

# International Symposium on PVP

## PVP国际研讨会

Key provisions of the 1991 Act of the UPOV Convention:  
relevant guidance and implementation matters  
UPOV公约1991年文本的关键条款：相关指导和实施事项

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***July 21, 2021***

***Geneva (via electronic means)***

日内瓦（线上进行）



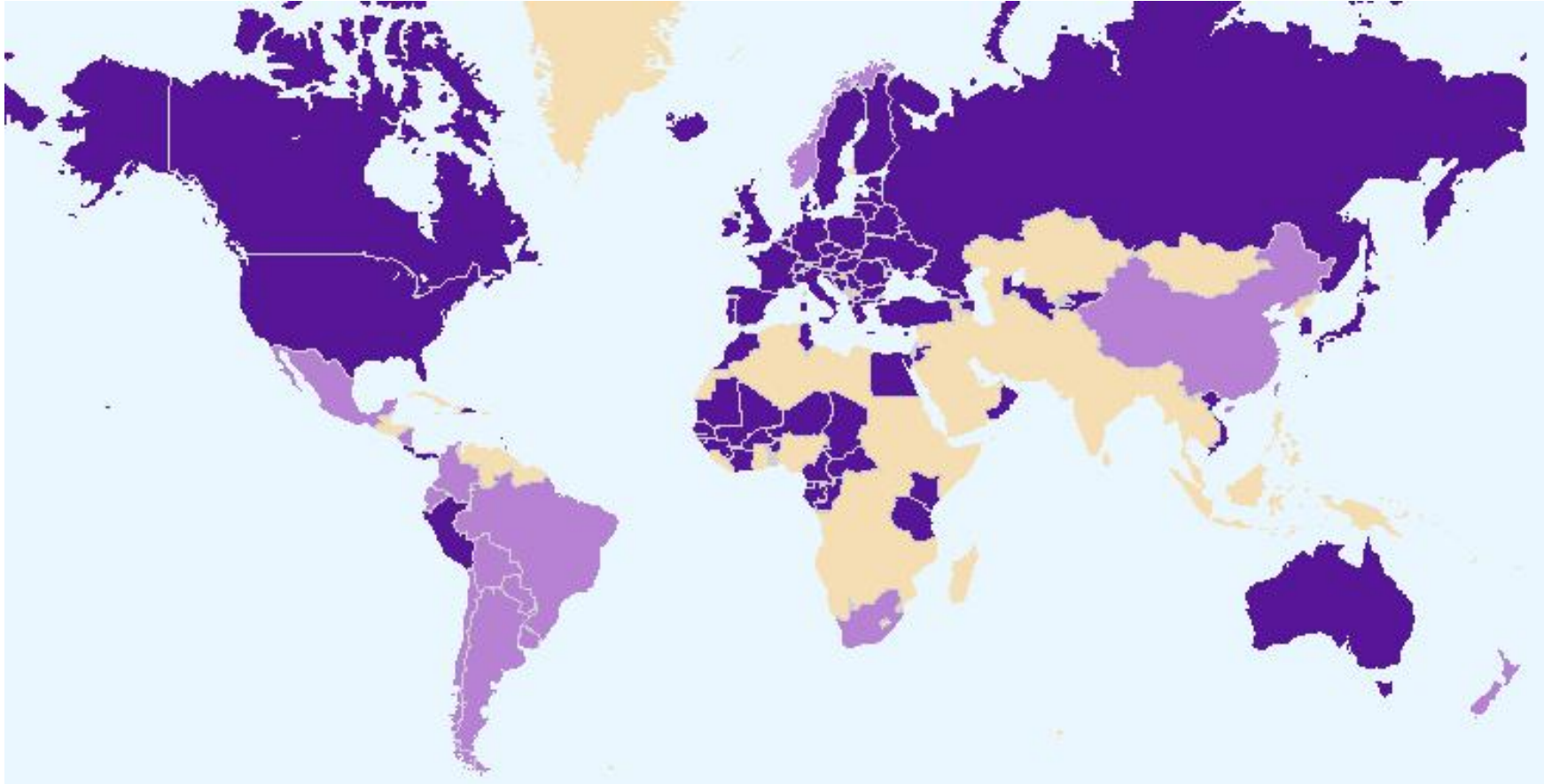
International Union for the Protection of New Varieties of Plants

