

International Community of Breeders of Asexually Reproduced Ornamental and Fruit Plants

CPVO Seminar on the Enforcement of Plant Variety Rights The Ornamental and Fruit Sector – A Breeders Perspective

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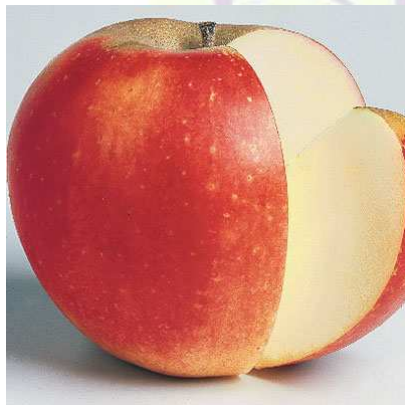
Athens, 15 April 2010

Agenda

1. Basics on the industry
2. Importance of effective IP protection
3. Enforcement activities of breeders – individually and collectively
4. The main needs of the breeders

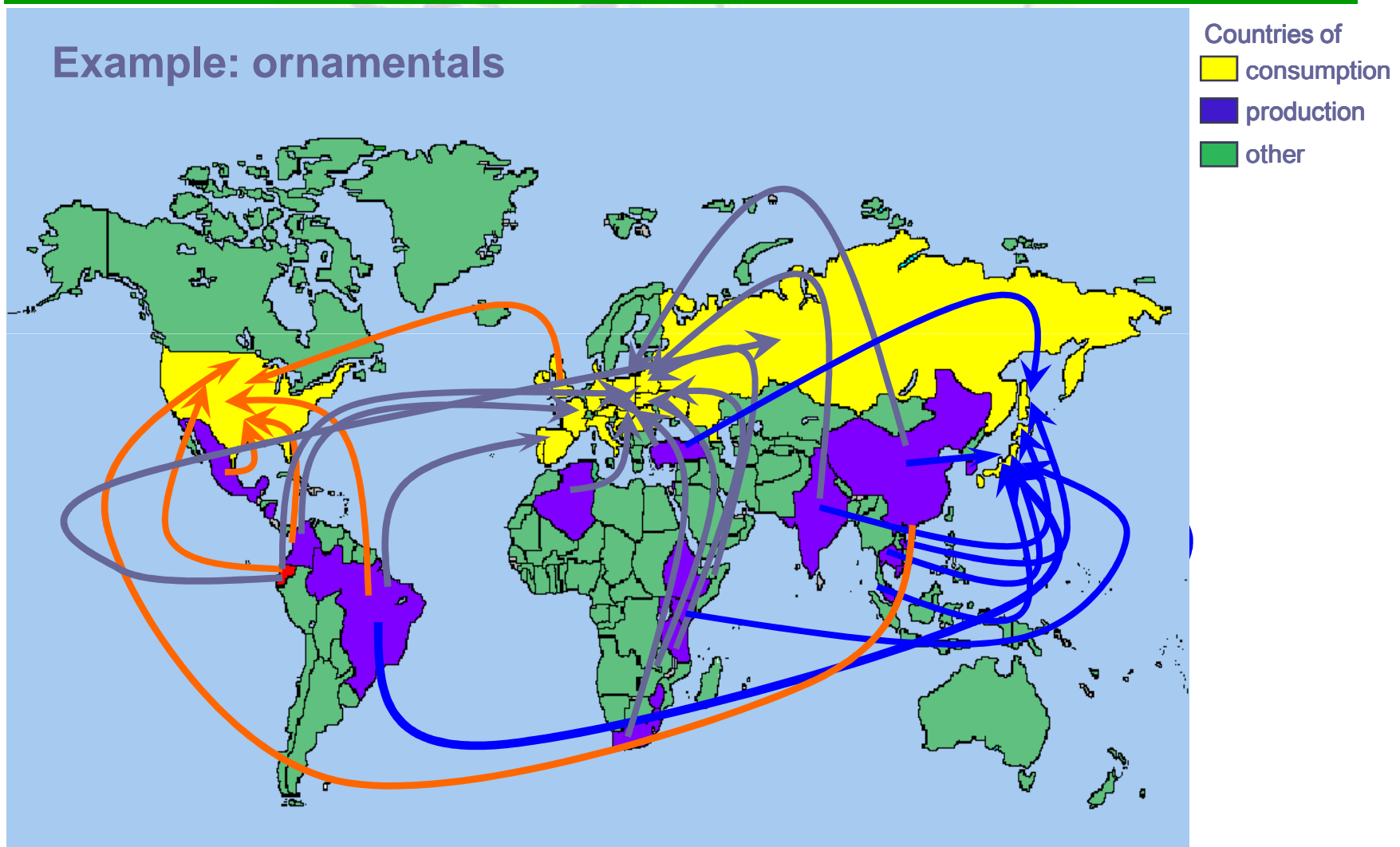
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Some examples for „asexually reproduced ornamental and fruit plants“



