



RAFI

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News Release - 16 September 1998

AUSTRALIA AND BEYOND...

PLANT BREEDERS WRONGS

147 Reasons to Cancel the WTO's Requirement for Intellectual Property on Plant Varieties

THE BIOPIRACY AND PLANT PATENT SCANDAL OF THE CENTURY

Plant "patent" offices in several industrialized countries are knowingly granting plant variety monopolies to plant breeders for cultivars actually bred by farmers in at least 43 Third World countries. RAFI and Heritage Seed Curators Australia (HSCA) today are presenting a roster of 147 "dubious" plant variety claims to challenge the World Trade Organization's edict that countries must grant intellectual property "protection" over living plant varieties. The WTO is meeting in Geneva September 17-18 to discuss procedures for reviewing the controversial clause in 1999. Now, the question shouldn't be "What the WTO is going to do about plant breeders rights?" rather, it is "What are the WTO and the various intergovernmental 'patent' conventions going to do about plant breeders wrongs?"

Action Demanded: The WTO is being called upon to cancel its provision obliging governments to have intellectual property legislation covering plants. In an open letter to the WTO Council for Trade-Related Aspects of Intellectual Property (TRIPs), RAFI is citing 147 examples of possible biopiracy involving the misappropriation of 124 farmers' varieties from 43 countries. The 147 cases of possible biopiracy are included in a report released today by RAFI (Winnipeg, Canada) and HSCA (Bairnsdale, Australia). The report describes, with graphic examples, the biggest scandal in seven decades of intellectual property "protection" of plant varieties.

In a second letter to the Agriculture Ministers of the 43 "pirated" countries, RAFI is asking governments to review the patent and patent-like plant breeders rights claims. RAFI charges that the patent offices of six industrialized countries are encouraging biopiracy through the granting improper monopolies. Most of the 147 claims have been made by public sector breeding institutes and most of the abuses have taken place in Australia, however, the US, New Zealand, Spain, Israel, and Italy have also accepted wrongful claims. The letter asks Ministers to take their concerns to the World Trade Organization and to the UN's World Intellectual Property Organization (WIPO, Geneva) to demand an inquiry into the regulatory shortcomings. RAFI's letters further propose an investigation of WIPO's subsidiary convention, the Union for the Protection of New Varieties of Plants (UPOV), which will convene its intergovernmental meeting in Geneva on October 28th.

Plant Pirates: The action call is based upon a nine month study available today at RAFI's homepage. 80% of the 147 cases identified relate to Australian breeders; but the study also points to a widening gyre of problems in other industrialized countries. RAFI's Edward Hammond, the principal RAFI researcher on the study, says "We've put the information out there and the problems are undeniable, now it's up to governments and UN authorities to act." Bill Hankin, Executive Director of HSCA agrees, "*The Australian Government is fully aware that rule violations have occurred. Already, five claims have been abandoned when breeders were confronted with the evidence.*" In February, HSCA notified the Australian Minister of Primary Industries of the scope of the scandal. Hankin says, "*But when we asked him to take over the investigation, we were informed that we would have to pay several hundred dollars in government service charges for each variety! The total cost,*" Hankin calculates, "*would run to about \$60,000 - and this doesn't include legal fees.*" "*Voluntary, not-for-profit organizations can't afford to pay governments to do their job,*" RAFI's Hammond concurs. "*We've shown that systematic abuses are taking place and that plant patents are predatory on breeding work undertaken by farmers and indigenous peoples around the world. If the relevant authorities in the countries where the abuses are occurring won't act responsibly, we'll go to the governments of the farmers who are being ripped off.*"

Scope of Scandal: The range of offended states runs from Chile to Mexico in Latin America and from South Africa to Morocco in Africa. The roster also includes much of the Middle East and South Asia. "*About*

37% of the suspect varieties have been collected in foreign countries and submitted for plant breeders rights without any evidence of breeding whatsoever," Edward Hammond insists. "In 29% of the cases, the varieties were never tested for uniqueness against the original. All these claims on apparently unimproved varieties and should be ineligible." In a number of cases, Hankin found that Australian breeders appear to have usurped plants nurtured and protected by Aboriginal communities in Australia.

Examples of the Intellectual Kleptocracy: Among the most outrageous cases highlighted in the report are Australian claims on two Asian chickpea varieties protected by a Trust Agreement between the UN's Food and Agriculture Organization (FAO) and the CGIAR, the international public agricultural research organization. Although the trust says the varieties should not be privatized, an institute in Australia not only claimed them without doing any breeding work, but then licensed them to private companies for re-sale back to their region of origin - all while trying to strongarm a CGIAR Centre into surrendering ownership. Another breeder applied for, and received, monopoly over a Mexican *guaje* tree (*Leucaena leucocephala*), even though the scientific literature clearly showed that the plant had been collected from the backyard of a Mexican farmer in Saltillo, Coahuila in 1979 and that it was commercially available in the US. Australia also granted rights to a (presumably) Chinese medicinal plant without being able to even confirm its species, much less whether or not the claimant had actually conducted breeding work. "Australia is the worst of the abusers," Edward Hammond claims. "it has become a kind of kleptocracy welcoming plant privateers."

