

End point royalties

Plant breeder's rights (PBR), sometimes known as plant variety rights (PVR) provide exclusive rights to various uses of the plant propagating material. In this way, PBR provides a framework for plant breeder's to obtain protection, however, it does not stipulate how the breeder can commercialise their new variety. In fact, there a number of different ways in which plant varieties can be commercialised, or otherwise exploited. Commonly, growers agree to a contract or license; setting out the terms under which a grower can have access to the variety, including: the purchase price of the propagating material, terms of use, reporting requirements and the amount (and timing) of any royalties payable.

What are royalties?

The cost of the propagating material often includes a royalty (a payment for use of the material); generating revenue for the breeder. For example, a variety that costs \$100 per tonne may include a \$4 royalty that goes back to the owner of the PBR.

Royalties are often collected at the point of sale, as a one-off payment when you purchase the sowing seed. However, growers are sometimes asked to pay an end point royalty on newly released varieties. End point royalty payments are calculated on the resultant grain from the purchased seed, with payment usually based on the volume, quantity or weight of the product sold, eg per tonne of grain that is harvested. End point royalties are also known as Crop Improvement Royalties.

Importantly, end point royalties are not restricted to protected varieties. Any royalty depends on the contract between the grower and the seller (often the plant breeder's rights owner or their licensee) of the propagating material.

Why end point royalties?

End point royalties are often presented as a fairer system to enable breeders to get a return on their investment, while keeping the cost of propagating material down. Industry further argues that end point royalties help share the risk of variety and crop failure, as well as providing some protection against the practice of farm-saved seed.

In this way, end point royalties are seen as a user-pays system that enables the grower to produce the variety and contribute proportionately based on the crops success; enabling the grain industry to remain competitive in world markets through the development of improved varieties.

How do end point royalties affect the grower?

In most circumstances the grower is required to sign a contract (often referred to as a 'Grower Agreement' or 'Seed Licence') when they purchase a variety. This may be subject to end point royalty payments. The contract outlines the obligations of the grower when purchasing the variety. These obligations may include:

- the grower making payment of a royalty on each tonne of grain harvested, either sold or retained on farm; and
- retaining records regarding the tonnage of grain either sold or retained.

Importantly, any grower retained seed, and successive production from this seed, may be subject to the terms and conditions of the contract.

How do growers pay end point royalties?

If grain of the variety is delivered to selected grain buyers, payment of the end point royalty may be automatically deducted from the grower payment. Alternatively, if delivery is made to a grain buyer that does not automatically deduct the royalty, then the grower may be invoiced directly for the end point royalty.

Grower declarations, grain delivery information and contract auditing are all used to ensure appropriate end point royalties are being collected.

How do I know if I have to pay end point royalties?

Your contract will state what type of royalties are payable. You need to check your contract to determine whether or not the royalties are end point royalties.

Who receives the end point royalties?

The recipient of the end point royalties is usually the breeder, distributor or licensee.

What are the issues with EPRs?

Transparency: Occasionally, breeders will collect a royalty on the propagating material, as well as by way of end point royalties. Some growers believe this constitutes “double-dipping” because they are paying two forms of royalty: one on the seed, as well as end point royalties. However, the majority of varieties do not have both forms of royalty.

Variation in end point royalties rates: There can be a large variation in end point royalty rates (from \$1 per tonne to \$10 per tonne) depending on the variety. This is generally a result of consideration of the costs of other varieties in the market place; the benefit/s of the new variety and market tolerance. Another option is to charge the end point royalties as a percentage rate rather than a \$/tonne charge.

Standardised contracts: While end point royalties are widely used, their implementation has been approached individually by different breeding organisations and/or collection agents. This has resulted in several similar, but separate, systems operating within the industry. As a result, there are a wide range of seed contracts that can vary markedly. It is important that you read the terms of any contract you sign carefully.

Third-line forcing (Competition and Consumer Law): While it is lawful to recommend a product or service of a third person to a grower, it is unlawful to force those products or services on growers. For example, it may be unlawful to force growers to use a particular collection agent. This may, however, depend on the public benefit (eg based on price or choice) associated with forcing growers to use a nominated agent, and may be approved by the relevant national regulator depending on the circumstances. For example, in Australia, the former Australian Wheat Board, successfully obtained ‘authorisation’ on the grounds of public benefit to force growers to use only their nominated collection agent.

This fact sheet is only for information purposes, and to assist you in understanding your legal rights and obligations in a general sense. It is not tailored to any particular fact, situation or specific requirements, and must not be relied on as legal advice.

This Fact Sheet was prepared independently by the Australian Centre for Intellectual Property in Agriculture (ACIPA).

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