

TEXTS TRANSCRIBING THE 1991 UPOV CONVENTION INTO NATIONAL LAW

In France, texts transcribing the 1991 UPOV Convention into national law have been collected in the Intellectual Property Code. Full transcription was achieved with the adoption of the Law on New Plant Variety Certificates of November 28, 2011, which was published in the Official Gazette of the French Republic (JORF) on December 8, 2011, amending the legislative part of this Code, *inter alia* to ensure the following:

- The principle of essentially derived variety was incorporated into French law, protecting new plant variety rightholders against the marketing of another variety which differs from the original variety by only a few non-essential characteristics in an agricultural and technical sense.
- The farmers' exception, also known as the "farm-saved seed" exception was incorporated into French law, permitting harvested crops of protected varieties to be reused, under certain conditions, as seeds in the holdings where they were produced. Previously, this practice was prohibited for varieties protected by a national plant variety certificate under French law.

These texts are applicable to the entire plant kingdom, as specified in article R. 623(55) of Intellectual Property Code.

The following enclosures are provided with the present Note:

- 1) The relevant legislative articles of the Intellectual Property Code.
- 2) The statutory articles of the Intellectual Property Code relating to its scope.

1) Relevant legislative articles of the Intellectual Property Code

Article L. 623(1)

Amended by art. 3 of [Law No. 2011-1843 of December 8, 2011](#)

For the purposes of this Chapter, a “variety” shall consist of a plant grouping within a single botanical taxon of the lowest known rank, which grouping can be:

1. defined by an expression of characteristics resulting from a given genotype or combination of genotypes;
2. distinguished from any other plant grouping by the expression of at least one of the said characteristics; and
3. considered as a unit with its suitability for being propagated unchanged.

Article L. 623(2)

Amended by art. 4 of [Law No. 2011-1843 of December 8, 2011](#)

For the application of this present chapter, a “plant variety” is a newly created variety which:

1. is clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of filing the application;
2. is uniform, i.e. sufficiently uniform in its relevant characteristics, subject to the variation that may be expected from the particular features of its sexual reproduction or vegetative propagation;
3. remains stable, i.e. identical to its original definition after repeated reproduction or propagation or, in the case of a particular cycle of reproduction or propagation, at the end of each such cycle.

Article L. 623(3)

Amended by art. 4 of [Law No. 2011-1843 of December 8, 2011](#)

Any new plant variety fulfilling the conditions of article L. 623(2) shall be defined by a denomination, with a corresponding description and a reference specimen preserved in a collection.

Article L. 623(4)

Amended by art. 5 of [Law No.2011-1843 of December 8, 2011](#)

- I. Any new plant variety may be the subject of a title known as “a new plant variety certificate” which shall confer on its owner an exclusive right to produce, reproduce, condition for the purpose of reproduction or propagation, offer for sale, sell or market in any other form, export, import or stock reproduction or propagation material of the protected variety for any of the purposes mentioned.
- II. When the products mentioned in paragraphs 1 and 2 below are obtained through the unauthorized use of reproduction material or propagation material of the protected variety, the exclusive right shall extend to the following, unless the breeder has had reasonable opportunity to exercise his right in relation to the products in question:
 1. the harvested material, including entire plants and parts of plants;
 2. products which are manufactured directly from harvested material of the protected variety.
- III. The exclusive right of the rightholder shall extend to:
 1. varieties which are not clearly distinguishable from the protected variety within the meaning of article [L. 623\(2\)](#);
 2. varieties whose production requires repeated use of the protected variety; and
 3. varieties which are essentially derived from the protected variety within the meaning of article L. 623(2), where this variety is not itself an essentially derived variety.
- IV. Constitutes a variety which is essentially derived from another variety known as the “initial

variety”, a variety which:

1. is predominantly derived from the initial variety or from a variety which itself is predominantly derived from the initial variety;
2. is clearly distinguishable from the initial variety within the meaning of article L. 623(2); and
3. except for differences which result from the act of derivation, conforms to the initial variety in the expression of the essential characteristics that result from the genotype or a combination of genotypes of the initial variety.

Note:

Article 19(I)(III) of Law No. 2011-1843 of December 8, 2011 provides: “The amended or new provisions of this article, except for those relating to essentially derived varieties, shall be applicable to new plant variety certificates issued before December 11, 2011. These provisions shall also apply to new plant variety certificates issued for applications for certificates registered before this date. The present paragraph IV does not apply to essentially derived varieties where the breeder made diligent and effective preparations with a view to their exploitation or the breeder exploited them prior to this date.

Article L. 623(4)(1)

Set forth in art. 6 of [Law No. 2011-1843 of December 8, 2011](#)

- I. The right of the holder shall not extend to:
 1. Acts done privately and for non-professional or non-commercial purposes;
 2. Acts done for experimental purposes; and
 3. Acts done for the purpose of breeding a new variety or acts referred to in article [L. 623\(4\)\(I\)](#) relating to this new variety, unless paragraphs III and IV of that article are non-applicable.
- II. The right of the rightholder shall not extend to acts concerning his variety or an essentially derived version of his variety or a variety which is not clearly distinguishable when material of this variety or material derived from this variety has been sold or marketed in whatever form by the holder or with his consent.

