

PLANT BREEDERS' RIGHTS

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Plant Breeders' Rights are different from Plant Patents. During the period the Rights are in force, they give the holder—the breeder or creator of a new variety—the exclusive right to:

a) Sell, offer or expose for sale, reproductive material of the protected variety.

b) Produce reproductive material of the protected variety for sale.

c) Exercise any further rights specified in the scheme.

At present, Plant Breeders' Rights are only exercised in individual countries. Protection must be taken out separately in each country where it is needed. International rights are controlled by a Convention that meets in Geneva. There are proposals that, by 1992, all countries in the European Community will operate to a common law. This will greatly simplify registration and increase property protection for breeders.

THE CONDITIONS FOR GRANTING OF RIGHTS ARE:

Previous Commercialization. Plant material of the variety must not have been offered or exposed for sale before rights are granted.

Distinctiveness. The variety must be clearly distinguishable from other varieties by at least one characteristic capable of precise description.

Stability. The variety must be stable in its essential characteristics.

Uniformity. The variety must be uniform with regard to reproduction and propagation.

Duration. Rights normally last between 20 and 30 years.

Naming and Objections. Objections to registering a name can be raised for the following reasons:

1) It is the same as, or resembles, the name of another plant in the same class

2) It is likely to deceive or cause confusion about the plant's characteristics

3) It does not conform with international usage regarding nomenclature of cultivated plants

4) It is the same as, or easily confused with, a trade mark or name

5) It is liable to give offense

Participants agreed with the concept of Plant Breeders' Rights but felt there were a number of drawbacks to the way the system operates in Great Britain.

Cost. The rights are very expensive to take out yet the policing is left to growers to enforce and pay for.

There is no promotion from the Plant Variety Rights Office.

Information. Growers have great difficulty establishing which varieties are protected. In many cases plants are purchased in good faith but later turn out to be covered by P.B.R. This is compounded by the fact that the Plant Variety Rights Office prohibits by copyright the publication in trade magazines of lists of new varieties that have been granted protection. Growers are expected to subscribe to the official *Plant Varieties and Seeds Gazette*, which is mainly concerned with arable crops rather than ornamentals. There is no other way of finding out which varieties have protection in the UK.

Breeders need to be more aware of the problems and intricacies of the system and of the potential of world markets. It was agreed that, ideally, Plant Breeders' Rights need to be obtained, and agents appointed in all countries where the new plant is to be sold before launching the plant in any country. Unfortunately this is not always practical.

There was general agreement that as the complexities of the scheme are more fully understood, breeders' introduction procedures will tend to become standardised. At present, one must first apply to have a genus or group of plants registered for the scheme if no previous application has been made for that plant. There are many groups of plants in the hardy nursery stock trade that have not been included in the scheme simply because the value of inclusion has not been appreciated before.

LICENCES

There is much confusion on this point but the following conclusions were agreed:

1) The raiser or breeder of a new variety can propagate, introduce, and promote the plant himself, or can grant a licence to a grower or tissue-culture laboratory to do so. A licence can be granted to grow but not sell, where a second company could be licenced to sell.

Difficulties have arisen in the past because of sub-licences granted to other companies by the head licensee. Fair trading regulations demand that sub-licences are issued unless there is a very good reason not to. But there must be very good communication between breeders and licence holders. The lack of a clearing house for arrangements being proposed and initiated is the main reason for the confusion caused by cross-licencing and contradicting agreements have been made.

Identification. DNA fingerprinting of plants is one sure way to ensure that plants are not produced and sold under a different name. At present, protected plants can be pirated in one country, taken to another, propagated, and then sold back to the original country under a different name.

Policing. The British Association of Rose Breeders has a method of policing the rose budding of protected rose varieties.

What to Register. Any plant that is a new variety, including sports of existing protected varieties, can be registered as long as it fills the relevant criteria (see above). Some members of this seminar group felt that while breeders should be rewarded for their skill, new varieties that arose as sports were lucky chances that were less deserving. However the identification and recognition of the potential of a sport depends to a great extent on the skilled observation of an experienced plantsman.

CONCLUSIONS

The biggest difficulty facing growers is lack of communication and information. There is total lack of awareness of the plants protected, exacerbated by copyright restrictions. Plant Breeders' Rights need to be more clearly publicised. The lack of uniformity across Europe will be addressed by E.C. legislation. Growers are becoming more aware of the need to register plants of particular merit and, as it becomes more costly to breed and market new plants, the need for protection is increased.