

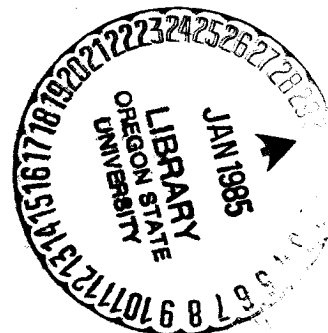
S105
E55
no. 724

Understanding the Plant Variety Protection Law

Oregon State University Extension Service

(Special Report) 724
February 1985

L.A. Agricultural Experiment Station



"UNAUTHORIZED PROPAGATION PROHIBITED"
"TO BE SOLD BY VARIETY NAME ONLY
AS A CLASS OF CERTIFIED SEED—
U.S. PROTECTED VARIETY"

"UNAUTHORIZED PROPAGATION PROHIBITED"
"TO BE SOLD BY VARIETY NAME ONLY
AS A CLASS OF CERTIFIED SEED—
U.S. PROTECTED VARIETY"

"UNAUTHORIZED PROPAGATION PROHIBITED"
"TO BE SOLD BY VARIETY NAME ONLY
AS A CLASS OF CERTIFIED SEED—
U.S. PROTECTED VARIETY"

UNDERSTANDING THE PLANT VARIETY PROTECTION LAW

by Don Brewer¹

Since its inception in 1970, a plant variety protection program of the U.S. Department of Agriculture (USDA) has extended marketing protection to those who develop new and distinctive seed-produced plants--from farm crops to flowers. Administered by the USDA's Agricultural Marketing Service (AMS), the "Plant Protection Act" has:

- Encouraged the development of novel varieties of sexually reproduced plants;

- Protected the work of plant developers, breeders and/or discoverers.

Before 1971, the plant patent office issued patents only on asexually reproduced plants such as roses, bluegrass, apple trees, and the like. Today, USDA grants an applicant a certificate of protection after an examination has determined that a new variety is novel, uniform and stable.

Provisions of the Act

- *Once a protection certificate is granted, its owner or assignees have a right for the next 18 years to exclude others from selling the protected variety.

- *If the owner elects, the certificate may also specify that seed of the protected variety may be sold only by variety name as a class of certified seed.

There are two major requirements for handling seed of a protected variety. First, the owner must notify the public that the variety is protected. Thus, in the marketplace, containers of protected seed must bear a statement: "Unauthorized Propagation Prohibited--U.S. Protected Variety." If the public users have not been so notified, then the owner of the variety certainly will have no claim of infringement. Second, when applying for protection, the owner must decide whether to elect the "Certification Option."

If the owner elects to use the certification option, then the protected variety may not be sold legally by variety name unless it is certified by (an official seed certification agency). If the owner has elected to use the certification option, this will mean that the sale of seed will come under the purview of Title V of the Federal Seed Act. If the owner elects not to use the certification option, seed of that variety may be sold by variety name, whether or not it is certified, but only with the owner's permission.

(Appendix 1 - has extracts from the Plant Variety Protection Act and The Federal Seed Act.)

¹Extension Certification Specialist, Oregon State University, Corvallis

Protection Against Infringement and Other Conditions

Infringements of a protected variety may be settled differently, depending on whether the owner elected the certification option. If the owner did not elect the certification option, violations are settled in civil court at the initiation of the certificate holder. A court may issue an injunction against further infringements, and it may award damages in compensation for losses. The cost of such civil action is borne by the certificate holder.

If the owner of a variety elected the certification option, then the owner may turn to the administrator of the Federal Seed Act for help in infringement cases where a variety is being sold by name but not certified for genetic purity. The enforcement of Title V now rests with the Federal Seed Act and no longer involves the Plant Variety Protection office unless the owner chooses to go to civil court. Thus, the expense of enforcement is not that of the certificate holder. Many state seed laws are being changed to assist in monitoring violations that may arise from selling uncertified seed.