## UPOV membership: 77 members covering 96 States

UPOV成员:77个成员, 包括96个国家

**1991 Act: 60 members – 1978 Act: 17 members**

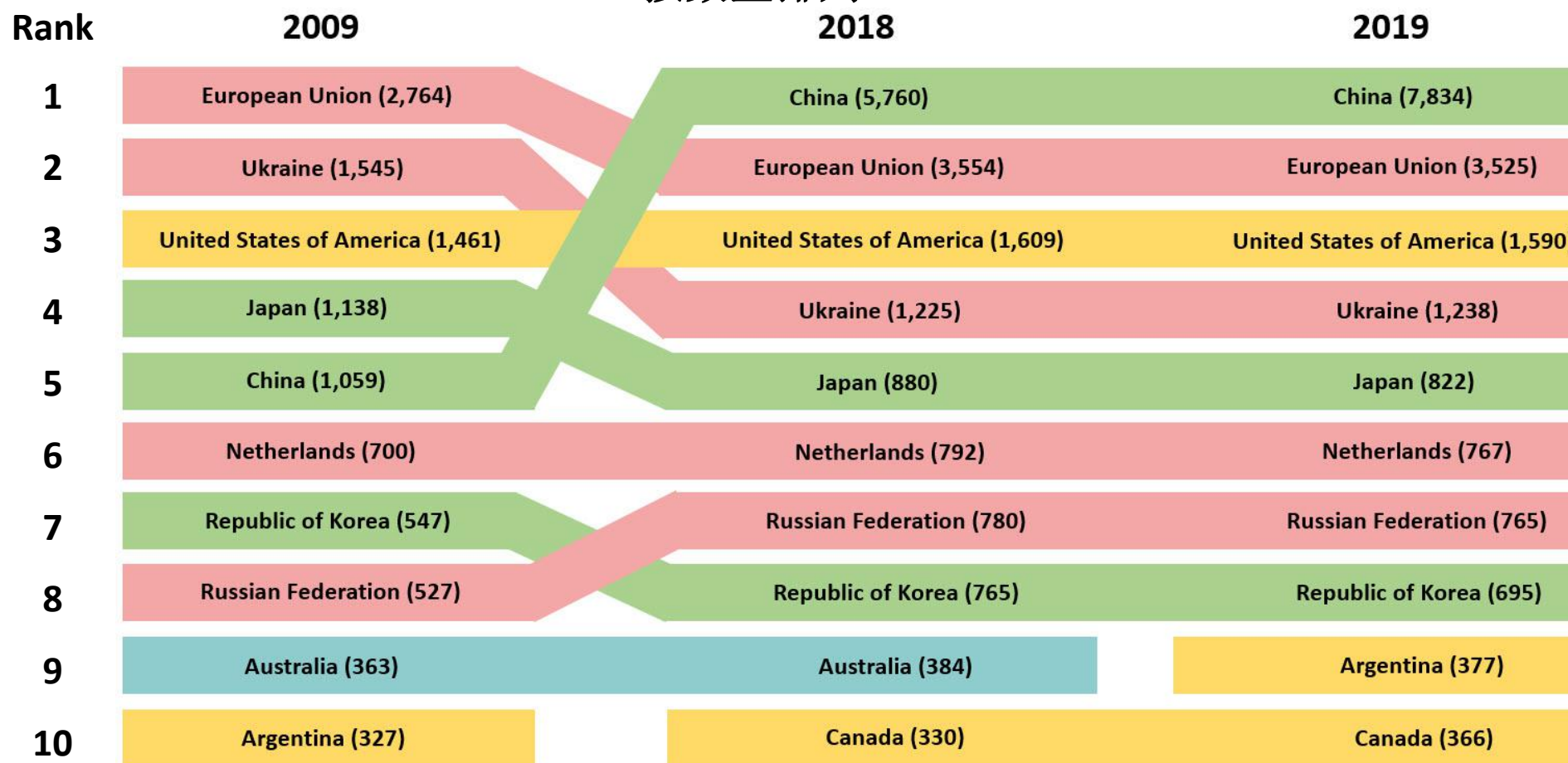
**1991年法律文本： 60个成员-1978年法律文本： 17个成员**



*The boundaries shown on this map do not imply the expression of any opinion whatsoever on the part of UPOV concerning the legal status of any country or territory*

