

Alec Lazenby

Before responding briefly to the four issues which you raise in your paper, it might be helpful to provide a little background information which bears on these issues. In 1985/6, when undertaking the review which formed the basis of the the PVR Legislation (1987), the case for such PVR had to be argued against a background of opposition and scepticism. This came from many of the public breeders and farmers, not to mention what might be described loosely as the environmental lobby. This latter included a range of interests from those concerned with the influence of multinational companies to those arguing the importance of genetic diversity, the value of old varieties and the ownership of material collected from developing countries and used in conventional breeding.

I felt very strongly [and still do] that protected cultivars produced by conventional breeding should be freely available for use in breeding improved plants. In contrast, the proposition (accepted in the legislation) that farmers purchasing seed of varieties protected by the then PVR should be allowed to resow them for up to 20 years without further royalty payments was a compromise, which I thought necessary for the PVR legislation to be accepted. It was based on a longstanding practice in some parts of Australia together with perceived difficulties in enforcing change.

Of course, the review was undertaken, and thus the recommendations were based, on a pre GMO era. The production and use of transgenics is very expensive and there is logic in the owners of such GM material seeking to patent, and thus protect, it. Expressing a purely personal view, it seems to me that a number of potential problems could be circumvented if new cultivars of crop and pasture plants bred by conventional methods and passing the DUS test were able to be protected only by PBR, leaving GM material to be protected by patents. However, I accept that it is unlikely that this would be possible.

Turning now to the specific issues which you have raised : -

1. My feeling is that the attitude to the current "gap" in IP protection would be determined by the prime interests of the individual or organisation concerned. Thus, the "gap" would probably be seen as a significant problem by owners of the protected material but not by farmers or plant breeders, who can be predicted to oppose changing the present legislation.
2. While I may believe that the present standard patent system and PBR system sufficiently protect the R & D on plant and animal subject matter, I would defer to the opinions of those involved. For example, the quicker and cheaper innovation patent may well be seen as advantageous to some owners of material needing to be protected. However, protection for a period of only 8 years may not be sufficient for a return on their investment.
- 3 and 4. Difficult questions to answer, depending on an interpretation of national interest and thus the criteria used to determine such national interest. Material protected by an innovation patent could become available sooner, at no cost, for plant improvement and for growing than if protected through the standard patent system - if

the owner decided to take that route. To me that would be a decided advantage to the farming and wider community.

I have deliberately been brief in responding to the issues which you have raised because in the end I think there will be a greater component of judgement than hard information in the recommendations which your Advisory Council might make. I am not sure that I have all the information at my finger tips now to provide a worthwhile or informed opinion. I am thus doubtful however, if you think I might be of assistance I would be willing to attend any such meeting held after mid-November.

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