

Plant breeder's rights

Plant breeder's rights (PBR) are a form of intellectual property protection designed to protect new varieties of plants. Plant breeder's rights allow plant breeders to control the use of the protected plant variety and to gain commercial benefit from their investment in the development of new plant varieties. If a grower purchases a plant breeder's rights protected variety they face restrictions on its use.

Plant breeder's rights were originally developed as an alternative to patents and were first recognised internationally by the 1961 International Convention for the Protection of New Varieties of Plants Convention. UPOV 1961 was first revised in 1972 and again in 1978. The 1978 version of the Convention recognises the so-called 'farmer's privilege' allowing farmers to re-use propagating material from the previous year's harvest and to freely exchange seeds of protected varieties with other farmers. It also provides exemptions for non-commercial research and for the development of new plant varieties. The International Convention for Protection of New Varieties of Plants was revised again by the 1991 Convention, which strengthens plant breeder's rights protection, removes the breeder's exemption from essentially derived varieties and leaves it up to individual countries to determine whether or not to apply the farmers' privilege within their territory.

Importantly, plant breeder's rights are territorial in nature and varieties need to be registered in the country in which you are seeking protection. The duration of plant breeder's rights is generally 25 years for trees and vines and 20 years for all other plants. This starts from the date the plant breeder's rights are granted.

How can a variety be protected by PBR?

In order to be protected, a plant variety must have a breeder and be new, distinct, uniform and stable, as defined by the International Convention for the Protection of New Varieties of Plants Convention:

Breeder	A breeder is a person who has bred or discovered and developed a plant variety, or their employer or contractor who has commissioned the work, and their respective successors in title.
New	A variety is generally considered to be new if it has not been sold (with the breeder's consent) for a period specified in national law.
Distinct	A variety is distinct if it is clearly distinguishable by one or more characteristics which can clearly be described from any other variety whose existence is a matter of common knowledge at the time of application.
Uniform	The requirement that the variety be uniform means that a variety must be sufficiently consistent in those characteristics that make it distinct.
Stable	A variety must remain true to description after repeated propagation or reproduction.

How do you apply for PBR?

In order for a variety to be protected by the plant breeder's rights system, it is necessary for the applicant to go through an administrative process that tests and evaluates whether the variety complies with the requirements for protection. Costs may include fees for the Application, Examination and Issuing of a Certificate. There may also be an annual fee.

What is the scope of PBR?

Valid plant breeder's rights give the owner (initially, the breeder) a number of rights. For example, holders of plant breeder's rights have exclusive rights in relation to the propagating material to:

- produce or reproduce the material
- sell or offer for sale
- import or export the variety

While these rights are primarily in relation to the commercialisation of propagating material, they may also apply to harvested material, products obtained from harvested material, and to derivative varieties in certain circumstances.

How do you know if a variety is protected by PBR?

In some countries plant breeder's rights protected varieties are denoted by a plant breeder's rights logo.

For example, in Australia plant breeder's rights are denoted by the logo:



Lists of plant breeder's rights protected varieties may be available from national plant breeder's rights offices and official websites.

Exceptions to PBR

An important feature of the plant breeder's rights system is the way in which the interests of breeders, growers, and researchers have been accommodated through the use of exceptions or limitations to the scope of the breeder's right. Some exemptions include:

- private or non-commercial purposes
- experimental purposes
- plant breeding
- farm-saved seed

PBR and contract

Plant breeder's rights and the contracts for use of a protected plant variety are not directly related. Plant breeder's rights are a framework that controls the use of the propagating material. In contrast, contracts deal with the commercialisation of varieties and may include details of prices, terms of trade and supply chain structures.

This fact sheet was produced as part of a collaboration between the CGIAR Consortium and the Australian Centre for Intellectual Property in Agriculture (ACIPA) to research international intellectual property issues relating to agriculture.

This fact sheet is for information purposes only. It is designed to assist in general understanding of legal rights and obligations: It is not tailored to any particular fact, situation or requirements and should not be relied upon for legal advice.

Further Fact Sheets are available on the ACIPA website <http://acipa.edu.au/fact-sheets.html>.