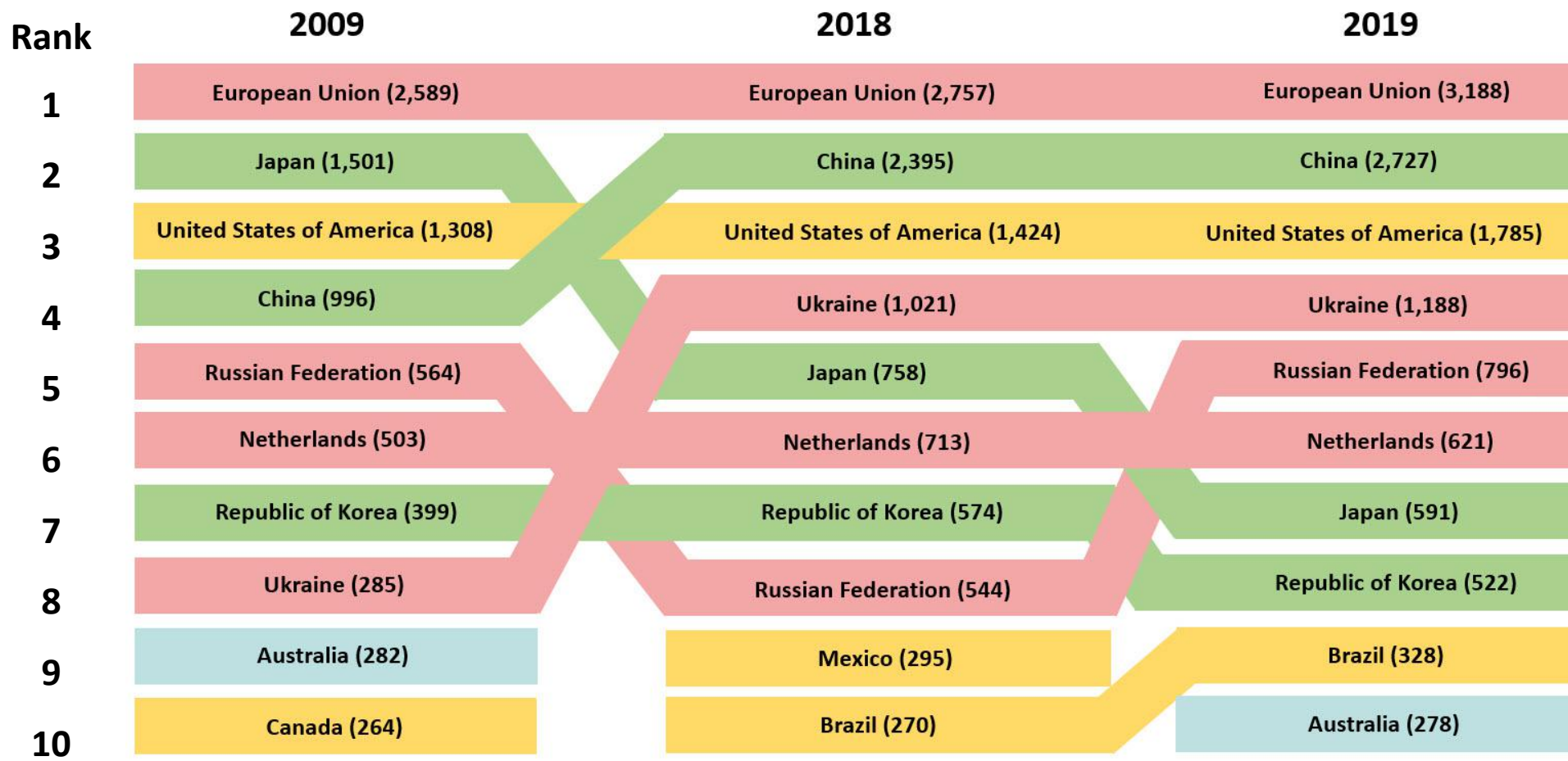
# Top 10: UPOV members by number of plant variety protection applications received

top10:UPOV成员申请的植物品种保护权  
(按数量排列)



