



Glossary of Terms with Explanations in Plant Variety Protection

Plant Variety Protection	Legal Requirement / Reference
<p>Concept of Variety Protection: Variety protection denotes the intellectual property rights in respect of new plant varieties. Grant of title to variety protection gives the breeder the right to protect his work, that is the breeding of a new variety, against unwanted commercial use. This right is time limited.</p>	
<p>How Variety Protection Works: Variety protection, first of all, serves the title holder by rewarding him for his ingenuity, time and expenses through income from licensing and propagation agreements. Furthermore, variety protection is beneficial to society in that it contributes to the advancement of plant breeding and the marketing of new varieties that may, for example, be more disease-resistant or better suited to consumer tastes.</p>	
<p>Office for Plant Variety Rights: Anyone wishing to obtain variety protection must file an application with the appropriate authority. In Switzerland it is the Office of Plant Variety Rights, under the Federal Office for Agriculture, which is responsible for granting plant variety protection. Given proper documentation and examination reports, the Office grants title to variety protection that is valid for the territory of Switzerland.</p>	

Persons	Rights and Obligations
Breeder: The <i>natural</i> person who has bred a plant variety.	Can call himself a breeder; this right cannot be transferred.
Variety owner: The natural or judicial person who owns the variety. This may be the breeder, his employee or the successor in title of the person initially entitled.	<i>Right of disposal</i> of the variety (he can sell or otherwise dispose of the variety).
Variety Rights Holder: Variety owner who has obtained title to protection of his variety.	<p><i>Right of determination</i>, provides that the protected variety may be produced, propagated or conditioned for the purpose of propagation, offered, sold or otherwise distributed, exported or imported (licensing, charging license fees).</p> <p><i>Obligations vis-à-vis the Office for Plant Variety Rights</i> (for which a representative may be responsible): payment of annual fees, maintenance breeding.</p> <p><i>Obligations vis-à-vis the licensee:</i> stipulated in the licensing agreement.</p>
Representative: Person resident or registered in Switzerland who represents the variety owner vis-à-vis the Office for Plant Variety Rights.	<p>Rights and obligations are stipulated in the contract between the variety rights holder and the representative, in particular the extent of the representation and the representative's remuneration.</p> <p>In dealing with the Office for Plant Variety Rights he is responsible for timely payment of fees and submission of the requisite documentation.</p>
Filer: Person who files for protection of the variety with the Office of Plant Variety Rights. This may be the variety owner or a representative. If the variety is filed by a foreign variety owner or a person who represents the variety in the EU or a third country, a representative who is resident in Switzerland must be designated for any further dealings with the Office for Plant Variety Rights.	<i>Obligations:</i> submission of complete application documents and payment of filing fee to the Office for Plant Variety Rights.
Licensee: Person who has obtained the permission of the variety rights holder to produce, propagate or condition for the purpose of propagation, offer, sell or otherwise distribute, export or import the protected variety.	Rights and obligations are stipulated in the licensing agreement, in particular propagation and sale of the protected variety and payment of the licensing fees to the variety rights holder.

Denomination / Name	Legal Requirement / Reference
<p>Variety denomination: Denomination of a plant variety that enables third parties – notably those active in the market - to identify the variety.</p>	<p>The variety denomination must not be misleading or confused with a denomination for a variety of the same or a botanically related species and must be the same for all UPOV members (Art. 12 of the Federal Act on the Protection of Plant Varieties).</p> <p>Plant material of a protected variety that is commercially marketed must be identified by the appropriate variety denomination. The variety denomination must be used even if variety rights have expired (Art. 13 of the Federal Act on the Protection of Plant Varieties).</p>
<p>Trade name: Designation that is used for marketing plant material, in addition to the variety denomination. This is often a trademark.</p>	<p>Material of a protected variety may also be marketed using a trademark or another trade name as long as this is clearly distinguishable from the variety denomination and the variety denomination is readily identifiable (Art. 13b of the Federal Act on the Protection of Plant Varieties).</p> <p>A variety must always appear commercially under the same variety denomination, but it may also be marketed under different trade names or trademarks.</p>
<p>Trademarks: A trademark indicates the origin of a product in a particular company and normally elicits from the consumer a certain expectation as to product quality. The trademark thus clearly conveys a sense of competition.</p>	<p>The trademark is normally registered with the Institute of Intellectual Property.</p>

Term	Legal Requirement / Reference
<p>Farmer privilege: The farmer privilege allows farmers to use the harvested material of a protect variety on their own holdings for further cultivation without prior approval of the variety protection holder.</p>	<p>In Switzerland this applies to the species listed in Annex 1 of the Ordinance on the Protection of Plant Varieties.</p>
<p>Breeder privilege: The breeder privilege makes it possible for breeders to use plant varieties for further breeding without prior approval of the variety rights holder.</p>	<p>This applies universally to all plant varieties.</p> <p>The new breeds may be marketed without approval of the variety rights holder of the initial variety, unless it were a matter of essentially derived varieties or varieties for which the initial varieties were required for their production (Art. 6(c) of the Federal Act on the Protection of Plant Varieties).</p>
<p>Harvested material: Harvested products from the cultivation of plant material (for example, fruits, cut flowers, grain seed, straw).</p>	<p>The variety holder can also exercise his right in respect of the harvested material if he can prove that it was not possible to do so with the propagating material (Art. 5, para. 2(d) of the Federal Act on the Protection of Plant Varieties).</p>
<p>Reproduction: Seed production by farmers on their own holdings.</p>	
<p>Essentially derived variety: Variety that, in the expression of its essential characteristics, matches the variety from which it stems (for example, a mutant that differs from the initial variety only by its blossom color).</p>	<p>The scope of protection of a protected variety also comprises the varieties essentially derived from the initial variety, provided the protected variety itself is not an essentially derived variety (Art. 5, para. 2(a)).</p> <p>Whether a variety has been derived essentially must be determined in each particular case.</p>