

Submission to ADVISORY COUNCIL ON INTELLECTUAL PROPERTY (ACIP)

FROM :

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I would like to answer your questions asked as a matter of course and address some fundamental core issues which I think are not being correctly addressed .

Q1. AACT have implemented a very comprehensive electronic program for tracking seed from the first production of pre-basic breeders seed through to sales of production for end point royalty collection . The system I am sure is one of many that has been introduced to try and capture the value of partaking in the seed Industries evolution of an Industry under PBR . The system is only as good as the information supplied and the compliance of a network of enterprises to present the information . Putting non compliance to the side for a minute your first question asks to estimate loss . Our companies loss in TIME alone on trying to get compliance from parties who have signed agreement in place would be one full times person wage and on costs . Breaches and remedy of known breaches would be one third of one persons wage and I would envisage this increasing as volumes of seed lines gain momentum .

Q2. My Interpretation of the cultivavust judgment leaves me total confused . I understand the first two points and see the third point as listed as being a contradiction of the first two?

Q3. The PBR act has been around since 1986 and has been operating with varieties since 1990 commercially , awareness is not the issue – compliance is the issue .

Q4. No , It would seem to me that the PBR committee has the right to not allow a variety to have PBR rights according to its DUS (Distinct, Uniform and Stable) characteristics . Allowing some relief by making well informed decisions or guide lines about the DUS characteristics could help elimination of "piggy backing "

Q5. Yes . Costs of preparing a legal case without running it are in excess of \$25,000 in legal costs , without the implications of social deterrents applicable to your business

Q6. If the FMC are used it is still not going to induce compliance or address the business deterrents . Commercial Seed Companies in conjunction with Breeders do not have the time and resources to be spending time in court .Evidence collection , Anton Pillar Orders are not practical solutions !

Q7.Time, Resources ,poor publicity , customer reluctance to purchase , Consumer sentiment .

Q8.Evidence collection is impractical – within our system alone we have parties that " are untruthful " consumers close ranks and Seed retailer and Farm Consultants avoid being party to any claim .

Q9. I personally think that chasing evidence is a waste of time and resources

Q10.Yes

Q11. Again I think that allowing the soft options in the PBR act only complicate the issue . The act needs to be redressed and tightened up so grower own seed is eliminated or controlled by the act to such an extent that it is not allowed to be an open vent which allows for the MAJOR trade of illegal seed to take place .

Q12. It does improve or enhance the act " dressing" up the quantifiable damages . Blocking the leaks in the Act is the issue . Not trying to catch the thief because the door was left unlatched !

Q13. No as it does not take away the social and cultural problem ramifications to the business taking action

Q14. I think this is impractical , the federal police are over worked now , these would be low priority cases and it still does not resolve the issue of compliance .

Q15. Mediation has to be "agreed" by both parties if the alleged offender is not willing then it proceeds to legal action and prosecution, as so on. Again all these actions are deterrents not preventative measures

Q16. No

Q17. Not Applicable

Q18. Yes, it's an unquantifiable question. In terms of EPR the seed types can look similar and we still have a very complex system where there are varieties with no EPR and varieties with EPR that fit into the same commodity markets. There are obvious advantages for growers to mis-describe varieties and end user and accumulators negligence to allowing it to happen.

Q19. Yes. Apply EPR values over all varieties. Set EPR values at consistent values amongst all owners. This would neutralize mis-description of varieties.

Q20. I do not see a need for complex methodology and technology to identify varieties that will only add cost and reduce the net income to the grower.

Q21. I can see merit in establishing a central Coordinating body subject to its role and membership make up and enforcement powers. It would give a central focus point and would be seen as being external from the "local" Social and local rural community issues. In my opinion it should have the following role:

- o Be a statutory body
- o Not for profit
- o Longer term education – I really believe that believing that certain Industry participants including growers are not aware of PBR legislation is rubbish. Pleading ignorance is not a "free Pardon" for a parking ticket or speeding fine !!
- o Membership should be mandatory and voting should be voluntary
- o It should enforce "Industry" Rights as a whole which obviously includes grantees
- o A collection process needs to be introduced – a central one would be good
- o Minimising costs should be one of its objectives
- o Greater enforcement capacity – would be contingent on power and enforcement capacity

Q22. The peak body should be looking at creating singular systems for the industry per crop or Industry type. There is a myriad of commercial arrangements that are being used that only frustrate the Industry. Standardization and compliance with Industry input are essential

Q23. Australians are not "dobbers" no amount of retrospective legislation or empowerment is not going to change this

Q24. No, changing the position to better controls and less positions for "leakage" is the way to move the position forward. Having watered down clauses for farmer saved seed only creates the problem which in turn induces high cost and lack of coherence.

Q25. Education will only be relevant when there is some consistency and standardization in the Industry. While ever there are variable commercial arrangements available to grower and Industry, it allows for confusion to have a place. Get the system standardized and formalized then look at extension programs to educate. Education should revolve around the positives not how to wield the enforcement stick.

Q26. Again confusion and variability cause the problem. If there is a standardization within the whole commercial arena. Then it makes sense that the peak body would perform such a role. I think that a process that allows the industry take the positive attributes of the legislation and promote the advantages is a better means of gaining compliance over enforcement

Q27. Yes. We have applied a great deal of time and effort in developing a system and compliance based computer program that reveals extensive anomalies in compliance. It is useless unless we develop a method of either enforcement or alternatively change the methodology that would allow the system to be a great management tool. I would suggest that we are not the only company in the same position where information management is central to gaining some idea of compliance. The problem is that enforcement is not the answer.

I think that the Industry needs to adopt a strategic approach that allows the participants within the to all prosper.

IN some cases this means making some very tough decisions that will have short term ramifications but in the longer term yield positive results . To achieve this I think its important to go right back to the start of the ACIP's paper and take a serious look at " THE AIMS AND OBJECTIVES OF PLANT BREEDERS RIGHTS " This is the fundamental goals of the legislation . The question needs to be asked have these been achieved and if the answers is negative then the question needs to asked why and what needs to be done !! Essentially there are conflicting areas within the goals . And commercially some of the goals will not be achieved without further amendments or management of the Act . It is not my roll to nominate what I think is best as I think it is Industries roll to reach agreement on what is best . The areas that need to be addressed in my opinion are :

1. Improved plant varieties that produce higher yield sand have better disease and pest resistance , are more environmentally friendly and/or have improved levels of consumer satisfaction . ***Seed Breeders have released a plethora of varieties with a significant number not meeting any of these requirements . This needs to have measurement and controls***
2. Provisions for farmers and home gardeners using protected varieties to continue to be able to retain seed or other propagating material for there own use . ***A significant flaw in the whole system , that is continually abused and is a major contributing factor to not allowing " Reward for production " . If the current means of allowing "retained seed " is left unchanged the PBR acts goals will not materilaise . Enforcement is not the answer , devising a better method to allow this to happen has to be developed by the Industry peak body .***
3. Encouragement of public sector plant breeding . ***This is never going to happen unless it becomes economically viable to attract investment .Until the PBR act is a workable instrument and Breeding companies and Grantees show respectable profitability the Industry will rely on government assistance and prayer to get Public sector interest***

If you require any clarification of the points raised please feel free to contact the undersigned

Regards



Daryl Young