If seed of a protected variety fails the certification requirements and the owner has chosen the Title V route for a particular variety, the seed still may be marketed; however, it must be labeled as "variety not known" or "variety not stated."

In many states the "State Seed Law" requires that the variety name be stated regardless of whether the seed is certified or not. Thus, the number of states where this so-called uncertified seed can be sold limits the sales. Because selling seed in this manner is unsatisfactory to many private owners, presently few such owners are electing the certification option.

Public institutions, both foreign and U.S., are obtaining plant variety certificates on the varieties they have developed. As of March 1983, 40 owners had obtained 139 certificates or 12% of the 1,117 certificates of protection granted to this point. The percentage of these 139 certificates that take advantage of Title V is not known. However, by examining the list of varieties at the end of this document, it is known that the majority of these are from public institutions. This should not be too surprising as varieties being released from state agricultural experiment stations have traditionally been placed under seed certification programs.

Public Varieties and Plant Variety Protection

Although inventors have enjoyed protection provided by the Patent Act since 1790, that same protection was not available to individuals who developed sexually reproduced plants. Assigning rights legally offers the originator an opportunity to collect royalties as reimbursement for the effort involved in developing the variety. Protecting and assigning rights has other benefits, however, when the variety is publicly developed.

Although plant varieties developed by a public institution may logically be assumed to be property of the public, the public then does have the right

to ask why these varieties must be protected and awarded to private individuals. The answer lies in the fact that before they can become available to the ultimate users, substantial investments are needed to expand and distribute these varieties. The public institutions that develop new varieties are not manufacturing plants or distribution centers; for those functions, public institutions turn to private industry. Private enterprise, however, is not interested in going to the expense of developing such a variety unless it can be assured that the variety--and, hence, its investment--is protected.

Many potentially useful discoveries languish on library shelves and in patent files today because they cannot be protected by a guarantee of exclusive license for a limited period. In Oregon there have been grass and legume varieties that required further financial investment before they could be made available for public use. In one case, a legume variety was not protected by a guarantee of exclusive license; as a result, it has never seen development or been put into widespread use. The public benefitted not at all, and the potential of this variety was never realized.

To be sure, there are many innovative ways of releasing varieties. However, it would seem that if there is any value and logic in the Plant Variety Protection Program, regardless of how or to whom a new variety is being released, it should be placed under the protection program. For example, if a new alfalfa were being released by a public institution and a group of growers banded together to grow and market this variety, it would seem wise and prudent to place the new variety under Title V of the Plant Variety Protection Act. If one believes that the U.S. patent system has any value at all, one has to picture the Plant Variety Protection program in the same content.

Blending Seed of Protected Varieties

The Federal Seed Act provides for the blending of protected varieties while still maintaining their names. However, these protected varieties must have the approval of the owner before they can be used in blends or mixtures. Protected varieties for which the owner has elected the certification option may be used in mixtures only if they have passed certification standards and with the owner's permission. This provision under the act is not meant to be a method of circumventing the certification provision of Title V of the Federal Seed Act.

For Further Information

Many varieties now being grown in Oregon have received or soon will receive protection certificates. Varieties protected when this publication was prepared are listed in appendix 2. You may request information about varieties protected since the date of this publication by writing:

Plant Variety Protection Office
Livestock, Poultry, Grain & Seed Division (AMS)
U.S. Department of Agriculture
National Agricultural Library Bldg. Rm 500
Beltsville, MD 20705

Appendix 1 - Extracts from the Plant Variety Protection Act and The
Federal Seed Act

The Plant Variety Protection Act:

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.

Title V, of The Federal Seed Act - Sale of Uncertified Seed of Protected
Variety, Sec. 501, states:

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 approval of, the owner of the variety.

