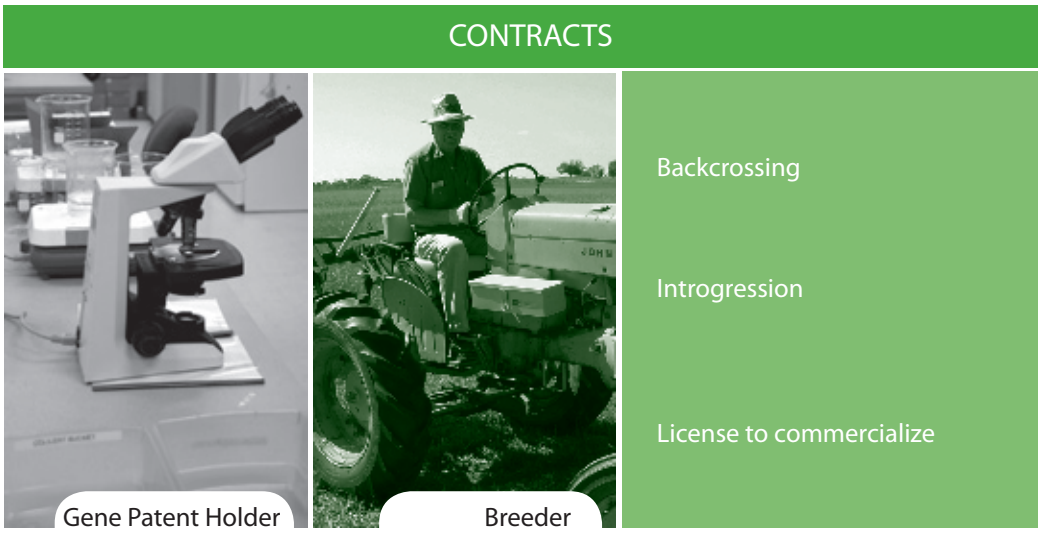
- Regulate the financial terms on which the license is granted. The licensor generally sells the licensee the seed for the line or the basic seed for the variety, in addition to collecting a royalty for every bag sold to the farmer of the licensed seed. With regard to self-pollinating varieties, an extended royalty to the farmer is included, a concept which is explained below.

- Regulate the validity of the contract, the modalities of early termination, confidentiality, the licensor's non-liability towards the licensee for the seed produced and delivered to the farmer, etc.

2.- Breeder–Gene Patent Holder

New technologies applied to traditional breeding make it possible to modify the germplasm contained in the seeds by including transgenes which provide the seeds with a different technology. This implies the possibility of holding a seed with two or more holders of rights protected for the same purpose and the need to share the benefits of the separate technological values with the respective title holders: the owner of the germplasm originally contained in the seed, and the owner(s) of the transgenic event(s) incorporated.

Contracts between breeders and gene patent holders regulate the incorporation of the transgenic event in



the original germplasm:

2.1.- Backcrossing contracts

The owner of the transgene delivers the transgene to the breeder in a line that is public property or that belongs to him, enabling the latter to engage in backcrossing so that he inserts the introducing the gene into his germplasm and obtains a new converted line.

2.2.- Introgression contracts

Unlike the aforementioned type of contract, nowadays it is common practice for the owner of the event to ask the breeder wishing to incorporate the event for a line, and the owner of the event introduces the event into the germplasm delivered by the breeder.

As far as Argentine legislation is concerned, the line that has been converted in this way is a new line, and it is registered in the breeder's name.

Such contracts contain clauses which limit commercial activities and only regulate the supposed technologies, the above-mentioned general confidentiality clauses, and prohibition of any action not specifically authorized.

2.3.- Licensing contracts for commercialization

Once the event has been introduced into the breeder's germplasm, the owner of the event grants a license covering the use of his transgene in the seeds commercialized by the breeder.

This type of contract usually contains many restrictive clauses, limits on time and territory, provides for royalties and, in a new development, bars the sale of seeds to third parties which have not entered into an agreement with them for the commercial use of the incorporated event.