# Top 10: UPOV members by number of plant variety protection titles issued

top10:UPOV成员被授予的植物品种保护权  
(按数量排列)



# PREVIEW 概览

## 1. Scope 范围

- a) Acts covered  
行为范围
- a) Material covered  
材料范围
- a) Varieties covered  
品种范围

Essentially Derived  
Varieties  
实质性派生品种  
(EDV)

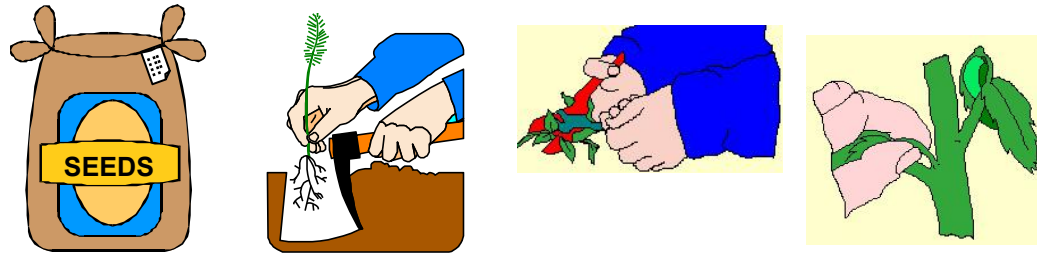
## 2. Exceptions 例外

## Authorization of breeder required for 需育种者授权的行为:

- **Production or reproduction (multiplication)** 生产或繁殖
- **Conditioning for the purpose of propagation** 为繁殖而进行的种子处理
- **Offering for sale** 提供销售
- **Selling or marketing** 售出或其他市场销售
- **Exporting** 出口
- **Importing** 进口
- **Stocking for any of the above purposes** 用上述目的的原种制作

# MATERIAL COVERED 材料范围

- All propagating material 所有繁殖材料



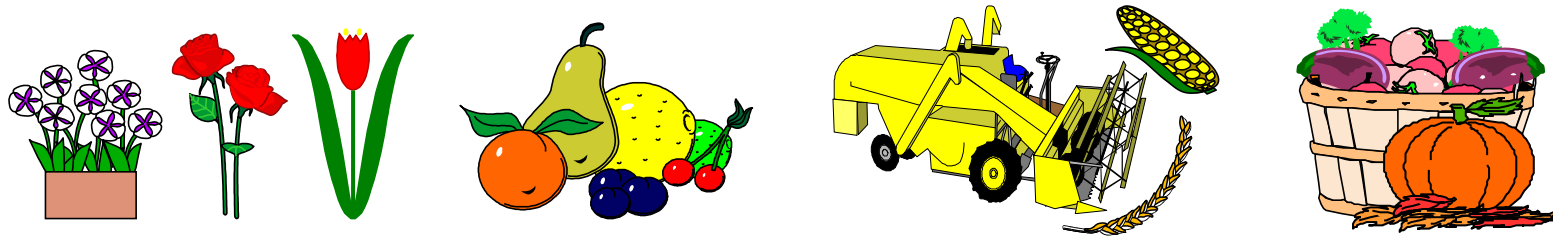
- Harvested material under certain conditions  
特定条件下的收获材料

- Certain products (optional)  
特定产品（可选）



# MATERIAL COVERED 材料范围

- All propagating material 所有繁殖材料
- **Harvested material 收获材料**



if obtained through **unauthorized use** of propagating material **unless**,  
reasonable **opportunity** for breeder to **exercise his right**  
未经授权使用繁殖材料而获得的，除非育种者有行使权利的合理机会

