



# Crop Science Report

RESEARCH/EXTENSION

## PLANT VARIETY PROTECTION

BY

Don Brewer<sup>1</sup>

On December 24, 1970, the President signed into law the Plant Variety Protection Act. The Act was to encourage the development of novel varieties of sexually reproduced plants, and to make them available to the public, providing protection available to those who breed, develop or discover them, thereby promoting progress in agriculture in the public interest. While there had been a plant patent system prior to this date, one could only obtain a patent on asexually reproduced plants; i.e., roses, bluegrass, apple trees, etc.

The number of varieties and species obtaining protection was slow in the beginning, but this trend has not held, and many varieties of a number of different species are being protected today. A term of protection is eighteen years from the date of certificate issuance.

### RESTRICTIONS ON HANDLING SEED OF PROTECTED VARIETIES

Quoting from the Act:

"(a) Every certificate of plant variety protection shall certify that the breeder (or his successor in interest) or his heirs or assignees, has the right, during the term of the plant variety protection, to exclude others from selling the variety, or offering it for sale, or reproducing it, or importing it, or using it in producing (as distinguished from developing) a hybrid or different variety therefrom, to the extent provided by this Act. If the owner so elects, the certificate shall also specify that in the United States, seed of the variety shall be sold by variety name only as a class of certified seed and, if specified, shall also conform to the number of generations designated by the owner."

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<sup>1</sup> Extension Certification Specialist, Oregon State University, Corvallis  
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As can be seen from the quotation, there are many restrictions put on handling seed of a variety once it has received protection. First, the public must be notified by the owner that it is a protected variety. So, we will find in the market place bags of seed bearing this statement: "Unauthorized Propagation Prohibited - U. S. Protected Variety."

From that quote one can also glean another aspect of the Act. A breeder and/or owner has an option when applying for protection. He may protect his variety and sell it with or without the benefit of the seed certification programs in the United States. Or, the owner may elect to use the "certification option." If he chooses this route the variety then comes under Title V of the Federal Seed Act, and it becomes illegal to sell the variety by variety name unless it is officially certified in the United States.

If there is any confusion over the Plant Variety Protection Act it usually exists over this certification aspect. For example, what advantages are gained by protecting a variety under the certification option? The Plant Variety Protection Act provides for settlement of infringements of the certificate of protection in different ways. Violations may be settled in a civil court, in which the court may issue an injunction to prevent infringement or may award damages to the holder of a certificate in compensation for losses. The cost of this civil action is an added expense to the certificate holder. However, if a protected variety is specified to be sold as certified seed only under Title V, an advertiser or seller of uncertified seed is in violation of the Federal Seed Act, and may be reprimanded or fined under this Act. The enforcement of Title V rests with the Seed Branch of the Federal Seed Act, and no longer involves the Plant Variety Protection office, nor is there an expense to the holder of the certificate unless he elects to go to civil court. Many state seed laws have been changed to enforce this provision as well.

Shortly after the Act became effective, more than half of the varieties being protected were being entered under Title V. More recently the Title V option has not been as popular. Fewer varieties are now placed under Title V.

One reason given for not using the certification option is that seed lots that do not meet the genetic requirements for certification cannot be sold as that variety. This seems to strike at the very heart of the controversy. No one wants to have to sell seed labeled as variety "not known" or "not stated"; but in fact, to sell seed by variety name when it is not genetically pure is a clear violation of the Federal Seed Act. The Federal Law states, "If the name of the variety is given, the name may be associated with the name of the kind with or without the words kind and variety. The percentage in such case, which may be shown as "pure seed", shall apply only to seed of the variety named."

### SEED SALES OF PROTECTED VARIETIES TO NEIGHBORS

If one has been farming for any length of time, you cannot but wonder what happens if seed of a protected variety is kept for your own use or given to a neighbor. The Administrator of the Plant Variety Protection office has given this answer to help illustrate several points already made.

#### Section 113 - Right to Save Seed; Crop Exemption

The two situations involved are as follows:

1. Protected varieties not required to be sold as certified seed.

A farmer whose primary occupation is the growing of crops for food or feed, and who has obtained seed of a protected variety, not required to be sold by variety name only as a class of certified seed, may:

- a. Save seed for his own use from his crop production.
- b. Sell seed to another farmer, but this second farmer may not sell seed from his production.

This exemption applies only to protected varieties that are not required to be sold by variety name as a class of certified seed. No seedsman, seed dealer, or elevator may sell seed (for seeding purposes) of a protected variety without the owner's permission.