3.- Breeder–Multiplier

The owner of a plant variety may handle the reproduction and commercialization of the material on his own or through a third party with which he has signed a propagation contract.

The propagation contract is a kind of license and it may be defined as a contract whereby the holder of a breeder/licensor's right authorizes another subject–multiplier/licensee to use the protected plant variety, with the scope stipulated and in exchange for consideration.

In the case of hybrids, the contract is similar to that of the breeder–breeder.

With varieties, there are two assumptions: a) the multiplier receives the basic seed from the breeder, sows it, and obtains certified seeds which he sells to farmers; or b) he sows the seed and hands the crop over to the breeder.

In the first case, as we saw before, the multiplier pays for the basic seed received, followed by royalties for each bag of certified seed sold to farmers. In most of these contracts, the process relating to the propagation, identity and quality of the product is overseen by the breeder.

In the second case, we say that it is a closed propagation contract, in which the multiplier acts almost like a rural contractor who has been requested to ensure the reproduction of a given seed. In this case, the breeder pays the multiplier for services rendered.

In closed contracts, the multiplier hands over to the breeder the proceeds of the seed delivered and complies fully with the quality and identity conditions imposed by the breeder. It is the breeder himself who considers that the purpose of the agreement is to increase production, given that he is solely responsible as the issuer of the quality product label in relation to third parties.

4.- Breeder–Farmer

The relationship between the breeders and the farmer with regard to the use of their plant varieties has been stipulated in the so-called extended royalty system.

This contractual arrangement is based on the rules of the Civil Code that state an adhesion contract which entails an obligation for the farmer to pay the breeder a royalty, whenever the farmer sows and reproduces by each propagation the seed of the protected variety for his own use.

Nowadays, the area under cultivation with these varieties and governed by the extended royalty system accounts for a growing share of the acreage set aside for growing soybeans and wheat in the country.

Some of the characteristics of the extended royalty system are:

- they have been implemented on new varieties, not on those existing before the system went into force;

- every year farmers may choose whether to acquire varieties that belong (or not) to the extended royalties´ system;

- the contract remains in force if the user continues to sow seeds obtained under this arrangement;

- the contract ends upon expiration of the term of legal protection for the variety or when the user makes the entire crop available for industrial use;

- the practice of farmers storing seeds for their personal use is maintained but is no longer free of charge.

The instrumentation of the system is the following:

- Public offer: the proposed commercial terms for the sale of the seed subject to the rules (intended for buyers/users/multipliers/farmers/distributors/merchants) are specified.

- The label on the seeds must specify the contractual terms of commercialization.

- A general clause reads as follows:" "Anyone who acquires propagates sows or uses in any capacity or stores seeds for his own use...under the system of extended royalties is subject to the terms of commercialization...in the offers published", which must be attached to the shipments and to a seal that is printed

on the sales invoice.

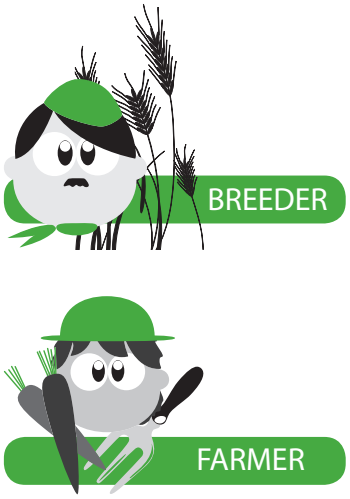
- Opening the packaging is deemed to constitute tacit acceptance of the terms.

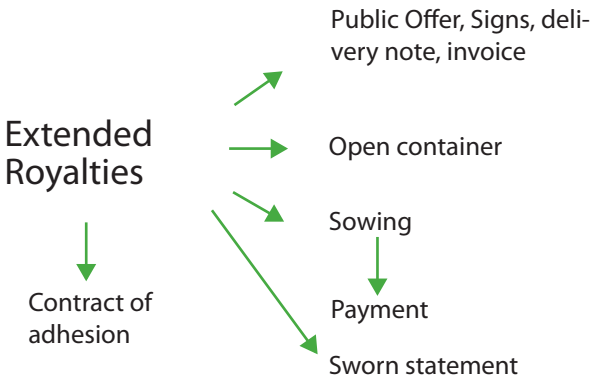
- Special clauses are included in model contracts between distributors and multipliers with a view to preventing the seeds from being distributed without royalty contracts.

