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Corporate Governance and Intellectual Property Policy
Building, Resources and Markets
Ministry of Business, Innovation & Employment
PO Box 1473
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New Zealand

Submission on Review of the New Zealand Plant Variety Rights Act 1987;

Comments on New Zealand Plant Variety Rights Examination

Michigan State University (MSU) is involved in plant variety breeding, and we bring our varieties to market through an extensive network of partnerships with domestic and foreign nurseries and seed companies. MSU utilises intellectual property rights protections including Plant Breeders Rights internationally.

A primary consideration for us when developing varieties in other countries of the world is the relevant intellectual property legislation, the associated examination process (see below) and the legal system available in each country. We give priority to countries that are signatories to the UPOV 1991 Convention who have reasonable examination processes and sound legal systems, as we believe this demonstrates their commitment to supporting modern Plant Breeders Rights or Plant Variety Rights legislation and release of new, protected, varieties in their jurisdiction. Such a system encourages MSU to release its varieties widely, to the benefit of MSU, its researchers, and to the nursery and commodity growers of the jurisdiction.

For the crops and clients that we work with, some of the specific benefits of legislation based on UPOV 1991 are:

1. The extension of rights to essentially derived varieties. The breeding of new varieties in many crops involves long and complex cycles of traditional hybridisation and selection of promising individuals among the resultant populations. The process of developing a new variety may therefore take 20 years or more. If another party is able to rapidly and independently develop a mutant of a variety then it undermines our ability to generate a return on our breeding investment. This can be a particular issue with woody fruit species such as apples, blueberries, and the like, which commonly throw somatic mutants known as “sports.” Breeders must

therefore be afforded some control over the development of any essential derivations of their varieties whether they might be considered a “sport” or not.

2. The extension of the scope of rights to include harvested material. For many new varieties the commercial goal is not to sell propagating material but instead to deliver high quality harvested material either directly to consumers or to processors for further development into consumer goods. An ability to manage the production and distribution of harvested material is therefore an essential component of sustainable programmes to deliver many new varieties of fruit, vegetables, cut flowers, cereals etc.

3. The extension of rights over the import and export of varieties is a fundamental requirement to reduce the potential misappropriation of valuable new plant varieties that may be grown in regions of the World where the breeder has no opportunity to assert their intellectual property rights.

As part of the review of your Plant Variety Rights Act, we hope that New Zealand will join the other 58 countries and organisations who are full members of UPOV 1991.

Additionally, it would be greatly appreciated if Corporate Governance and Intellectual Property Policy would undertake a review of the Plant Variety Rights examination process. We have been subject to arbitrary and capricious requirements for, among other things, provision of check varieties that are not the same species as the variety for which we are seeking rights, provision of check varieties of the same species but that are known to be clearly distinct from our variety *ab initio* (very different flower dates, harvest dates, plant morphologies, etc.), establishment of additional test locations after the examining authority selected a first test location, and provision of additional rooted and dormant material both out-of-season and after a test site had been established and material was in possession of the testing authority. This greatly increases the expense and duration of examination without any benefit to the growers of New Zealand. Our varieties have been proven to be distinct, uniform and stable through DUS examination in Europe, Canada and Chile, yet New Zealand cannot or will not get its examinations completed. If it were not for the dedicated efforts of a few New Zealand nurseries, MSU would not bring its newest fruit and rootstock varieties to New Zealand due to the onerous, arbitrary and capricious nature of DUS examination in New Zealand. Instead, MSU would allow only our South American and Australian partners to export fruit of our varieties to the Asian market, to the detriment of New Zealand Nurseries and fruit growers.

Yours sincerely

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