2. Protected varieties under "Certification option." (Title V)

Varieties protected through the "Certification only" option are regulated by the Federal Seed Act. This prohibits sale of a protected variety by variety name except as a class of certified seed. For example, Amsoy 71 soybeans (a certified, protected variety) may be sold by variety name only as certified seed. Anyone who sells uncertified seed of this protected variety by variety name is violating the Federal Seed Act as well as the rights of the owner under the Plant Variety Protection Act. A farmer may save seed for his own production only. He cannot legally sell uncertified seed of this variety by variety name to anyone, including his neighbors or friends.

### ADVANTAGES OF PLANT VARIETY PROTECTION

Perhaps the question lurking in the back of your mind is; "Just what benefits are to be gained by protecting a variety?" For the first time there is now protection in the United States for the breeders and developers of new varieties just as the inventors have enjoyed since 1790 under the Patent Act. Assigning rights presents the breeder with an opportunity to collect royalties, if he wishes, as reimbursement for his variety development efforts. The key phrase here is that he may collect royalties if he wishes.

Many state agricultural experiment stations are paying the fees required to protect their varieties with very little thought of collecting royalties. This is done to protect a variety from unscrupulous individuals who could pirate the variety from experiment stations or developers and claim it as their own. In addition there are the benefits derived from having only certified seed in the market place.

Dr. J. B. Kendrick, Jr., Vice-President-Agriculture and University Services, University of California, makes the following observations concerning "Patenting Publicly Supported Research Discoveries":

"One of the most generally misunderstood issues involves the practice of patenting some research discoveries which have resulted from the studies made by scientists at publicly supported educational institutions and federal laboratories. Quite understandably, questions by members of the public and some of their state and federally elected representatives are raised about the wisdom and even the ethics of patenting research discoveries made by public funds. A prevailing view among many people is that if patenting is desirable for these kinds of discoveries, then the patents should be issued as public interest patents so that no single firm or business can control the discovery.

I must agree that there appears to be a certain degree of superficial logic in that view and it is consistent with the intended use of the vast majority of discoveries resulting from the research of the many scientists and engineers at our public universities and in federal laboratories. Information derived from the work of the individuals in these public institutions is the property of the public. And indeed, most of the information is published in one form or another in publications which are available to anyone anywhere.

Then why is it necessary to patent some discoveries and copyright some books or other written works? Because it requires the additional investment of significant amounts of money to manufacture and distribute them into the hands of the ultimate user. Public institutions are not manufacturing plants or distribution centers. The additional investment required for the preparation of these kinds of discoveries for consumer use must come from the private sector. Whether it is an individual's personal investment or a corporation's business investment, everyone wishes to be assured that this investment is protected to the extent that is possible. If an invention or discovery which requires further financial investment before it can be made available for general use is unprotected by a patent holder and subsequent authorized and licensed manufacturing agreements, then the discovery frequently never becomes available for public use.

It may be ironical to most that some public discoveries require private protection in order to make them available to the public. The logic supporting this statement, however, does make sense, and it applies as well to the use of copyrights for the many books and written works which result from the scholarly activity of our university personnel.

Federal law still requires the use of public patents for discoveries arising from federally funded research. Proposals have been made to change to a licensing arrangement similar to that which I've described above. There is ample evidence to show that many potentially useful discoveries are languishing on the shelves of libraries and in public patent files because they cannot be protected by a guarantee of the exclusive license for a limited period.

I am hopeful that careful reasoning by those who are skeptical of changing the present federal patent policy will understand why a change would really be in the public's best interest. This change in patent policy would demonstrate the value of cooperation between government and business in fulfilling a public need".

#### BLENDING SEED OF PROTECTED VARIETIES

One further point of clarification, Title V - Sale of Uncertified Seed of Protected Variety, Sec. 501.

"It shall be unlawful, in the United States or in interstate or foreign commerce to sell by variety name seed not certified by an official seed certifying agency when it is a variety for which a certificate of plant variety protection under the Plant Variety Protection Act specifies sale only as a class of certified seed: provided, that seed from a certified lot may be labeled as to variety name when used in a mixture by, or with the approval of, the owner of the variety."

Some have interpreted this last sentence to mean that with the owners approval, seed of a variety can be used in a blend, if the seed is not eligible for certification. This is not correct because seed of a protected variety under Title V must be genetically eligible for certification before it can legally be used in a blend with the owner's approval.

#### IMPORTANCE OF PVP TO OREGON SEED INDUSTRY

Because the Protection Act provides for compensation to developers of sexually reproduced plants, we will undoubtedly see more varieties developed. Because of Oregon's reputation as a high-quality seed producing state, we will no doubt be growing more of these varieties.