- During the harvest and the storing of the seed, an obligation arises for the farmer to inform the breeder of the quantity harvested the amount the farmer intends to set aside for his own use, and the storage and processing site.

- Whenever the variety covered by the system is sown, a payment obligation arises for the farmer.

CONTRACTS





B. PUBLIC SECTOR
NATIONAL INSTITUTE OF FARMING TECHNOLOGY (INTA)

The goal of INTA's technology transfer policy is to create formal links with the regional and national agricultural, agro-food and agro industrial system with a view to developing and transferring the new technologies and knowledge arising from the lines of research carried out by the Institution.

INTA's knowledge and technologies are public assets, that is, they are for society as a whole.

INTA is not able to disseminate them on its own. So it forges strategic partnerships with companies.

National Institute of Farming Technology enters into the following two types of contractual relationships:

1.- Cooperation agreements with public, national or foreign institutions where non-appropriable technologies are involved; and

2.- Technical cooperation agreements with private-sector companies or, in the previous instance, with public institutions when appropriable technologies are involved.

To achieve the aims of the technical cooperation policy, INTA has three different types of contracts: research and development agreements (R&D); technology transfer agreements (TT) and technological assistance agreements (TA).

2. 1.- Research and development (R&D):

In this case, INTA joins forces with a company or group to generate a technology and commercialize it through the product in which it is incorporated. In this way, the company and INTA share their capacities, generation and dissemination costs and the implicit technological and commercial risks.

If the innovation is a success, the company reproduces or propagates and commercializes the product, compensating INTA by means of previously agreed royalties.

It is a risk contract, INTA is the owner of the product and the associated company is granted an exclusive license. If the breeding is done over the long term, royalties are not agreed when the contract is signed but rather in a future agreement, which will be made once the development phase has been completed or when the registration is being processed.

There are two types of research and development contracts:

- Mutually exclusive contracts, when INTA's entire program gets involved in a specific crop, such as wheat, alfalfa, etc. In this case, the associated company may not run a plant breeding program for this species, and it also has exclusive sales rights on the varieties of the species that make up the subject matter of the contract.

- Contracts for a particular variety or line.

The characteristics of these contracts are joint research and development combined with technology transfer; the setting of royalties for the duration of the license that matches the duration of the plant's ownership; the requirement that the agreement must be approved by INTA's Governing Board; and the requirement to display the institution's logo when advertising or selling the materials obtained.

2.2.- Transfer of technology (TT):

In this case, INTA, acting on its own, comes to the end of an innovative process incorporating technology and knowledge in a product or process.

INTA then transfers the technology to one or more companies by means of a public call in a given territory and for a given time period, thereby collecting, in accordance with the nature of the license, a "royalty" payment.

The technology thus obtained is registered in the name of INTA, which authorizes its use with a sublicensing option. However, the official body reserves the right to audit and supervise the books of the company as well as a veto right.

Under Law 23877 on the PROMOTION AND ENCOURAGEMENT OF TECHNOLOGICAL INNOVATION, royalties received by INTA are distributed as follows: 30 % for the researcher, 40 % for the team or working group, and the remaining 30 % for a technology enhancement fund designed to maintain intellectual property rights and plant breeding programs prior to public calls, and to train technical staff.

2.3 Technological assistance:

These are agreements related to the transfer of knowl-

edge andKnow-how.

III. ARGENTINA'S EXPERIENCE WITH CONTRACTS

A.- In general, problems arising between private individuals over the signing of a contract, such as the interpretation of its scope, do not lie within the purview of the implementation body of the Law on Seeds and Phytogenetic Creations, which in this case is the NATIONAL SEED INSTITUTE. This institute belongs to the National Executive Power and another State body, the Judicial Power is competent to settle any disputes that may arise between the contracting parties.