- **Certain products (optional) 某些产品（可选）**



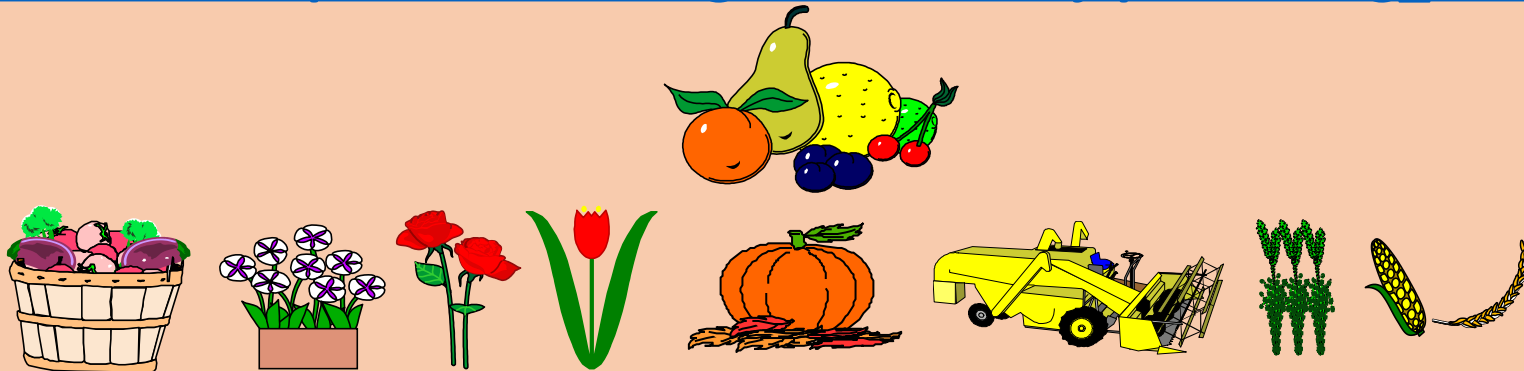
# HARVESTED MATERIAL 收获材料

seminar to exchange information on matters concerning  
harvested material and unauthorized use of propagating material  
held by

**electronic means on May 27, 2021\***

就有关收获材料及未经授权使用的繁殖材料的交流研讨会  
于2021年5月27日在线上举办

[https://www.upov.int/meetings/en/details.jsp?meeting\\_id=63048](https://www.upov.int/meetings/en/details.jsp?meeting_id=63048)



\*to be confirmed

# Seminar on the breeder's right in relation to harvested material

与收获材料有关的育种者权利研讨会

## CONCLUDING REMARKS 结论

**How does the lack of effective protection on harvested material impact on growers and consumers?**

对收获物缺乏有效保护对种植者和消费者有何影响？

- Inhibit the early introduction of new and improved varieties  
尽早引进新品种和改良品种
- Reducing the benefits of those varieties for growers and consumers and society  
减少这些品种对种植者、消费者和社会的好处
- If breeders do not have effective protection to recover the investment in breeding, improved varieties might not be developed
- 如果种植者得不到有效的保护来收回育种投资，良种就可能得不到开发

# Seminar on the breeder's right in relation to harvested material

## 与收获材料相关的种植者权利研讨会

### *cont. concluding remarks* 结论

**What are the main challenges in the exercise of the breeder's right in relation to the harvested material?** 在收获材料方面行使育种者权利的主要的挑战是什么？

- lack of predictability 缺乏可预测性
- for certain species, trees, once planted, can produce fruits for many years 对于某些品种，林木，一旦种植，可以结很多年的果实
- A minimum scope of provisional protection and/or a narrow interpretation of “unauthorized use of propagating material” – 临时保护的最小范围和/或“未经授权使用繁殖材料”的狭义解释
- may not provide the means for the breeder to exercise and enforce their right in relation to the growing of the plants and producing and selling of the fruit 不得为种植者行使和实施其种植植物和生产、销售水果的权利提供途径

# Seminar on the breeder's right in relation to harvested material

与收获材料相关的种植者权利研讨会

*cont. concluding remarks* 结论

## At the level of UPOV: what solutions for those challenges?

在UPOV的层面上：这些挑战有什么解决方案？

- To help to encourage the development of new varieties of plants, further guidance would be helpful on 为了鼓励植物新品种的开发，进一步的指导将有助于：
  - propagating material 繁殖材料
  - harvested material 收获材料
  - effective provisional protection 有效的临时保护
  - notion of “unauthorized use of propagating material”  
“未经授权使用繁殖材料”的概念
  - the doctrine of exhaustion of rights in relation to the reversal of the burden of proof 与举证责任倒置有关的权利利用尽原则