#### PROTECTED VARIETIES

Many varieties now being grown in the Northwest have either received their protection certificates or soon will. In an attempt to keep you informed we are printing a list of these varieties. The seller of these varieties, regardless of who it may be, should be sure and inform the purchaser that a variety is protected, that protection is anticipated, or that it is protected through certification.

While every attempt has been made to be accurate in our information, please understand that an owner has the prerogative to change designation up until the certificate has been awarded.

TITLE V VARIETIES

The following varieties were listed under the certification option Title V as of January 31, 1982:

|                          |                         |                           |
|--------------------------|-------------------------|---------------------------|
| <u>Agrotricum</u>        | <u>Bluegrass, KY</u>    | <u>Cotton (continued)</u> |
| 2350                     | Barbie                  | GSA 75                    |
| 3425                     | Enmundi                 | GSA 78                    |
|                          | Harmony                 | Lambright GL-F-3-A        |
| <u>Alfalfa</u>           | Pacific                 | Lambright GL-N-4          |
| Baker                    | Ram I                   | Lambright GL-4            |
| Honeoye                  | Scenic                  | Lambright GL-5            |
| Magnum                   | Welcome                 | Lambright L-X-28          |
| Multileaf                |                         | Lambright X-15            |
| Oneida                   | <u>Bluegrass, Rough</u> | Lockett BXL               |
| Riley                    | Po-lis                  | Lockett 77                |
| Saranac AR               |                         | LX 571                    |
| Victoria                 | <u>Canarygrass, Red</u> | McNair 210                |
|                          | Vantage                 | McNair 220                |
| <u>Barley</u>            |                         | McNair 511                |
| Bold                     | <u>Clover, Red</u>      | McNair 612                |
| Georgie                  | Kenstar                 | New Mexico Acala #20      |
| Gus                      | Redland                 | Paymaster Dwarf           |
| Kombar                   | Tristan                 | Paymaster 101-B           |
| Lud                      |                         | Paymaster 111-A           |
| Maris Mink               | <u>Corn, Field</u>      | Paymaster 266             |
| Menuet                   | LHI                     | Paymaster 303             |
| Moravian III             |                         | Paymaster 785             |
| Paoli                    | <u>Cotton</u>           | Paymaster 792             |
| Pike                     | Blanco 3363             | PR 68                     |
| Reliance                 | Cascot B-2              | PR 75                     |
| Summit                   | Cascot BR-1             | PR 80                     |
| Wapana                   | Cascot L-7              | Quapaw                    |
| Washonupana              | Coker 304               | Rogers GL-6               |
|                          | Coker 310               | Stoneville 256            |
| <u>Bean, Field</u>       | Coker 312               | Stoneville 603            |
| Ebony                    | Coker 315               | Stoneville 731N           |
| Olathe                   | Coker 420               | Stripper N                |
| Sacramento               | Coker 3131              | Stripper 31A              |
| Tuscola                  | Coker 5110              | Tamcot CAMD-E             |
|                          | Delcot 311              | Tamcot SP21               |
| <u>Bean, Lima</u>        | DES 24                  | Tamcot SP21S              |
| Bush Florida Butter      | DES 56                  | Tamcot SP23               |
| Mendoza                  | Dixie King III          | Tamcot SP37               |
| Sprigg                   | Dunn 118                | Tamcot SP37H              |
|                          | Dunn 119                | Thorpe                    |
| <u>Bentgrass</u>         | Dunn 120                | TPSA 1633                 |
| Penneagle                | GP 3755                 | Westburn M                |
|                          | GP 3774                 |                           |
| <u>Bluegrass, Glauca</u> | GSA 71                  | <u>Cowpea</u>             |
| Tundra                   | GSA 74                  | Magnolia Blackeye         |
|                          |                         | Mississippi Purple        |

Fescue, Chewings

Banner  
Jade  
Jamestown

Fescue, Hard

Silvana

Fescue, Meadow

Beaumont

Fescue, Red

Fortress  
Menuet  
Merlin

Fescue, Tall

Kenhy  
Missouri-96

Foxtail, Creeping

Retain

Lovegrass, Weeping

Morpa

Oat

Allen  
Brooks  
Coker 227  
Coker 716  
Dal  
Firecracker  
Four twenty two  
Goodland  
Noble  
Stout  
Wright

Orchardgrass

Dolcea

Pea, Garden

Almota  
Conner  
Edison  
Prospector

Peanut

Avoca-11  
GK-19  
GK-3  
Goldin I  
K-29

Peanut,(continued)