The ornamental and fruit business is very international

Example: ornamentals



The ornamental and fruit business is very international

Hundreds of millions of flowers and fruit are shipped every month from producing to consuming countries



Growers benefit from absent trade barriers for ornamentals and fruits



It takes only a few days to bring the end-product from the producer to the consumer



Some numbers on the cut flowers industry worldwide

Exports

Kenya: ca. 200 M€/year
(mainly roses)

Colombia: ca. 900 M
USD/year (mainly roses,
chrysanthemums and
carnations)

Ecuador: ca. 500 M
USD/year (mainly roses)

Total estimated turnover
of Chinese ornamental
industry: 5,000 M
USD/year


Imports

Cut flowers through the
Dutch Auctions: ca. 600
M€/year

Cut flowers into the EU:
ca. 3.500 M€/year

Cut flowers into the
U.S.A.: ca. 600 M€/year

Importance of effective IP protection

- 
- Globalization, a growing world population and climatic change require new and better traits of plants
 - Without innovative breeders and scientists such new traits will not be introduced, to the disadvantage of the entire business

Breeders

- Need a fair ROI for developing new varieties
- The source and basis of the income of the breeders is their IP

Trade (Ex-/Import/Wholesale/Retail)

- Benefits from new varieties
- Faces severe consequences for infringement of IP-Rights

Propagators/Growers

- Are constantly seeking for new varieties to meet customers needs and to attain higher revenues
- Face severe consequences for infringement of IP-Rights



Compliance with intellectual property rights is a **joint interest** of the whole industry

Importance of effective IP protection

Infringement of Plant Variety Rights ...

- Prevents innovation
- Leads to unfair competition
- Increases costs for legal products
- Causes health and product safety risks
- Hinders economic growth
- Destroys job