However, there are two exceptions to this rule.

First, when the National Seed Institute, as the implementation body of law, must interpret the legal and regulatory provisions and lay down rules regulating the activities of the different people involved in the seed chain, and second, when this body, in the process of dispensing administrative justice, must decide whether or not to apply a sanction to a third party who has infringed a breeder's rights.

In the Republic of Argentina, the National Seed Institute is the State body empowered to investigate and punish, upon request or at its own initiative, anyone who identifies or sells seeds of varieties of plants which propagation or commercialization has not been authorized by the breeder.

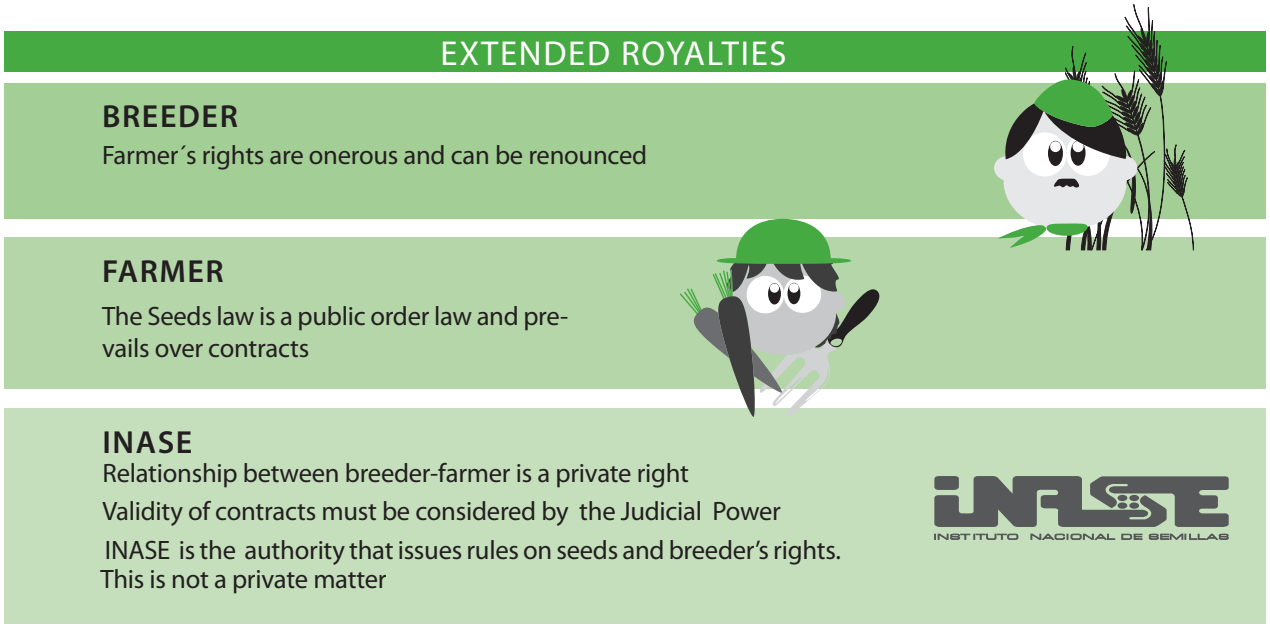
This coercive power, known as "policing power", also enables INASE to inspect and take samples at sites where the seeds are in use, that is to say, to have access to premises and shops and to inspect relevant documents and information.

Accordingly, INASE has on various occasions drawn up contracts due to inquiries with or requests by private individuals or judicial authorities, for instance, the settlement of administrative proceedings concerning violations of breeders' rights –which are more than 500 cases to date.

B.- Here are some examples of how the State body intervenes with regard to contractual issues.

- BREEDER–EMPLOYER RELATIONSHIP

The case referred to INASE was the authorship of various varieties which an official body wished to register in its own name. An employer raised an objection since he claimed that the varieties were his own as they had not arisen in the framework of his work contract with his employer.
INASE ruled to dismiss the objection, as the opposing party was unable to provide evidence that he had created the varieties prior to his work contract or that they stemmed from independent research. Moreover, he did not possess and had not possessed the related material – a factor strengthening the case of the official body which possessed live samples of the varieties to be protected.