NC 6  
NC 7  
Valencia McRan

Pumpkin

Howden

Rice

Bellevue  
CB 744  
Golden Steve  
Maxwell  
Melrose  
Terso

Rye

Wheeler

Ryegrass, Annual

Aubade  
Deltonic  
Deltop  
Maris Ledger

Ryegrass, Perennial

Augusta  
Barry  
Citation  
Diplomat  
Game  
Pennfine  
Score  
Sprinter  
Yorktown  
Yorktown II

Safflower

Cargill Dwarf 101

Sainfoin

Remont  
Renumex

Soybean

Ancor  
Amsoy 71  
AP 70  
AP 71  
B 186  
B 216  
Bedford  
Beechwood  
Beeson 80

Soybean (continued)

Bonus  
Brooks  
BSR 301  
Centennial  
Century  
Coker Hampton 266A  
Coker 136  
Coker 156  
Coker 237  
Coker 317  
Coker 338  
Coker 488  
Coles  
Crawford  
Cumberland  
Cutler 71  
Deltapine 345  
DSR-121  
DSR-141  
DSR-171  
DSR 207  
DSR-232  
Emerald  
Evans  
FFR 335  
Forrest  
Gnome  
Gutwein 180  
Gutwein 221  
Gutwein 421  
Hartz 936X  
Hobson  
Hodgson  
Hodgson 78  
J-102A  
J-84A  
K-77  
Lancer  
Marion  
Matsoy  
McNair 500  
McNair 600  
McNair 710  
McNair 770  
McNair 800  
Nebsoy  
Oakland  
Pella  
Peterson Jade  
Rockford  
S 1244  
S 1346  
S 1474

Soybean (continued)

S 1492  
 Seedmakers I-E  
 Sloan  
 SRF 100  
 SRF 101  
 SRF 150  
 SRF 150P  
 SRF 174-AT  
 SRF 200  
 SRF 250  
 SRF 307B  
 SRF 307P  
 SRF 350  
 SRF 350P  
 SRF 400  
 SRF 425  
 SRF 450  
 SRF 450P  
 S1578  
 S4055  
 Terra-Vig 606  
 Terra-Vig 708  
 Tracy  
 Vickery  
 Vinton  
 Weber  
 Wells  
 Wells II  
 3034

Squash

Autumn Pride  
 Jersey Golden Acorn

Timothy, Turf

Match

Tobacco

Coker 347  
 Coker 411  
 Coker 48  
 Coker 86  
 McNair 944  
 Speight G-140  
 Speight G-15  
 Speight G-23  
 Speight G-52  
 Speight G-58  
 Speight G-70  
 Speight's G-33

Trefoil, Birdsfoot

Carroll

Watermelon

Kengarden  
 Vic's Valentine

Wheat, Common

Abe  
 Agate  
 Archer  
 Argee  
 Arthur 71  
 Augusta  
 Beau  
 Bennett  
 Blueboy II  
 Bonanza  
 Bounty 309  
 Brawny  
 Buckskin  
 Centurk  
 Centurk 78  
 Citation  
 Coker 68-15  
 Coker 68-19  
 Coker 747  
 Coker 762  
 Coker 797  
 Dancer  
 Delta Queen  
 DK-22S  
 DK-33S  
 DK-49S  
 Downy  
 Eklund  
 Encore  
 Eureka  
 Frankenmuth  
 Frontiersman  
 GB 2148  
 Hiplains  
 Homestead  
 Houser  
 Hutch  
 III  
 James  
 Key  
 Lancota  
 Lindon  
 Maverick  
 McNair 1003  
 McNair 1813  
 McNair 4823  
 McNair 701  
 Newton  
 Nicoma

Wheat, Continued)

Oasis  
 Osage  
 Oslo  
 PR 2360  
 Plainsman V  
 Probred  
 Prodax  
 Profit 75  
 Rocky  
 Roy  
 Ruler  
 Sentinel  
 Solar  
 Southern Belle  
 Sullivan  
 S76  
 Texred  
 Titan  
 Tracy  
 Tut  
 Vona  
 W.S. 1  
 W.S. 25  
 W.S. 6  
 W-332  
 W-335  
 W-444  
 W-504  
 Westbred Aim  
 Westbred 906R  
 Wings  
 World Seeds 13  
 World Seeds 1616  
 World Seeds 1809  
 4555  
 4578  
 5210  
 5221  
 5232  
 5411  
 5422  
 5466

Wheat, Club

Jacmar

Wheat, Durum

Aldura  
 Produra  
 W.S. 3  
 Westbred 1000D

Wheat, Polish

RF-75

Current list of varieties protected under the Plant Variety Protection Act are available from:

Plant Variety Protection Office  
Grain & Seed Division, AMS  
USDA National Agricultural Library  
Beltsville, Maryland 20705