Effective
enforcement
is necessary

What breeders are doing individually

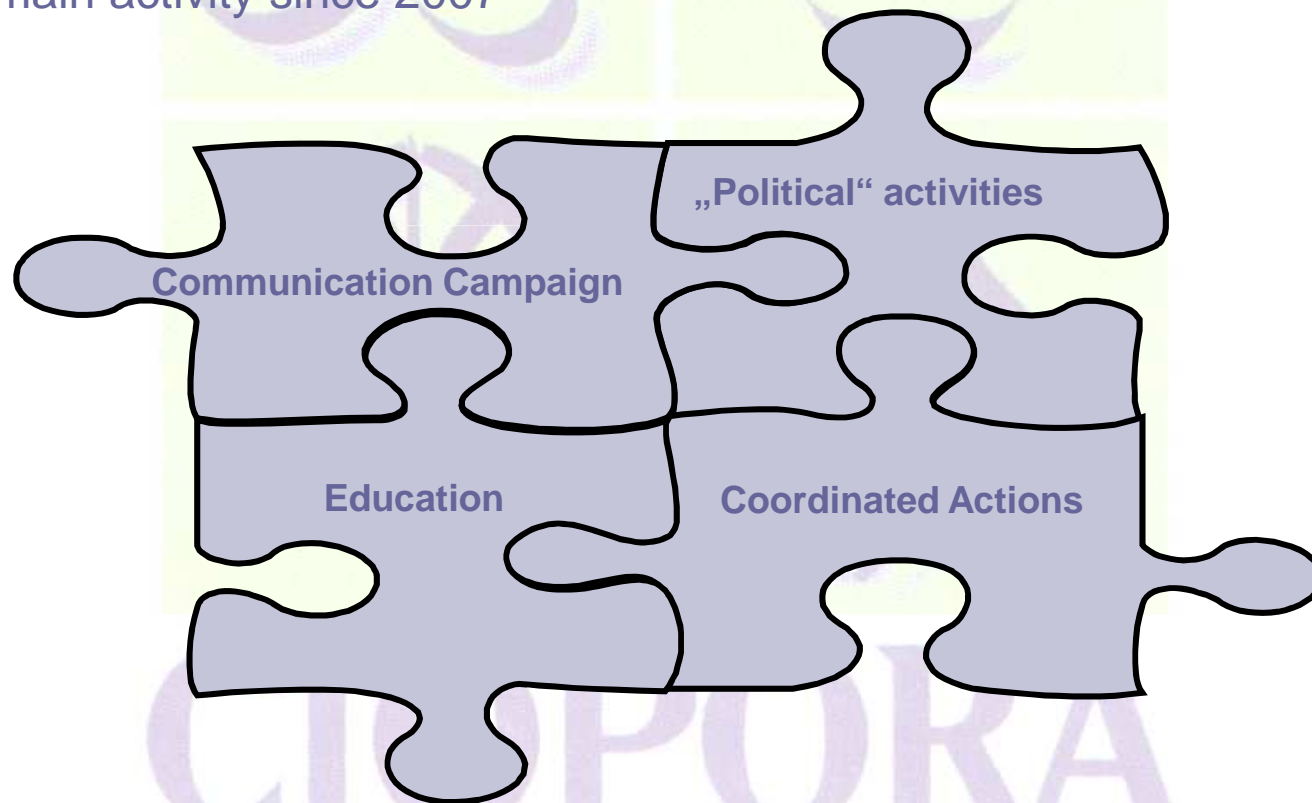
1. Registration of IP rights
2. Advertisement and promotion of products and rights
3. Monitoring and controlling the market (at borders, auctions, markets, growers and nurseries, traders, etc.)
4. Active protection and fight against infringement, by chasing, warning, summoning, attacking infringers, out of court and in court when necessary.

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What breeders are doing collectively

