

International Community of Breeders of Asexually Reproduced Ornamental and Fruit Plants

Workshop on Plant Varieties Protection and Enforcement of breeders' rights

Point of View of the Breeders

Chisinau, Moldova • October 05, 2015

Agenda

- **CIOPORA: Who we are & What we do**
- **Why is enforcement necessary?**
- **The price for being honest**
- **Effective enforcement tools**

Who is CIOPORA?

CIOPORA is the...

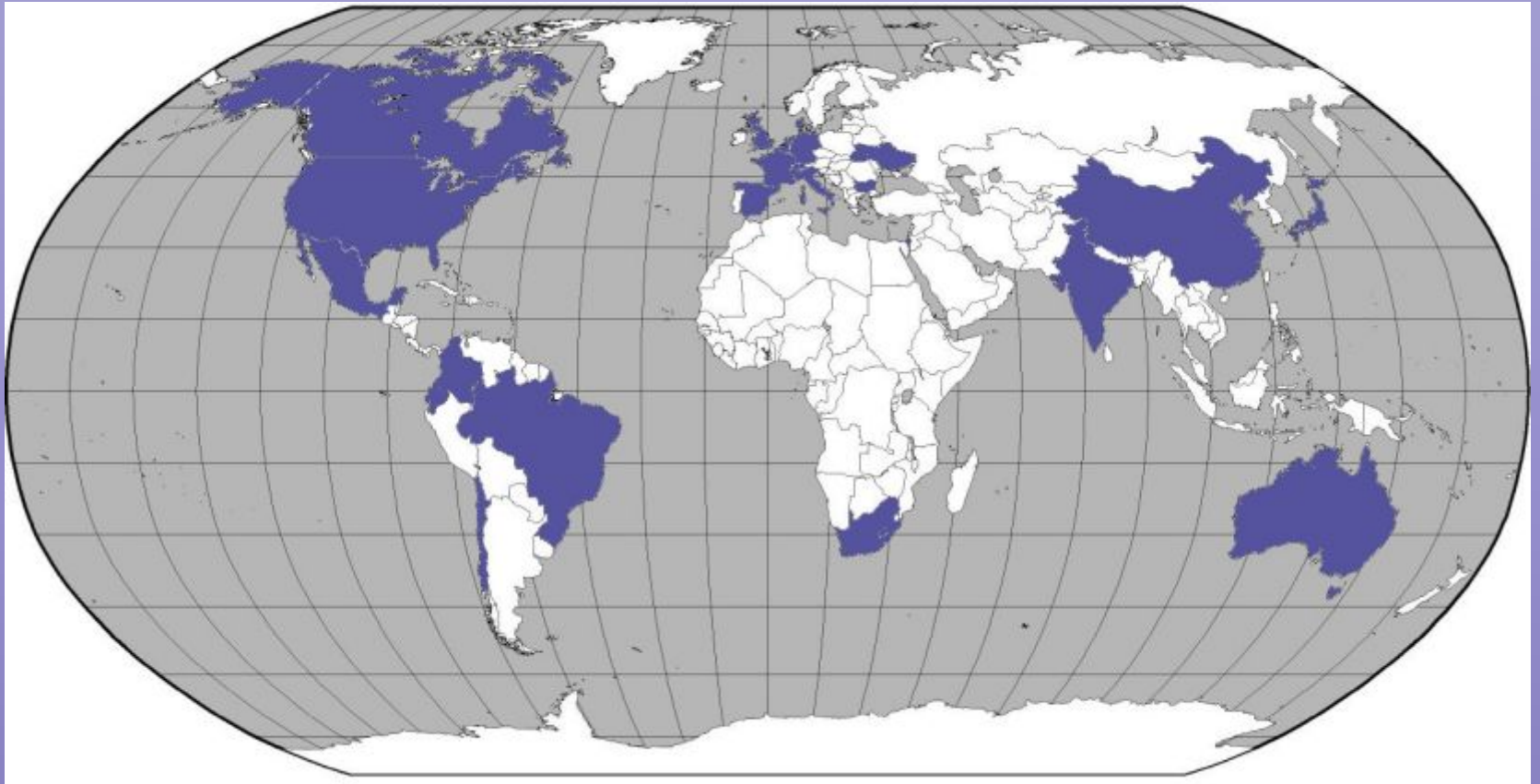
International Community of Breeders of Asexually Reproduced Ornamental and Fruit Plants

Founded by breeders in 1961 simultaneously with the establishment of UPOV by the International Convention for the Protection of New Varieties of Plants

Specializing in the IP-protection of ornamental and fruit plant innovations by means of Plant Breeders' Rights, Plant Patents, Patents and Trademarks



CIOPORA Membership*



106 CIOPORA Members from 26 Countries

* Sep 2015

What We Do: Advising

Types of Granted Breeders' IP Rights



CIOPORA advises governments on the minimum content and requirements of IP laws and enforcement regulations for the effective protection of the Plant Breeders' Rights, Patents, Plant Patents & Trademarks, their co-existence and interaction.