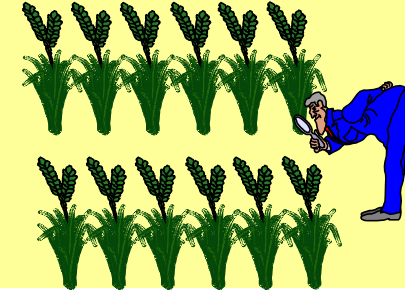
# VARIETIES COVERED (1991 Act)

## 品种范围（1991年法律文本）

In addition to the protected variety itself 除了受保护品种本身,

**VARIETIES** 品种:

- **not clearly distinguishable** from the protected variety
- 与受保护品种**无明显差别**



- whose production **requires the repeated use** of the protected variety 其生产需要重复使用受保护品种，例如使用受保护品种生产的杂交品种（1978年法律文本）

*e.g. hybrids produced using a protected variety (1978 Act also)*

使用受保护品种生产的杂交品种(1978年法律文本)

- which are **essentially derived** from the protected variety
- 基本上是从受保护的品种中**衍生**出来的

# PREVIEW 概览

## 1. Scope 范围

- a) Duration 时间范围
- b) Acts covered 行为范围
- c) Material covered 材料范围
- d) Varieties covered 品种范围

## 2. Exceptions 例外

# EXCEPTIONS TO THE BREEDER'S RIGHT

## 育种者权利的例外

### Compulsory 强制性的

#### Acts done 采取行动:

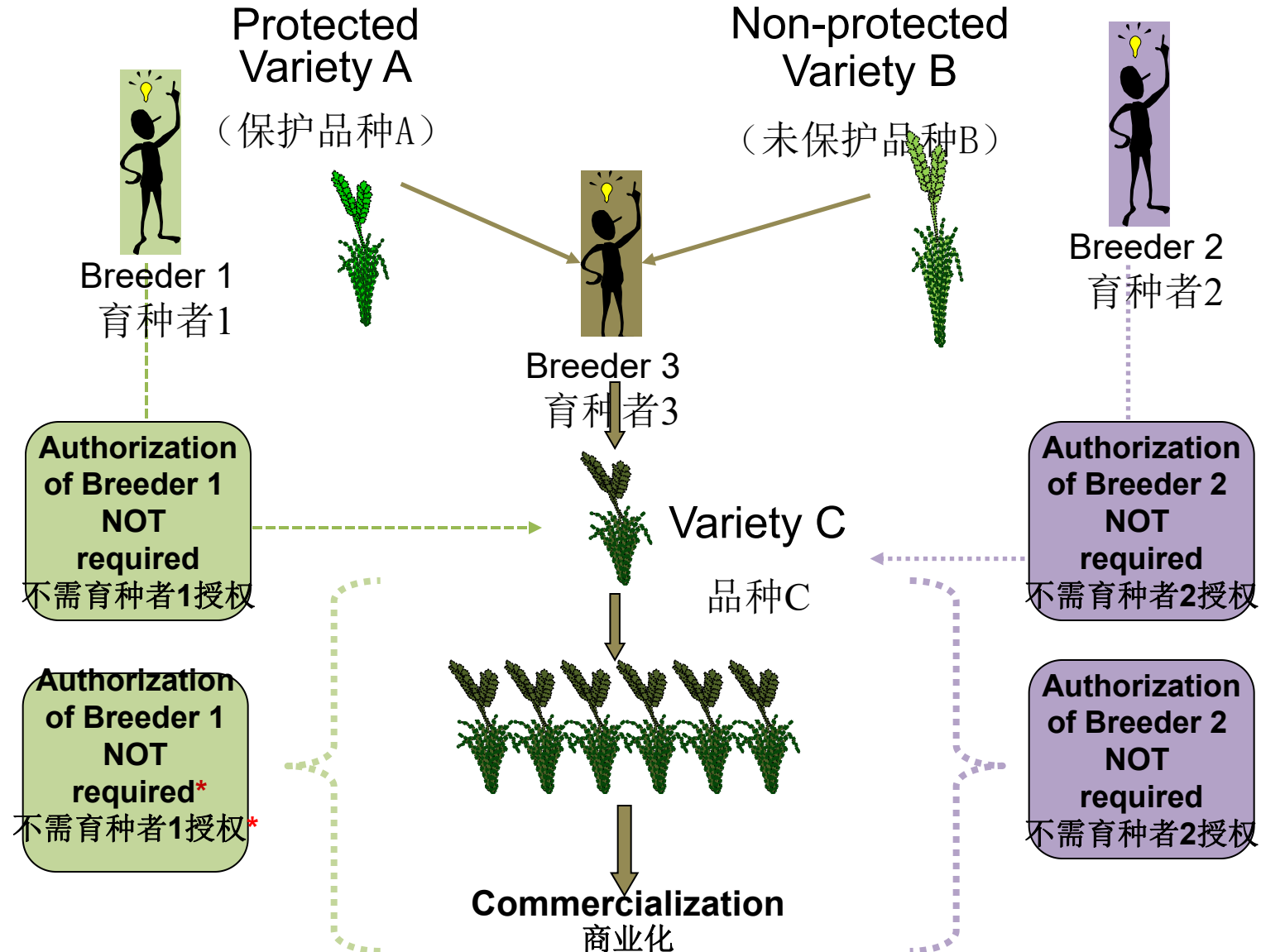
- privately and for non-commercial purposes  
私人和非商业目的
- for experimental purposes  
用于实验目的
- breeding other varieties (breeder's exemption)  
培育其他品种（育种者豁免权）