The CIOPORA Anti Infringement Initiative

- has been established in April 2005 and
- is a main activity since 2007



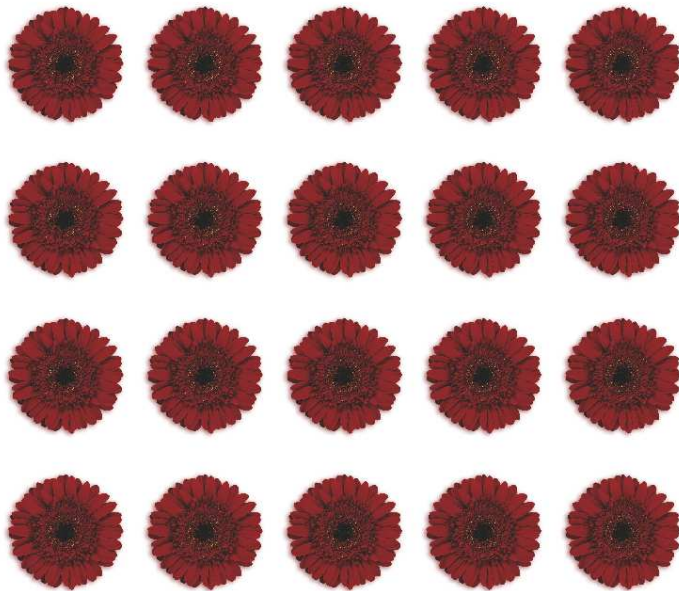
Communication and political activities

- Enhanced internal communication by establishment of extra e-mail address antipiracy@ciopora.org for reporting and exchanging information on alleged infringements
- Organization of IP seminars and giving presentations at external events
- Increased communication and cooperation with the CPVO, UPOV and national governments on enforcement issues
- Dialogue with business partners on cooperation in ensuring compliance with IP-Rights
- Communication within industry
 - E-Mails and letters to more than 1000 addressees
 - HortiFair 2007 Awareness campaign "Flower Lady & Pirate"
 - Press-campaigns
 - Poster-campaign FIND THE FAULT



Visual Communication

FIND THE FAULT!

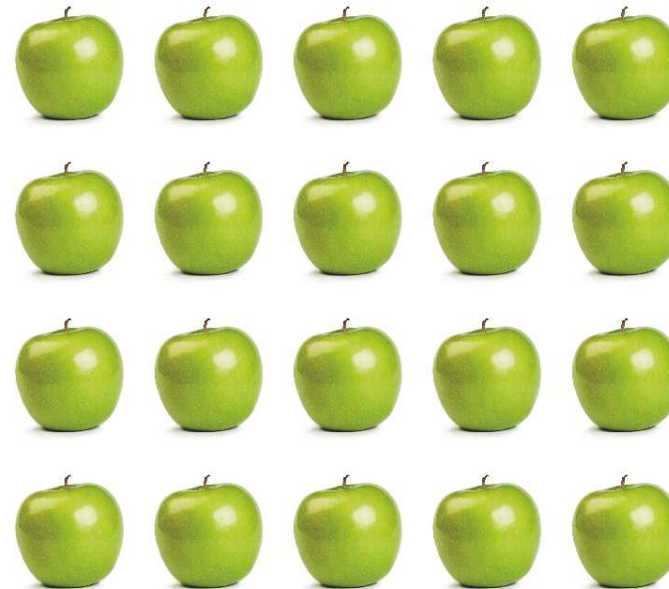


THE FAULT IS THAT THREE OF THE GERBERA HAVE BEEN PROPAGATED WITHOUT A PROPER LICENSE.

Dealing with unlicensed propagating material of a protected variety, and the harvest obtained from it, is a Plant Breeders' Rights infringement. It can have **serious consequences** for your company and is a **criminal act** in many countries. Make sure that you deal with legal plant material only. Be aware that anybody in the whole value chain can be held liable for a Plant Breeders' Rights infringement. For more information please visit: www.ciopora.org



FIND THE FAULT!



THE FAULT IS THAT THREE OF THE APPLES HAVE BEEN HARVESTED FROM TREES, WHICH HAVE BEEN PROPAGATED WITHOUT A PROPER LICENSE.

Dealing with unlicensed propagating material of a protected variety, and the harvest obtained from it, is a Plant Breeders' Rights infringement. It can have **serious consequences** for your company and is a **criminal act** in many countries. Make sure that you deal with legal plant material only. Be aware that anybody in the whole value chain can be held liable for a Plant Breeders' Rights infringement. For more information please visit: www.ciopora.org



The Cut-Rose Breeders' “Valentines Action 2008”

- Pilot-project for increased coordinated enforcement of IP-Rights in the plant breeding sector
- 15 companies representing an important part of the worldwide cut rose-breeding industry acting coordinated
- Parallel activities in several countries at the same time, at the airports of Amsterdam, Frankfurt, Lisbon, London, Madrid and Paris
- Joint effort of breeders, customs, CPVO and European Commission to protect compliance with IP-Rights and fair trade

Handbook “Best practice”

A Best Practice Handbook on Enforcement of Intellectual Property Rights by Customs actions in the European Union

- Has been drafted containing
 - Legal background and prerequisites
 - Information on preparation of customs actions
 - Information on execution of such actions
 - Lots of practical tips
- Draft has been discussed internally with lawyers and externally with customs officials
- Electronic version will be sent to members soon