Appendix 2.--Title V varieties (those listed under the certification option

Title V as of September 30, 1983)

<u>Alfalfa</u>	<u>Bluegrass, Rough</u>	<u>Foxtail, Creeping</u>
Baker	Po-Lis	Retain
Honeoye		
Magnum		
Multileaf	<u>Canarygrass, Reed</u>	<u>Oat</u>
Oneida	Vantage	Allen
Riley		Benson
Saranac AR		Brooks
Victoria	<u>Clover, Red</u>	Coker 227
		Coker 716
	Kenstar	Dal
<u>Barley</u>	Redland	Firecracker
Bold	Ruby	Four twenty two
Georgie	Tristan	Goodland
Gus		7630
Kombar	<u>Clover, White</u>	Big Mac
Lud		Mesquite
Maris Mink	Star	Noble
Menuet		Southern States 76-30
Maravian 111	<u>Fescue, Chewings</u>	Stout
Paoli		Wright
Pike	Banner	
Reliance	Jade	<u>Orchardgrass</u>
Summit	Jamestown	Dolcea
Wapana		
Washonupana	<u>Fescue, Hard</u>	
		<u>Rye</u>
<u>Bentgrass</u>	Silvana	Wheeler
Penneagle	<u>Fescue, Meadow</u>	
		<u>Ryegrass, Annual</u>
<u>Bluegrass, Glaucantha</u>	Beaumont	Aubade
Tundra		Deltonic
	<u>Fescue, Red</u>	Deltop
<u>Bluegrass, Ky</u>	Fortress	Maris Ledger
Barbie	Menuet	
Barblue	Merlin	<u>Ryegrass, Hybridum</u>
Enmundi		Augusta
Harmony	<u>Fescue, Tall</u>	
Mystic		
Pacific	Barcel	
Ram 1	Kenhy	
Scenic	Missouri-96	
Welcome		

Ryegrass, Perennial

Barry
Bianca
Citation
Diplomat
Game
Pennfine
Score
Sprinter
Yorktown
Yorktown 11

Timothy, Turf

Match

Trefoil, Birdsfoot

Carroll

Wheat, Common

A99AR
Abe
Agate
Archer
Argee
Arthur 71
Auburn
Augusta
Beau
Bennett
Blueboy 11
Bonanza
Bounty 309
Brawny
Buckskin
Caldwell
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
Duke

Wheat, Common (contd.)

Eklund
Encore
Eureka
Frankenmuth
Frontiersman
GB 2148
Hawk
Hiplains
Homestead
Houser
Hutch
111
James
Key
Lancota
Lindon
Maverick
McNair 1003
McNair 1813
McNair 4823
McNair 701
Newton
Nicoma
Oasis
Osage
Oslo
PR 2360
Plainsman V
Pike
Probred
Prodax
Profit 75
Rocky
Roy
Ruler
Sandy
Sentinal
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

Wheat, Common (contd.)

Walera
Westbred Aim
Westbred 906R
Westbred 911
Wings
World Seeds 13
World Seeds 1616
World Seeds 1808
2369
4555
4578
5210
5221
5232
5409
5411
5422
5466

Wheat, Club

Jacmar

Wheat, Durum

Aldura
Produra
W.S. 3
Westbred 803
Westbred 881
Westbred 1000D
D-5003

Wheat, Polish

RF-75



The Oregon State University Extension Service provides education and information based on timely research to help Oregonians solve problems and develop skills related to youth, family, community, farm, forest, energy, and marine resources.

Extension's agriculture program provides education, training, and technical assistance to people with agriculturally related needs and interests. Major program emphases include food and fiber production, business management, marketing and processing, and resource use and conservation.

Extension Service, Oregon State University, Corvallis, O. E. Smith, director. This publication was produced and distributed in furtherance of the Acts of Congress of May 8 and June 30, 1914. Extension work is a cooperative program of Oregon State University, the U.S. Department of Agriculture, and Oregon counties.

Oregon State University Extension Service offers educational programs, activities, and materials without regard to race, color, national origin, sex, or disability as required by Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, and Section 504 of the Rehabilitation Act of 1973. Oregon State University Extension Service is an Equal Opportunity Employer.