• EXTENDED ROYALTIES

The extended royalties system has been an arrangement used by breeders. According to them, it serves the following purposes: the recognition of the right to intellectual property; the promotion of research; and the guarantee that agriculture is able to compete.

Breeders claimed the farmers' right to reserve their seed was economic in nature and could therefore be waived.

This arrangement system was rejected by farmers who argued that extended royalties were a gimmick that cheated farmers because when they acquired seeds under an extended royalty regime, the contractual conditions set implied a tacit waiver of the farmer's right to store and use his seeds, which was recognized by a legal system of public order based on food security and sovereignty of production.

One of the first points that deserved special attention was to define INASE's role in determining whether extended royalty contracts infringed farmers' right to store their own seeds, and second, whether or not the legal provisions embodied by farmers' right to store and use their seeds took precedence over the clauses in the extended royalty contracts stipulating that farmers were obliged to pay royalties for their seeds.

The Secretariat of Agriculture, Livestock, Fisheries, and Food stated in several appearances that as stipulated in Act No. 20.247 on Seeds and Phytogenetic Creations, the sale price of the new variety as well as the transaction and/or sale conditions are topics related to the relationship of the private parties. The Judicial Power must determine whether the contractual clauses in the agreements between those sectors are valid.

With detriment to the above mentioned, in a press release dated May 22, 2005, the Secretariat of Agriculture, Livestock, Fisheries and Food, added (only the relevant part of the text is being quoted) "INASE did not recognize the extended royalties system since, even though the problems arising from the exercise of the property rights in plant varieties between owners and users... come under private law, it is incumbent upon the State, in the case at hand INASE must determine the scope of the articles of the Act on Seeds and Phytogenetic Creations and their regulatory standards, and these requirements may not be set, modified or altered by any condition or interpretation established by the breeders to license their varieties. In this sense, INASE determined... which requirements farmers must meet to align their situation with the rights granted by the rules referred to and the obligations they must fulfill for this purpose. If a farmer meets the requirements laid down by legal rules, his

situation is aligned with the farmer's exception which envisages an exception to the breeder's right. This implies that the farmer is not obliged to secure the breeder's permission for the seeds obtained within this system. Therefore, the breeder may not impose conditions of any kind and in turn may not require the payment of royalties. …. Other claims made by the breeder go beyond the present framework and refer to agreements or contracts between parties. These claims fall outside the purview of Law No. 20.247 (Law on Seeds and Phytogenetic Creations), and it is incumbent upon the courts to rule whether the contracts referred to are valid or void….".*

To date, there has been no court ruling on the matters in debate, either in proceedings brought by breeders or in those brought by farmers. Hence, until this time comes, the discussion will continue to be based on arguments of free interpretation of each of the parties.

• DIRECT PAYMENT OF ROYALTIES BY MULTIPLIERS AND/OR FARMERS TO THE OWNERS OF THE TECHNOLOGY

In this case, the relationship was established between the owner of the transgenic event – the property of a biotechnology company – and the breeders, the owners of the germplasm, various other companies which had entered various transgenic varieties in the INASE Property Register and obtained a title of ownership.

The biotechnology company had delivered the transgene to the breeders with a view to its incorporation in the new varieties.

The seeds from those varieties were propagated and incorporated in the seed trade within seed certification systems and acquired by farmers, who, exercising their right granted in the Law on Seeds and Plant Genetic Creations to store their seeds, produced grain, which they proceeded to sell to exporters, being purchasers from other countries the end users.

Although the case we are analyzing embraced various issues of a legal nature, two facts were considered in relation to the contracts by the State:

• First, the sales invoices delivered to seed multipliers and/or users contained a clause formally stipulating that the payment made by the person purchasing the seed only cancelled out the value of the germplasm and did not cover the value of the technologies referred to in the transgenic event.