What We Do: Networking and Lobbying

Ideas exchange on protection of new varieties



CIOPORA groups the breeders of asexually reproduced ornamental & fruit varieties

Defense & representation of breeders' legitimate interests

Development & unification of IP laws and regulations

Development & improvement of enforcement of IP rights

Centralization of information on IP protection of new plant varieties

Promotion of the necessity of the global protection of breeders' IP rights

What We Do: Active Support

CIOPORA supports its members in their enforcement activities by...

Organizing joint activities

Analyzing the legal background in target countries

Providing structural support

Communicating the results

What We Do: Communication

Internal Communication

- Circular Letters (emails)
- Newsletters
- Annual CIOPORA Chronicle
- CIOPORA Profile on LinkedIn & Facebook
- CIOPORA.org: Download Library & News

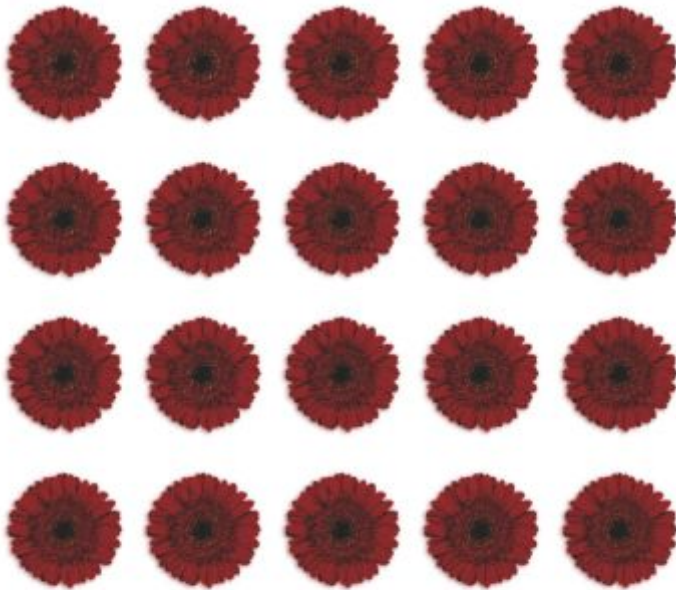
External Communication

- Information materials
- Online media
- Print media (CIOPORA Chronicle)
- CIOPORA.org – Open Download Library & News
- Industry events & fairs



What We Do: Campaigns

FIND THE FAULT!

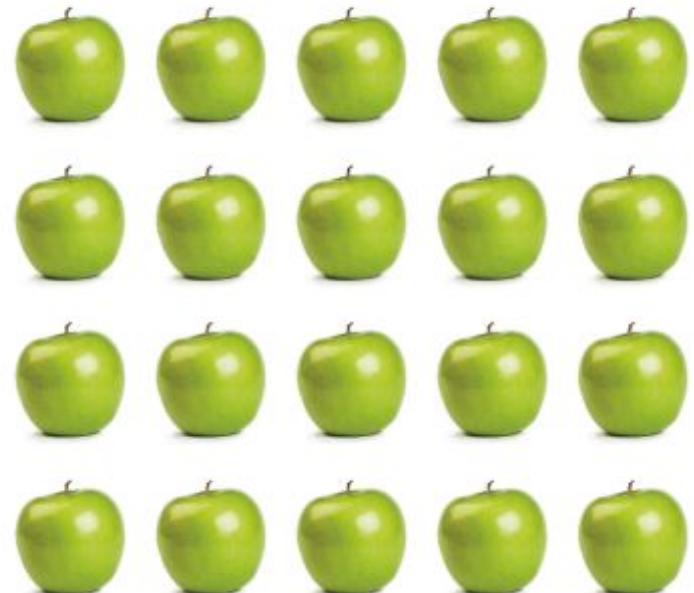


THE FAULT IS THAT THREE OF THE GERBERA HAVE BEEN PROPAGATED WITHOUT A PROPER LICENSE.