### Optional 可选的

#### Farm-saved seed 农场保存的种子



# The Breeder's Exemption 育种者豁免权



\* Except for 除了:

(i) varieties which are essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety 实质性派生于受保护品种，而受保护品种本身并非实质性派生品种，

(ii) varieties which are not clearly distinguishable in accordance with Article 7 from the protected variety and 依照第7条不能与受保护品种明确区分的品种

(iii) varieties whose production requires the repeated use of the protected variety 生产需要重复使用受保护品种的品种。

# Breeding new var.: Improved by adding material 培育新品种：通过添加材料改良

Father  
(Protected Var.  
from oversea)

父本  
(源自海外的受保护品种)



X



Mother  
(Local variety)

母本  
(本地品种)



New variety  
新品种



# KSVS Symposium on Plant Variety Protection

Seoul, Republic of Korea (September 3, 2015)

植物品种保护研讨会  
韩国首尔（2015年9月3日）

## Korean Rose Breeding Converts a Royalty Payer into a Receiver

Charlie Jeong/wonwoo trading

韩国的玫瑰育种帮助实现了专利税缴纳者到接受者的转变。

## Becoming Royalty Receiver

1. Korean pay rose royalty abroad about 1,040,000 plants in year 2014
2. GARES rose varieties are sold about million in year 2014
3. Korea change from royalty payer to royalty receiver

### 成为专利税接受者

- 1、2014年，韩国为大约1,040,000株植物缴纳国外玫瑰专利税
- 2、2014年，GARES玫瑰售出约百万株
- 3、韩国从专利税缴纳者成为接受者

# EXCEPTIONS TO THE BREEDER'S RIGHT

育种者权利的例外

## Compulsory 强制性的

Acts done 采取行动：

- **privately and for non-commercial purposes** 私人和非商业目的
- **for experimental purposes** 用于实验目的
- **breeding other varieties (breeder's exemption)** 培育其他品种（种植者豁免权）



# EXCEPTIONS TO THE BREEDER'S RIGHT

## 育种者权利的例外

- Compulsory 强制性的

- (i) Acts done privately **and** for non-commercial purposes

私人和非商业目的的行为

- propagation of a variety by a **farmer exclusively** for the production of a **food crop to be consumed entirely by that farmer and the dependents of the farmer** living on that holding 农场主为生产一种好的作物而繁殖的一个品种，这种作物完全由农场主及其所依附的人食用

**therefore** 因此

“**subsistence farming**” where these constitute acts done privately and for non-commercial purposes, may be considered by a UPOV member to be excluded from the scope of the breeder's right “自给农业”如果这些行为构成私人和非商业目的，UPOV成员可将其排除在繁殖者权利范围之外

