

Sean Applegate  
Secretariat  
Advisory Council on Intellectual Property  
PO Box 200, Woden ACT Australia 2606

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Sean

### **A Review of Enforcement of Plant Breeders Rights – Option Paper**

Australian Grain Technologies (AGT) trust that our response to the option paper is not too late and our late response is not seen as a reflection of the importance that AGT places on these matters. To the contrary AGT recognises the ability to exercise its intellectual property rights with regards to cereal grains as being of the foremost importance. To this end AGT is an active participant in the GRDC sponsored Industry Steering Committee on End Point Royalties. AGT recognises that without a strong PBR Act and an efficient means of collecting End Point Royalties the cereal breeding industry, whether private or public based, would not survive. The survival of the cereal breeding industry in Australia and the continued development of new varieties by cereal breeders is essential to the future of the entire Australian grain industry as it relies on breeding for ongoing gains in productivity and quality.

AGT's following comments on the Options Paper are made in the context of ensuring the PBR Act is strengthened in such a way that organisations such as AGT are able to ensure a fair and equitable return for their investment and thereby ensuring the ongoing development of new, competitive cereal varieties that maintain the profitability of Australian grain producers and their ability to compete in the international export market.

#### **Section 11 - Use and Purchase**

AGT supports the inclusion into section 11 of the PBR Act an amendment that would allow the owner of a PBR variety to exercise it's intellectual property rights in relation to the "purchase" (option 3) or "use" (option 2) of the variety.

Currently section 11 does not cover purchase and use and therefore places no onus on purchasers and users of a variety to ensure that the owner of the variety has been able to exercise their right for equitable return for their investment in the development of the variety. Indeed the most efficient way for a variety owner to exercise their right is through the purchasers and users of grain rather than the many tens of thousands of grain producers. At present, however, there is limited ability within section 11 for a variety owner to exercise their rights over a variety that is traded and used domestically. Domestic users are currently able to purchase, stock and use PBR protected

varieties with no obligation to report transaction details to the variety owner. This in turn makes it very difficult for the variety owner to exercise their right with the grain producer (seller).

### **Section 14 & 15 – Reasonable Opportunity**

AGT believes that the use of the term “reasonable opportunity“ in relation to the exercising of a PBR owners rights is unclear and open to interpretation. AGT supports option 6 that would reverse the onus of proof thereby requiring all participants in the value chain to ensure that the owner of the variety has exhausted their intellectual property rights in relation to the transaction.

This is not inconsistent with the intellectual property rights within the music industry. At present, all users of recorded music must ensure they have the appropriate licence for their business and an artists right to an equitable return is not always exhausted at the first sale of a record.

### **Section 17 - Farmer Saved Seed**

From the perspective of the grains industry AGT supports option 9, no change to the farm saved seed exemption. It is an essential part of the adoption of grains varieties that grain producers are able to access small amounts of new varieties and bulk them up on their own farm for subsequent planting. The requirement for a grain producer to purchase new seed every year would be cost prohibitive and have a deleterious impact on the adoption rates of new, higher yielding, improved quality varieties, and subsequently affecting both farm profitability and return on investment to breeders.

### **Extended Jurisdiction of the Federal Magistrates Court.**

AGT supports option 30 that would provide an alternate more accessible venue for dispute resolution. PBR disputes are generally not related to the validity of the PBR grant itself but rather whether a party is using the intellectual property (PBR variety) without permission and/or appropriate recompense to the PBR owner. For this reason PBR disputes might be better handled by the Federal Magistrates Court, under their dispute resolution mandate, rather than in the Federal Court of Australia as an interpretation of the Act.

The timeliness of dispute resolutions is also important as an infringer may be causing irreparable damage to a varieties reputation and hence adoption rate as well as making it impossible for the PBR owner to trace the variety. If the FMC is able to hear and act upon a dispute in a more timely manner than the FCA then this can only be of advantage to the PBR owner.

## **Criminal Sanctions**

AGT supports option 35 that would ensure the Australian Federal Police (AFP) and the Department of Public Prosecution (DPP) treat PBR related infringement at an equal level as that of other forms of intellectual property breach.

## **Collection of Evidence**

The collection of evidence against a suspected infringer is very difficult as local community members are usually not willing to get involved and by the time a court order is obtained, by the PBR owner, to enter to suspected infringers property and cease evidence, the evidence is likely to have been sold or moved.

For this reason AGT supports both options 38 and 39 that would allow PBR owners to act in a rapid manner, without the need for obtaining a court order, to enter the suspected infringers property and seize sample evidence while under the guidance of a legal officer.

## **Mis-declaration of varieties**

AGT strongly supports option 46 that provides for an amendment to sections 53 and/or 70 that would make the mendacious declaration of varieties an offence under the PBR Act. The correct and truthful declaration of cereal varieties is essential if PBR owners are to have an opportunity to exercise their rights under the PBR Act and to achieve a fair and equitable return on their investment.

AGT thank ACIP for the opportunity to respond to the Option Paper and would be pleased to discuss any of the above matters further.

Kind regards

Dr Stephen Jefferies  
CEO  
Australian Grain Technologies