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



Why is Enforcement Necessary?

Enforcement of IP Rights is to the benefit of all honest players in the business, because it adds to fair competition and stable prices in the market.



- Level playing field for all market participants: Propagators and Growers who do not pay royalties have lower production costs and a higher margin. This is damaging to honest market participants.
- Honoring honesty of licensees: Licensees respect the work of the breeders and pay their contribution to it. These agreements must be honored.

Why is Enforcement Necessary?



- Prevention of overproduction and dumping: Production of plant material without license causes overproduction. This destroys the healthy balance between offer and demand, and results in dumping prices
- Protection of Exclusivity: The exclusive right to grow a variety granted to a grower or a group of growers is part of its financial calculation. This needs to be protected.
- Fair return on investment: Breeders rely on a fair return on their investment in order to continue their business and develop new varieties



The Price for Being Honest...

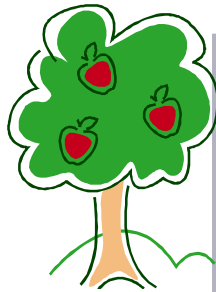
- Royalty for the production of one apple tree: EUR 0.40 - 2.00
- Sales-price of an apple tree: average EUR 5.50 - 7.00
- Trees on one hectare: 1,666 – 3,300
- Tree production per year: average 30 - 40 kg
- Commercial life of an apple tree: 12 - 15 years
- Harvest per ha per year: 55 - 60 t (at 1,666 trees/ha)
- Price paid to the apple grower: 0.27 – 0.45 EUR/kg
- Price of apples for the end-consumer: 1.99 – 2.99 EUR/kg
- # of apple pies eaten per year? Don't know!
- # of worms in apples? Don't know!



Picture credit: Better3Fruits

Financial Calculation per ha, low level:

**One time 666 EUR royalties for the trees
(1,666 trees by 0.40) EUR)**



**Growers' income from
apples per year:
EUR 13,500 (50 tons, 0.27
EUR/kg)**

**Growers' income from
apples: per life time of
the apple trees - EUR
202,500 (15 years)**



**End-consumer price of
the apples:
per year: 100,000 EUR (50
tons, 1.99 EUR/kg)**

**End-consumer price of
the apples: per lifetime
of the trees: EUR
1,500,000**

Money earned in the trade chain: EUR 1,300,000

Portion of royalty in grower's income: 0.33%

Financial Calculation per ha, high level:



Growers' income from apples per year:
EUR 36,000 (80 tons, 0,45 EUR/kg)

Growers' income from apples: per life time of the apple trees - 432,000 EUR (12 years)



End-consumer price of the apples:
per year: EUR 240,000 (80 tons, 2.99 EUR/kg)

End-consumer price of the apples: per lifetime of the trees: EUR 2,880,000

Money earned in the trade-chain: EUR 2,448,000

Portion of royalty at growers income: 1.5%

Effective Enforcement Tools

Sufficient Information and Access



Fast Proceedings



Specialized Courts



Full Compensation of Costs



Effective Border Measures



Deterrent Sanctions



Effective Enforcement Tools

Greenhouses and Samples

- Right holders must be granted access to greenhouses and nurseries 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 material, thus fast provisional measures to preserve evidence are necessary.



Pictures: flickr.com – [aleske](#) (CC BY2.0), [steelight](#) (CC BY ND 2.0)

Effective Enforcement Tools

Right to Information

- The trade with ornamental and fruit material is very international and 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



Picture: flickr.com – [Doug Waldron](#) (CC BY SA 2.0)

Effective Enforcement Tools

Procedural Challenges

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

Solutions

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

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

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

Effective Enforcement Tools

Procedural Challenges

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

Solutions

Full compensation of costs:

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

Trade with ornamental and fruit material is very international

Croatia has a long external frontier of the EU

Effective Border Measures:

Instruments to control import & export of illegal plant material are necessary. Customs agents must have sufficient knowledge on plants and PBR

Effective Enforcement Tools

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

- **Enforcement of IP Rights is in the benefit of all honest market participants – only dishonest have to be afraid**
- **To be honest does not cost a fortune, but gives you a quiet sleep**
- **IP Infringement is a serious offense**
- **UPOV member states are obliged to provide for effective tools for the enforcement of IP- Rights**



Questions? Comments? Concerns?

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