**Acts Possibly falling within the scope of the exception可能属于例外的行为**



## WORK IN UPOV ON SMALL HOLDER FARMERS

### UPOV小农户相关工作

Development of guidance regarding the implementation of the exception of acts done privately and for non-commercial purposes in relation to small scale farmers

制定关于实施与小农户有关的私人和非商业目的行为例外的指南

UPOV members and UPOV observers have provided their experience and views — UPOV成员和UPOV观察员提供了他们的经验和观点——

**no legal action by breeders has been reported on acts concerning protected varieties by small holder farmers not involving their commercial exploitation** 没有关于育种者对小农户对受保护品种采取不涉及商业开发的行为的法律行动的报告

# EXCEPTIONS TO THE BREEDER'S RIGHT (1991 Act)

育种者权利的例外（1991年法律文本）

## Compulsory 强制性的

### Acts done 采取行动：

- privately and for non-commercial purposes 私人  
和非商业目的
- for experimental purposes 用于实验目的
- breeding other varieties (breeder's exemption)  
培育其他品种（种植者豁免权）

## Optional 可选择的

**Farm-saved seed** 农场保存的种子







Farm-saved seed

农场保存的种子



# OPTIONAL EXCEPTION TO THE BREEDER'S RIGHT

育种者权利可选择的例外

## Farm-saved seed – Article 15(2)

农场保存的种子——第15（2）条

**A Contracting Party may restrict the breeder's rights in order to permit farmers to use:**

缔约方可以限制育种者的行为允许农民使用的权利

- for propagating purposes **on their own holdings** 为了繁育他们自己的种子  
**the product of the harvest** 收获的产物
- **obtained on their own holdings** 由自留的种子获得  
from the protected variety 来自受保护品种
- **within reasonable limits** 在合理范围内
- subject to **safeguarding legitimate interests of the breeder**  
以保护育种者的合法利益为目标

*[Recommendation of the Diplomatic Conference on Article 15(2)]*

[外交会议关于第15（2）条的建议]

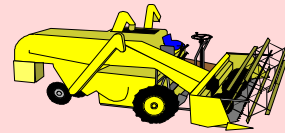
# OPTIONAL EXCEPTION TO THE BREEDER'S RIGHT

## 育种者权利可选择的例外

**Product of the harvest** can be used for propagating purposes

收获的产品可用于繁殖

small grain cereals 小型谷物:



harvested product may = propagating material

可能收获的产品=繁殖材料



Fruit, ornamentals and vegetables 水果、观赏植物和蔬菜:

harvested product may  $\neq$  propagating material

可能收获的产品 $\neq$ 繁殖材料

# OPTIONAL EXCEPTION TO THE BREEDER'S RIGHT

育种者权利可选择的例外

## Reasonable limits and safeguarding the legitimate interest of the breeder

合理限制与维护育种者的合法权益

Possible factors 可能因素:

- Type of variety 品种类型
- Size of holding/crop area/crop value 持有面积/收成面积/收成价值
- Proportion/amount of harvested material 收获材料的比例/数量
- Remuneration to the breeder 育种者报酬

Review over time 随着时间推移审查

# Increased Investment 增加投资

## Canada ratifies UPOV '91 seed treaty



By Staff

Published: June 22, 2015  
Crops, Markets



(Country Guide file photo)

## Ritz: UPOV 91 Part Of Reason For New Wheat Seed Development Partnership

By Ray Baynton on July 6, 2015 8:43am

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BlackburnNews.com file photo by Simon Crouch

- Bayer Crop Science new investments in wheat breeding  
拜耳作物科学公司对小麦育种的新投资
- Limagrain/Canterra Seeds partnership – cereal breeding  
种子伙伴关系-谷物育种
- Public/private/producer breeding consortium to fund Canadian Prairie Spring Red Wheat (CPSR)  
公共/私人/生产者育种联合会资助加拿大草原春红小麦（CPSR）
- New PBR applicants in the agriculture sector 农业部门的新PBR申请人

UPOV

## Plant breeding investment in Australia (Wheat) 澳大利亚植物育种投资（小麦）

