



ACIPA - PBR Symposium
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PBR: A Chance or a Change

- Is PBR designed for plant breeders or plant industries?
- Is the PBRO managing regulation or providing a service?

PBR: Change is Urgent

- Breeders and consumers must win
- If we continue without change - both will lose.
- Breeders will lose interest and consumers will lose the plant breeders' benefits.

PBR: Limitations

- Farmer Saved Seed & Research
- Both are a burden on the seed industry.
- Grain – Brown bagging & reduced royalties
- Vegetable – Rapid cv. Turnover & B. bagging
- Turf Seed – B bagging & small market size
- Pasture Seed – B bagging & EDV

International Brown Bagging

Country	Lost turnover for seed trade (US\$Millions)
China	287
Australia ^[1]	246
USA	80
Argentina	57
Canada	49
Poland	40
United Kingdom	40
Czech Republic	14
Finland	12
Total	825

^[1] Australian Seed Federation submission into enforcement of Plant Breeders Rights, 8th May 2007.

Non-Payment of Royalties

- Grain industry – End Point Royalty Systems
 - Automatic deduction from payment of delivered grain
 - Royalty invoiced to the grower after harvest
 - Closed loop systems

Available Solutions and Remedies

- Stop manufacturing brown bags
- Develop more stringent agreements under common law
- Change IP to patents
- Enforce your rights under the PBR act. – The Federal Court
- Greater support for the applicant to produce a thorough description
- Greater promotion of the benefits of legal use of PBR varieties

Enforce Your Rights under PBR

- High cost of Federal Court action
 - (Change to Magistrates)
- Time required to brief and prepare evidence for legal council
- Unknown time frames to bring the case to a conclusion
- Burden of proof
- Difficulties in evidence collection
- Awards are restricted to royalty value or loss of profits^[i]
- ^[i] PBR act 1994, section 56 (3)

Difficulties in Evidence Collection

- *Saisie contrefaçon* – Court ordered evidence collection (EU)
- Australian options:
 - Anton Piller Order – Based on case law
 - Search Order – Based on court rules

Awards are Restricted to Royalty Value or Loss of Profits

- Small in nature – No deterrent
- Need exemplary damages provisions
- A case found against an infringer is not an innocent one!

PBR Act Falls Short of its Obligations Under UPOV & WTO

- UPOV - Article 30(1) (i):
“...appropriate legal remedies for the
effective enforcement of breeders’ rights;”
- TRIPS - 27.3.b:
enforcement system be expeditious and
constitute a deterrent to further infringements.

PBRO Support for a Thorough Description

- PBRO a largely positive experience
- Treating act as a regulatory function
 - Eg. Requirement for photograph
- It should be a service function not a regulatory function

Promotion of Act to End Users

- ASF communication failed to reduce infringements
- Urgent need for Government communication:
 - Benefits of legal use
 - Sanctions for infringers

Summary

- Changes:
 - To the court of competent jurisdiction,
 - the need to allow for exemplary damages and
 - a government promotional campaign
- Act for a service, not an act for regulating

PBR: A Chance or a Change

- Is PBR designed for plant breeders or plant industries? – Plant Breeders
- Is the PBRO managing regulation or providing a service? – Need for both

Final Word

It is not enough share the vision you
need to shape the vision.