

Plant Breeder's Rights

Plant breeder's rights, sometimes known as plant variety rights, are a form of intellectual property designed to protect new varieties of plants. Plant breeder's rights allow plant breeders to control the commercial uses of the plant varieties that they develop for a limited period. Plant breeder's rights are designed to encourage plant breeding and innovation, while also making improved plant varieties openly available to anyone after the period of protection ends. From the grower's perspective, it is important to understand whether a plant variety that you purchase is protected, because if so, the permissible uses of the variety will be limited.

The international system of plant breeder's rights was established by the 1961 International Convention for the Protection of New Varieties of Plants (UPOV Convention). Today, countries follow one of two versions of the UPOV Convention, namely the 1978 or 1991 versions. UPOV 1978 contains more exceptions for growers, recognising a 'farmer's privilege' that allows farmers to save and re-plant the propagating material of protected varieties from prior harvests, and to freely exchange propagating material with other farmers. UPOV 1978 also provides exemptions to plant breeder's rights for non-commercial research, and for the development of new plant varieties.

UPOV 1991 is a 'stronger' form of intellectual property, because it expanded the scope of protection to a broader range and to different categories of plant varieties. UPOV 1991 also extended the periods of protection. UPOV 1991 allows members to recognise a version of the farmers' privilege within their territories. As of December 2019, there were 76 members of the UPOV Convention, including two intergovernmental organisations. Fifty-nine of these members adhered to UPOV 1991, and 17 members followed UPOV 1978.

Like other forms of intellectual property, plant breeder's rights are territorial in nature. This means that plant varieties need to be registered in the country in which protection is sought with plant breeder's rights granted and enforced under the legal system of that country. The duration of plant breeder's rights is generally 25 years for trees and vines and 20 years for all other plants. The protection period starts from the date on which the plant breeder's rights are granted.

How can a variety be protected with plant breeder's rights?

To be eligible for protection with plant breeder's rights, a plant variety must have a breeder and be new, distinct, uniform and stable as defined by the UPOV Convention.

Breeder	A breeder is a person who has bred or discovered and developed a plant variety, or their employer or contractor who has commissioned the work, and their respective successors in title.
New	A variety is generally considered new if it has not been sold (with the breeder's consent) beyond the allowable time period.
Distinct	Distinctness is shown by comparing the variety with the most similar variety or varieties of common knowledge. Quantitative and qualitative differences between the new and existing varieties must be established and recorded. To be 'clearly distinguishable', the new variety must have at least one characteristic that differentiates it from similar varieties of common knowledge.
Uniform	The requirement that the variety be uniform means that a variety must be sufficiently consistent (i.e., from one plant to another) in those characteristics that make it distinct.
Stable	A variety must remain true to description after repeated propagation or reproduction (i.e., from one generation to another).

How do you apply for plant breeder's rights?

To obtain plant breeder's rights protection, applicants must follow an administrative process that tests and evaluates whether the variety complies with the requirements for protection. Costs may include fees for the application, examination, and issuance of a certificate. There also may be an annual maintenance fee.

What is the scope of plant breeder's rights

Plant breeder's rights give the owner (initially, the breeder) a number of rights. Plant breeder's rights owners have exclusive rights to:

- produce or reproduce the propagating material;
- sell the material or offer it for sale; and
- import or export the material.

While these rights primarily relate to propagating material, they also may apply to harvested material, products obtained from harvested material, and to varieties derived from the protected variety.

How do you know if a variety is protected with plant breeder's rights?

In some countries, plant breeder's rights protected varieties are denoted by a plant breeder's rights logo. Lists of plant breeder's rights protected varieties may be available from

national plant breeder's rights offices and websites.

Exceptions to plant breeder's rights

An important feature of the plant breeder's rights system is that the interests of breeders, growers, and researchers all have been accommodated through the use of exceptions or limitations to the scope of protection. Exceptions may cover uses of the protected variety for:

- private or non-commercial purposes;
- experimental purposes;
- plant breeding; and
- re-planting, using farm saved seed.

Plant breeder's rights and contracts

Plant breeder's rights and the contracts that growers sign when they buy planting material are not directly related. Plant breeder's rights are a form of intellectual property that allows plant breeders to control the use of the propagating material of the varieties that they develop. In contrast, contracts deal with how plant varieties are commercialised, whether or not they are protected with plant breeder's rights. Commercial agreements may include details including pricing, terms of trade, and supply chain structures (see Fact Sheet 19: Closed Loop Contracts).

Fact Sheet 2: Plant Breeder's Rights September 2022

This fact sheet is only for information purposes, and to assist you in understanding your legal rights and obligations in a general sense. It is not tailored to any particular fact, situation or specific requirements, and must not be relied on as legal advice.