• Second, the holder of the event intended to en-

Gene Patent Holder

NO

Breeder

To third parties

ter into contracts with farmers and other links in the seed chain to collect royalties for his technology in the grain and not in the seed.

In this case, it was argued that when the holder of an event negotiates an agreement or a contract with the breeder, the biotechnology company has given its consent for the breeder to incorporate the transgene in his germplasm and hence in the varieties and seeds derived from his research and development.

The emerging intellectual property rights of the technology holder to oppose the use of his invention and derivatives on the grounds of breach of the contracts signed must be exercised against the breeder companies, the owners of the germplasm – those who used the invention and were the main beneficiaries.

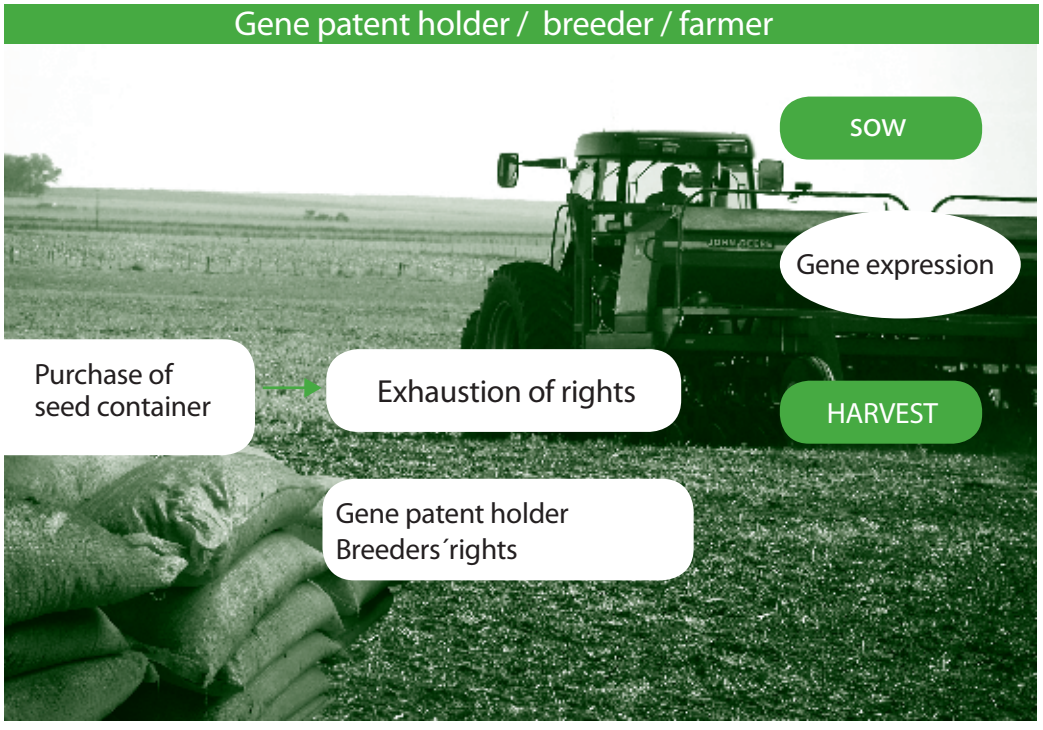
The relationship between the owners of the technologies and the owners of the germplasm when it comes to payment and recognition of the intellectual property rights is limited to them, and if any dispute arises it cannot affect third parties.

Moreover, the event cannot be separated from the seed.

When a farmer sows the seed of a transgenic variety which possesses intellectual property rights in the event and in the variety, he is using both creations for his benefit and is obtaining a result, and thus he must compensate the inventors.

In practice, this takes place with the purchase of the seed bag. Once the farmer has paid the sale price for this bag, this cancels out the value of all of the inventions it contains, abolishing the holders' rights. This is what is called the "integrity of the seed".

As far as the grain is concerned, if the farmer has legitimately purchased the original seeds, both rights are abolished.



The holder of the breeder's right may not exercise his right again, given that this right ends with each production cycle. Moreover, the Law on Seeds and Phytogenetic Creations provides for the "exception of consumption", making it possible to use and sell the crop obtained from growing the plant genetic creation as a raw material or as food.

