



RAFI

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Plant Breeders' Wrongs Righted in Australia?

Under attack for blatant abuses to its Plant Breeders' Rights (intellectual property) legislation and accused of abetting the biopiracy of Farmers' Varieties around the world - including Australian Aboriginal varieties - Canberra's beleaguered PBR Office has issued new regulations intended to prevent piratical plant patents. But will they? What about past abuses? What does it mean for the renegotiation of the WTO's "TRIPS" (patent) chapter this December 1-2? For background see RAFI's home page (www.rafi.org) or go directly to: <http://www.rafi.org/pr/release20.html>

"An Ounce of Prevention": Breeders applying in Australia for monopoly over a plant variety will now have to disclose the origins of the variety and identify its "parent" breeding stock, according to the Government's Plant Variety Journal (Vol. 11, No. 3, 1998). For the first time, applicants will have to explain how they obtained and bred the variety and describe how their variety differs from its parents. In their September 16th report (Plant Breeders' Wrongs), RAFI and HSCA (Heritage Seed Curators Australia) noted that 37% of the 118 suspect Australian claims offered no evidence of actual plant breeding - lending weight to the criticism that breeders were pirating Farmers' Varieties from overseas. The new regulations also oblige applicants to field trial their variety against its parent lines to prove that it is different. If breeders fail to do so, they must explain why. Again, HSCA and RAFI reported that 29% of the dubious claims had not shown that their variety was distinct from foreign introduced parents. A third change places a 2-year limit on 'provisional protection'. Previously, some breeders merely lodged applications for varieties. Under the terms of provisional protection, breeders were allowed to exercise monopoly rights over the variety without submitting evidence that their material deserved protection. This loophole allowed pirates to reap the benefits of protection year-after-year without doing the work. In their report, HSCA and RAFI noted that 16% of the 118 possibly wrongful claims were abuses of this type.

Still Needs "a Pound of Cure": While these three regulatory changes have the potential (if maintained and monitored) to address 90% of the causes of biopiracy in Australia, they relate only to new applications. Bill Hankin, President of HSCA, confirms that, "These rules are not retroactive. The many certified varieties that would not have been able to meet these standards - and that were probably pirated - continue to be protected. Dubious varieties we have already identified that are still awaiting certification but whose applications were filed prior to the new rules, will be allowed to slip through. We're closing the barn door after too many of the horses have escaped."

"Crime and (no) Punishment": These and other regulatory proposals could have the effect of granting retroactive protection or "amnesty" to pirates. "The Government says it may extend from 6 years to 8 or more the length of time a variety can be in the market before PBR is claimed or granted," Hankin says. "Ten percent of the possible abuses we identified appear to have violated the old time restriction. Rather than redress the abuse, the government is moving the goal posts." RAFI's Edward Hammond, who co-drafted Plant Breeders' Wrongs with Hankin, agrees, "These changes match what we've been hearing ever since the release of our report. Breeders in Australia are embarrassed but they are not willing to admit their failings nor give back the money they made through false claims. These regulations go some way toward prevention but they also entrench the piracies of the past and present. The new regs offer retroactivity to protect the pirates but not to defend the pirated," adds Hammond. "If Australia wants to regain its good reputation among farmers and scientists around the world," Hankin concludes, "the government has to come clean. These changes are a confession of guilt but there's no punishment. The biopirates can keep on making monopoly profits on stolen varieties." Bill Hankin concludes, "There is need for a Senate parliamentary committee investigation of the Plant Breeders' Rights Office and of the impact of the PBR Act over the past decade."

FAO-CGIAR Prescribe More Medicine: The Australian regulations come hard on the heels of a new agreement adopted in Washington DC at the end of October. FAO and the Consultative Group on International Agricultural Research (CGIAR) adopted a new and exhaustive procedure confirming what each party would do if there is any indication that crop germplasm held in trust may be the subject of an intellectual property claim. The signed arrangement guarantees that both the UN Agency and the scientific organization will be pro-active in tracking down abuses and demanding that pirates withdraw their claims. Earlier this year, at RAFI's suggestion,

FAO and CGIAR called for a moratorium on any claims related to "trust" germplasm. The new deal puts some teeth to the moratorium. As a member of both FAO and CGIAR, Australia's delegation welcomed the tough new procedure at the Washington meeting.

But it's TRIPS and UPOV that are Sick: If there is a cure and the medicine is available, there is still the problem of delivering it. "The World Trade Organization will be meeting to discuss the review of its special chapter on Trade-Related aspects of Intellectual Property (TRIPS) in Geneva on December 1st and 2nd," says Pat Mooney, RAFI's Executive Director, "The TRIPS Council needs to get the message. The prevailing Western models for intellectual property protection over plant varieties actually aid and abet biopiracy. Either they change the systems or they scrap their demand that every WTO member country adopt plant "patent" legislation. It is simply immoral to impose piratical systems on poor farmers and their countries." Mooney has been invited by the South Centre (a Third World intergovernmental think-tank) and the Minneapolis, USA-based Institute for Agriculture and Trade Policy (IATP) to meet with ambassadors from South governments to discuss the issue on November 30th, just prior to the WTO negotiations. "This is an opportunity for trade ambassadors to determine what mechanisms the World Trade Organization should have in place to prevent and redress biopiracy," Mooney suggests. "Ambassadors might also examine the role of the Union for the Protection of New Varieties of Plants [UPOV - the Plant Breeders' Rights Convention]. If Australia is now in the lead in regulating against plant piracy, what of the other UPOV country members? Will Australia back the South in calling for an end to biopiracy?" asks Pat Mooney. During 1999, as the WTO undertakes its review of intellectual property rules for plant varieties, RAFI and HSCA will continue to monitor the WTO and UPOV closely.

More Claims Abandoned - More Abuses Uncovered: News of the Australian rule changes came as yet another Australian PBR certificate was abandoned. "Indus", a barnyard millet collected in a Pakistani market in 1954 has been dropped by the St. Lucia, Queensland research station of CSIRO (Commonwealth Scientific and Industrial Research Organization). The Farmers' Variety was granted a PBR certificate in Australia in 1995. This brings to six the number of claims exposed by RAFI and HSCA that have been abandoned in Australia so far this year. RAFI and HSCA listed 118 dubious Australian claims in their September report. Meanwhile, a number of new claims - on rice varieties in Japan, forages and cereals in Italy, and other forages in Australia - have come to light. RAFI's Edward Hammond is flying to Rome for meetings this week with CGIAR and FAO authorities, at their invitation, to discuss mechanisms for monitoring crop gene flows on the internet. He is bringing along the list of possible new abuses. "This problem is far from over," Bill Hankin says.

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RAFI is a non-profit international civil society organization headquartered in Canada. For more than twenty years, RAFI has worked on the social and economic impact of new technologies as they impact rural societies.

HSCA is a not-for-profit association of heritage seed curators based in Bairnsdale, Victoria. HSCA is dedicated to the conservation and sustainable use of plant genetic resources for food and agriculture around the world.