Embargo Inevitable? If the plant breeders rights offices in question don't agree to an immediate investigation, the 43 countries who have been pirated may feel they have no choice but to impose a plant germplasm embargo. "The predator countries want tropical and subtropical germplasm," Edward Hammond points out, "as regrettable as it would be, an embargo to force renegade states to behave might prove effective." "Australia is one of the world's biggest importers of the Third World's crop germplasm," Bill Hankin advises, "We need the world more than the world needs us. It is simply economic stupidity to be moral isolationists when we are the net beneficiaries of international good will!"

Patent Moratorium: When RAFI and HSCA first broke the news that breeders were routinely usurping crop varieties bred by farmers elsewhere, both FAO and the Consultative Group on International Agricultural Research (CGIAR, Washington DC,) proposed a voluntary moratorium on monopoly claims over internationally-held crop germplasm. The CGIAR's 16 International Agricultural Research Centres (whose 600,000 seed accessions account for about 40% of the world's crop germplasm in storage) were the first to be pirated by Australian agencies. In April and May, the Centres met to revise their seed exchange agreements and to lock in procedures to better monitor seed transfers. In May, the CGIAR adopted protocols for challenging piracy. Some national governments, such as The Netherlands, also moved quickly to bring their own national procedures into line with FAO and CGIAR arrangements.

Progress in Rome: When the FAO Commission on Genetic Resources for Food and Agriculture met in Rome June 8-12 this year, an information session was convened on what was then "the Aussie scandal." Although many government delegates attended, Australian did not. European diplomats told RAFI that the Australians had been ordered to stay away by Canberra. At the informal meeting, FAO's legal counsel and CGIAR's representative congratulated the HSCA and RAFI for their work in bringing the piracy to world attention. Several states joined in expressing their relief that FAO, CGIAR, and civil society organizations were working together to curtail the abuses. (See the January/February RAFI Communique and later news releases at www.rafi.org for background.)

Pandering to Piracy: "The real shock at the Rome luncheon was the comment volunteered by the UPOV representative," RAFI's Executive Director Pat Mooney observes, "who told the room that it was understandable that countries such as Australia, New Zealand, and Israel were involved since their breeders were looking for tropical and subtropical species for which little 'conventional' breeding had been done. He went on to say that the problems we were identifying would probably go away in another generation after breeders had built up a stockpile of germplasm. Even some of the seed companies in the room were blushing after that. UPOV's representative didn't seem to realize that he was, in effect, condoning piracy and conceding that it would continue for some years to come!" Bill Hankin shares Mooney's incredulity, "These guys are supposed to be guaranteeing the integrity of the system - not saying that piracy and highjacking the knowledge of poor farmers is permissible."

Fighting Fora: In its letters to the WTO and the 43 government ministers, RAFI is urging the cancellation of the TRIPs plant patenting requirement on the grounds that it entrenches piracy, and asking governments to attend the October 28th UPOV Council meeting in Geneva to express their concern and demand action.

"WIPO and UPOV are pretty tightly controlled shops," Hankin notes, "but they allow one day for democracy each year when governments can make their opinions known. This year that day is October 28 and we hope delegates from their capitols or their ambassadors in Geneva will let the patent privateers know how they feel."

What can be done?

RAFI's letter to Agriculture Ministers suggests nine possible actions. Principle among them:

World Court: WIPO should take this issue to the International Court of Justice (The Hague) to obtain an Advisory Opinion on conflicts between Farmers' Rights and Plant Breeders Rights.

Trip TRIPs: Governments, together with WIPO and UPOV should bring the issue of predatory patents before the WTO TRIPS Council when it reviews its plant variety rules in 1999.

"Interpollen": WIPO, UPOV, government regulatory agencies, FAO, and CGIAR must improve and link their internet databases so that patent claims, variety descriptions, and germplasm collections can be monitored.

"Plantbudspersons": WIPO, UPOV, and national patent offices should establish "ombudsmen" offices capable of receiving and acting upon possible abuse cases brought forward either by national governments, farming communities or indigenous peoples.

FOR FURTHER INFORMATION

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HSCA is a not-for-profit association of heritage seed curators based in Bairnsdale, Victoria. HSCA is dedicated to the conservation and sustainable use of plant genetic resources for food and agriculture around the world.

RAFI is a non-profit international civil society organization headquartered in Canada. For more than twenty years, RAFI has worked on the social and economic impact of new technologies as they impact rural societies.