As for the creator of a genetic construction, it is not possible to claim that his invention has been utilized, given that its characteristics are expressed not in the grain but in the growing. As
a result, the invention lacks industrial application compared to the grain.

- Breeders' contracts, seed certification, and the seed commercialization.

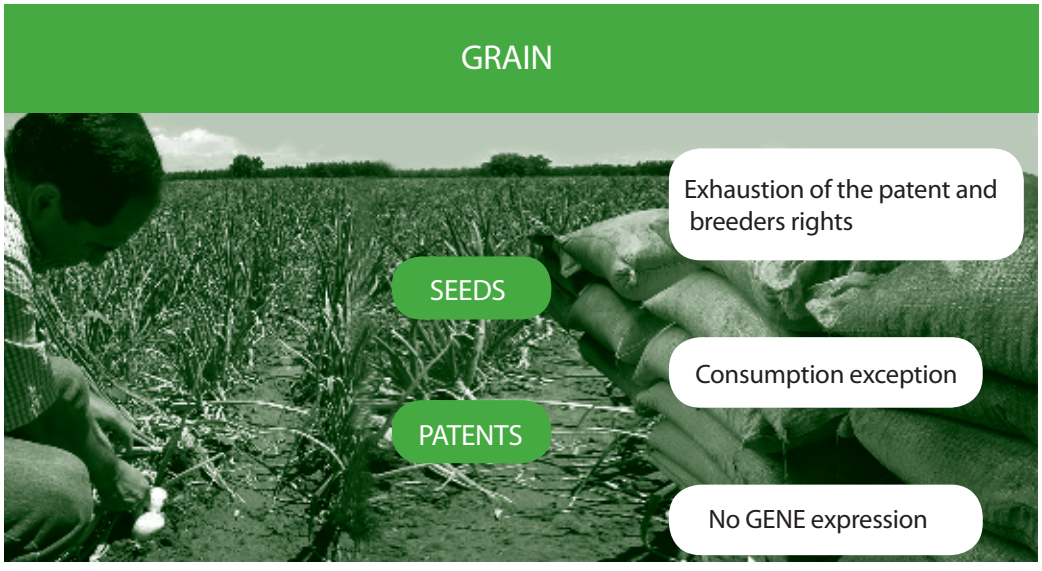
In certification processes and the seed commercialization, INASE requires the authorization of the breeder of the protected variety, which is used as a pre-determined licensing contract to register production batches, propagate the seed, secure authorization for nationwide sale, and import and export the certified seed.

Authorization granted by breeders may be general, which implies that the authorized party may perform all types of actions in relation to the seed variety that forms the subject matter of the authorization. It may also be partial, based on a strict list of the acts which the licensee may carry out: for example, whether he may only propagate or may propagate and commercialize and, in the latter case, whether trade is limited to the national level; if it is at the international level, a decision must be made as to the countries of destination.

INASE does not authorize the propagation of or commerce of seeds which goes beyond the authorizations granted.

INASE has also decided that if the seed was acquired within the framework of a commercial seed production contract, the multiplier may not decide on his own to use it for his own sowing, on the pretext of the farmer's exception, without prior authorization from the breeder.

Furthermore, in Argentina, the Argentine Association for the Protection of New Plant Varieties (ARPOV) introduced a stamp which is affixed to the label on the seed bag showing that the labeled seed has been the subject of a prior contract with the breeder. Therefore, its owner has authorized its sale and/or distribution.



In these cases, INASE has decided that affixing the ARPOV stamp to the label implies the breeder's authorization for the seeds it contains. If this stamp is missing, the holder must use other means of proof to demonstrate that the breeder has granted him the relevant authorization.

Different facets of plant varieties

In the year of the bicentennial of the revolution of 1810 the National Institute of Seeds renews its commitments as every year of promoting an efficient activity of the production and trade of seeds, ensuring the agrarian producers the identity and quality of the seed they acquire and protecting the property of the phytogenetic developments.

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