



# Essentially derived varieties and the perspective of growers

**Mia Buma**

**Secretary AIPH Committee for Novelty Protection**

**October 22, 2013**

# Content

Four parts:

1. Arguments for the introduction of the EDV provision in the 1991 Convention.
2. Evaluation EDV: has it brought the benefits that were intended when it was introduced?
3. AIPH's opinion on EDV.
4. Conclusions

# 1. Arguments for introduction EDV

Why was it introduced?

1. Under former Conventions one or two differences between new and initial variety enough for grant PBR
2. Mutants
3. Development biotechnology

1+2+3 > ask for more clarity and fairness for decision grant of new PBR.

Since introduction AIPH raised the question: EDV suitable juridical solution for these problems ?



## 2. Evaluation of the EDV provision

- Arguments clear, but working out in UPOV 1991 problematic
- Where do you draw the dividing line?
- Much debates; used definitions do raise new questions
- Breeding world parties try to give answers and guidelines
- To litigants, judges and lawyers no much help  
> see jurisprudence.



### 3. Opinion of AIPH on EDV (1)

5

Essentially the EDV issue is not a juridical one.

Three general AIPH statements are mentioned:

Goal PBR is to stimulate plant breeding by an IP right system

Innovation and product renewal is basis for progress in ornamental sector

A main principle is the breeders exemption: EDV should not restrict this.



### 3. Opinion of AIPH on EDV (2)

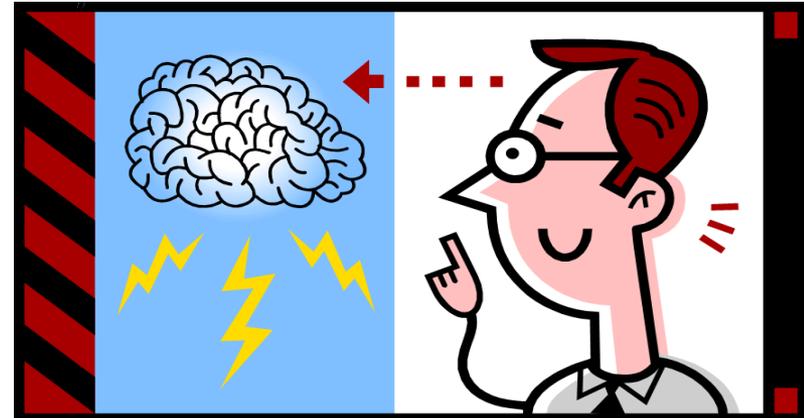
- Against background of three statements, AIPH's two arguments EDV issue is not a juridical one, are understandable.
- Argument 1: content of art 14,5 Conv. 1991 does not agree with juridical base and essence of UPOV PBR system.

# 3. Opinion of AIPH on EDV (3)

7

Explanation 1st argument:

- Definition of the breeder: basic legal principle is that a person who works out in his mind a thought that leads to new variety, can apply for breeders right.
- IP is civil law: if understanding of law-system is no good, the base of the legislation will be no good.
- The object of the law is an abstract right. It protects the thought, the idea of the invention, not the physical plant.



### 3. Opinion of AIPH on EDV (4)

- So, only definition of breeder = someone who creates varieties
- EDV does not differ from this abstract right
- What we forgot as criteria to be granted PBR, yet we try to formulate as an extra criteria ,called EDV
- EDV should be solved under conditions for the grant of PBR, EDV does not deal with the scope of the PBR

### 3. Opinion of AIPH on EDV (5)

- Arg. 2: EDV provision makes the issue complex in stead of solving and simplifying it.
- Before 1991 the relevant question: is there an new variety or not?
- Since 1991 there is a second question: is this new variety EDV from another variety, yes or no?
- The only question is: is the offspring of the new variety different enough from its parents to grant a new PBR?
- Governments and controllers should set out a logical, fair and consistent system.

### 3. Opinion of AIPH on EDV (6)

10

AIPH has fundamental problems with EDV:

- Reduction of healthy competition between breeders
- The existing EDV provision does not agree with the juridical basis of IP
- Nevertheless, AIPH did give her recommendations or guidance concerning EDV.



### 3. Opinion of AIPH on EDV (7)

11

A solution:

- focus on the real important discussion, the distances between varieties
- Essence of the discussion: what is a variety? Is there an new variety?
- Determination of what the relevant characteristics are for the different varieties.



# 4. Conclusions (1)

12

1. AIPH has fundamental problems with EDV from the juridical point of view
2. Regulations of any kind to solve the problems should never block the breeders exemption
3. Not in favour of rules that make the entrance to the market for new varieties more difficult
4. Not the goal of PVR to provide monopoly position to existing breeders



# Conclusions (2)

13

5. Existing EDV provision is difficult to understand in the perspective of the essence of the IP right system
6. Disadvantage that questions of proof, caused by the EDV provision, are mixed up with questions of principal law system.
7. Criteria for acceptance of criteria on distances have to be made.
8. Very willing to give contributions to the thoughts and discussions to come to objective criteria for examining the distinction.





# EDV and the perspective of growers

Thank you for your attention.

For further information please visit our  
website:

[www.AIPH.org](http://www.AIPH.org)