



SUID-AFRIKAANSE NASIONALE SAADORGANISASIE

SOUTH AFRICAN NATIONAL SEED ORGANIZATION

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SANSOR's Position on the Conditioning for the purpose of propagation as it pertains to the PBR Act of 1976

Protecting the rights of plant breeders in the seed industry is important for the longevity of the industry. Unfortunately, the rights of a Plant Breeder when considering the "conditioning for the purpose of propagation" as seen in Article 23A of the PBR act have in some cases been misunderstood.

SANSOR's position on the scope of "conditioning for the purpose of propagation" reserved in Section 23 of the PBR Act can be seen below after consultation with various South African Intellectual Property Law Firms and the Department of Agriculture. As South Africa is party to the 1978 version of the International Convention for the Protection of New Varieties of Plants ("the UPOV Convention"), the UPOV Convention and the explanatory notes issued in terms thereof has also been considered.

Article 23 of the Plant Breeders Rights Act of 1976 states:

23A) Rights of holder of plant breeder's right. –

(1) The effect of the protection given under this Act by the grant of a plant breeder's right shall be that prior authority shall during the currency of the plant breeder's right be obtained by way of license under section 25 or 27 by any person intending to undertake the-

- (a) production or reproduction (multiplication);
- (b) conditioning for the purpose of propagation;
- (c) sale or any other form of marketing;
- (d) exporting;
- (e) importing;
- (f) stocking for any of the purposes referred to in paragraphs (a) to (e), of-
 - (i) propagating material of the relevant variety; or
 - (ii) harvested material, including plants, which was obtained through the unauthorized use of propagating material of the relevant variety.

6) Notwithstanding the provisions of section 23A (a), a person who procured any propagating material of a variety in a legitimate manner shall not infringe the plant breeder's right in respect of the variety if he or she-

- (a) resells that propagating material;
- (b) subject to the provisions of subsection (2), sells any plant, reproductive material or product derived from that propagating material for purposes other than the further propagation or multiplication thereof;
- (c) uses or multiplies that propagating material in the development of a different variety;
- (d) uses that propagating material for purposes of bona fide research;
- (e) uses that propagating material for private or non-commercial purposes; or
- (f) is a farmer who on land occupied by him or her uses harvested material obtained on such land from that propagating material for purposes of propagation: Provided that harvested material obtained from the replanted propagating material shall not be used for purposes of propagation by any person other than that farmer.

DIRECTORS

J Odendaal (Chairman), R Roselt (V-C), B Lever, DE Malan, P Smit, L Chetty, SM Hildebrand

1. **SANSOR is of the position that any person other than the farmer, including a 3rd party, requires authorisation, a license or permission for conditioning for the purpose of propagation from the plant breeder's rights holder.**
 - a) Whether or not the third party is compensated for conditioning the propagating material, the act is still viewed as an infringement if done without the permission of the PBR holder. The PBR Act prohibits the conditioning of propagating material of harvested material without the authorisation/licence of the PBR holder. This includes conditioning seed as a favour and or only charging for the chemicals and not for the conditioner's services.
 - b) The third-party conditioner is not procuring the propagation material. The limitation of rights provided for in section 23(6) is thus not applicable to a third-party conditioner.
 - c) The liability pertaining to the conditioning of farm saved seed are with the conditioner of the seed or the 3rd party unless agreed upon otherwise in the agreements of the different parties in an agreement/license.
 - d) The onus lies with the conditioner of the seed or the 3rd party to ensure all licenses is in place before conditioning propagating material.

2. **Conditioning for the purpose of propagation means – in relation to propagating material of a plant variety:**
 - a) Cleaning, drying, coating, sorting, grading, or packaging of material
 - b) Testing for germination or vigour; or
 - c) Any other similar treatment,
Undertaken for the purpose of preparing the material for cultivation and sale;
(PBR and PIA Bill)

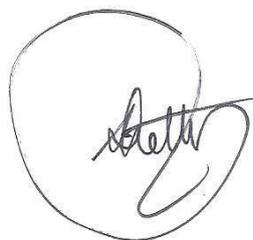
3. **If a farmer conditions seed in terms of the requirements of Section 23(6)(f), in our opinion it is not an infringement of PBR due to the rights of a farmer under “farmer privilege”.**
 - Farmers privilege applies to the use of the seed/propagating material of the harvest by a farmer on land occupied by the same farmer.

4. **Propagating material can be legitimately procured by not infringing on the rights of the PBR holder (as per section 23(A)) by obtaining it from the PBR holder or a party that has been authorised by the PBR holder to distribute the propagating material.**
 - However, if seed is purchased from the PBR holder or a licensee and undergoes an additional conditioning treatment, no infringement is taking place, but the liability will then be transferred to the 3rd party conditioner unless agreed upon otherwise in the agreements of the different parties in an agreement/license.

5. To ensure no infringement is taking place use the diagram attached.

Final comments should be sent to Magdeleen Cilliers (projects@sansor.co.za) by the 20/03/19.

Kind Regards



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General Manager

Compliance test for "Processing for purposes of Propagation"