General needs of breeders

1. **Less bureaucracy, more efficiency** by the authorities in charge of control, enforcement and judgment
2. **Adequate attention to breeders' rights** that are often underrated in comparison to fashion, software, hi-fi etc.
3. **Awareness and knowledge** of the specific problems and requirements of our industry
4. **Active cooperation** from
 - Custom authorities
 - Growers
 - Markets, auctions and traders

Basic requirements for effective enforcement

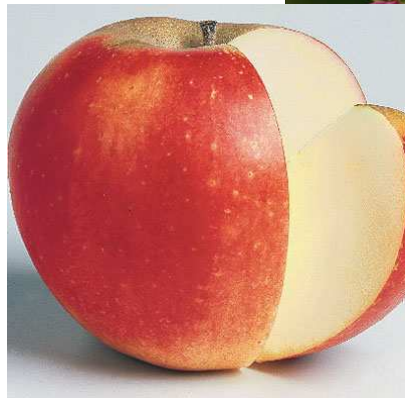
- Good protection standards in basic laws
- Access to necessary information
 - Access to premises
 - Right to information
- Efficient administrative and court proceedings
 - Low barriers to get a preliminary injunction
 - Infringer must pay the cost for the court procedures
 - Specialized courts competent for PBR cases
 - Effective customs procedures work
- Effective sanction mechanism
 - The law must impose damages and punitive damages
 - IP infringement is a criminal act

Basic requirements for effective protection – basic laws

The added value of many varieties is not the propagating material, but pot plants, cut flowers, fruits and processed material



PBR protection must cover whole plant, not only propagating material...



Basic requirements for effective protection – basic laws



PBR protection
must cover also
processed material

Access to necessary information

Greenhouses and samples

- Right holders must be granted **access to greenhouses** to count and inspect plants and **collect samples**
- There is only a short period between an infringement of a PBR (e.g. illegal propagation) and the sales of the infringing plants, thus fast **provisional measures** to preserve evidence are necessary.

Right to information

- The trade with ornamental and fruit plants is very international and so there are widespread sources of propagating material
- Right holders must be able to get **access to information** on the illegal sources of propagating material and about the recipients of illegal material



Efficient administrative and court proceedings

Procedural challenges

Trade with ornamental and fruit plants is a very fast business; often huge intermediaries, providing services and market space to sellers, are involved in the chain

Plant Breeders' Rights law is a special and complex legal topic. It requires legal expertise as well as know-how on plant breeding and growing

Often only parts of costs are covered since calculation bases on amount of dispute; but proceedings need specialized lawyers (charging per hour)

Trade with ornamental and fruit plants is very international

Solutions

Preliminary injunctions

Right holders must be able to stop alleged infringements quickly on the spot of the sellers or the intermediaries

Specialized Courts

The effective enforcement of Plant Breeders' Rights requires specialized courts.

Full compensation of costs

Infringer need to be obliged to compensate all costs incurred by proceedings

Effective border measures

Instruments to control import and export of illegal plant material are necessary.

Customs authorities need to have sufficient knowledge on plants and Plant Breeders' Rights

Effective sanction mechanisms

➤ Financial consequences (Damages)

- Infringers weight their profit against their risk
- The risk to be caught and the damages payable must overweight the potential profits
- Damages must be deterrent to the infringer and must make up for the losses of the right holder



➤ Criminal sanctions

- Infringement of Plant Breeders' Rights should be treated as a criminal act as it is comparable with theft, misappropriation and fraud.



Conclusions

- Globalization, a growing world population and climatic change require new and better traits of plants – developed by breeding companies and protected by IP
- The enforcement of breeders' rights is to the joint benefit to the whole industry and a shared responsibility between breeders, other industry players and authorities
- Breeders, both individually and collectively through CIOPORA are more and more active in the protection of their rights
- There are still many areas of infringement to be defeated and room for improvement in the basic laws and the legal tools for enforcement, like access to information and effective sanction mechanisms, and in administrative and court proceedings.

CIOPORA



Thank you

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