However, the right of the rightholder shall be maintained where these acts:

1. involve further reproduction or propagation of the variety in question;
2. involve exportation of material of the variety which enables the propagation of the variety into a country which does not protect the intellectual property of varieties of the plant genus to which the variety belongs, except where the exported material is for final animal or human consumption.

Article L. 623(5)

Amended by art. 7 of [Law No.2011-1843 of December 8, 2011](#)

- I. The variety shall no longer be considered to be new if plant reproduction or propagating material or harvested material is been sold or otherwise disposed of to others by the breeder or with the breeder’s consent for the purposes of exploitation of the variety for more than twelve months on French territory or within the territory of the European Economic Area. The variety shall no longer be considered to be new in case of sale to others or disposal by other means by the breeder or with the breeder’s consent for the purposes of exploitation of the variety in another territory for more than four years prior to the filing date of the application for the new plant variety certificate or, in the case of vines, for more than six years prior to said date.
- II. The disposal of material of the variety to an official authority or officially recognized authority under the terms of a statutory obligation for the purposes of experimentation or displaying the variety at an officially recognized exhibition, subject to the express stipulation of the breeder in the latter two cases that the commercial exploitation of the variety whose material has been provided is prohibited, shall not be considered as disposal to others within the meaning of paragraph I above.

Article L. 623(6)

Amended by art 8 of [Law No.2011-1843 of December 8, 2011](#)

A new plant variety certificate may be requested by any national of a State Party to the International Convention for the Protection of New Varieties of Plants and any national from a Member State of the European Union or a person having his domicile, headquarters or establishment in one of these States.

A person filing an application for a new plant variety certificate in France may benefit from the right of priority for a first application previously filed by said person or by its author for the same variety in one of the said States provided the application filed in France does not postdate the first application by more than twelve months.

The novelty, within the meaning of Article [L. 623\(5\)](#), of the variety whose application is granted priority as defined in the second paragraph hereof, shall be determined from the date of filing of the priority application.

Apart from the cases set forth in the first paragraph, any foreigner may enjoy the protection afforded by this Chapter provided a French national may enjoy reciprocity of protection by the State of which he is a national or in which he has his domicile, headquarters or establishment.

Article L. 623(7)

Amended by art. 1 of [Law No. 2011-1843 of December 8, 2011](#)

The certificate issued by the authority mentioned in [Article L. 412\(1\)](#) shall come into effect from the date of filing of the application. Any rejection of an application must be reasoned.

Article L. 623(8)

Amended by art 1 of [Law No. 2011-1843 of December 8, 2011](#)

The Minister of Defense may contact the authority mentioned in Article L. 412(1) and acquaint himself confidentially with applications for certificates.

Article L. 623(9)

Set forth in [Law 92-597 July 1, 1992 – see annex to JORF of July 3, 1992](#)

The list of plant species for which applications for a plant variety certificate cannot be disclosed and freely exploited without a special authorization shall be prescribed by regulation.

Subject to Article L. 623(10), such authorization may be granted at any time. It is obtained as of right after a period of five months with effect from the date of filing of the application for a certificate.

Article L. 623(10)

Set forth in [Law 92-597 July 1, 1992 – see annex to JORF of July 3, 1992](#)

Before expiry of the deadline indicated in the last paragraph of Article L. 623(9), the prohibitions set forth in the first paragraph of the said article may be extended for a period of one year renewable, upon request of the Minister of Defense. The prohibitions thus extended may be lifted at any time under the same condition. The extension of the prohibitions issued in this article shall entitle the holder of the application for a certificate to claim an indemnity according to the prejudice suffered. In the absence of agreement, this indemnity shall be fixed by the judicial authority.

Article L. 623(11)

Set forth in [Law 92-597 of July 1, 1992 – see annex to JORF of 3 July 1992](#)

The holder of the certificate may request a review of the indemnity provided for by article L. 623(10) after the expiry of the one-year time limit following the date of the final judgment fixing the amount of the indemnity. The holder of the certificate shall bring evidence to show that the prejudice suffered is greater than the estimate of the court.

Article L. 623(12)

Amended by art. 4 of [Law No. 2011-1843 of December 8, 2011](#)

Amended by art. 9 of [Law No. 2011-1843 of December 8, 2011](#)

The certificate shall be issued only if the result of a prior examination shows that the variety for which protection is sought is a new plant variety in accordance with article [L. 623\(2\)](#).

However, the authority mentioned in Article [L. 412\(1\)](#) may consider that a prior examination conducted in another State which is party to the International Convention for the Protection of New Varieties of Plants is sufficient. The authority may take into account an examination carried out by the breeder or his beneficiary.

This committee may seek the assistance of foreign experts.

Article L. 623(13)

Amended by art 1 of [Law No. 2006-236 of March 1, 2006 – see JORF of March 2, 2006](#)

The period of protection shall be twenty-five years with effect from the date of issue.

The period of protection for forest trees, fruit trees or ornamental trees, vines and also for perennial forage legumes and forage grasses, potatoes and inbred lines used to produce hybrid varieties, is thirty years.

Article L. 623(14)

Amended by art. 10 of [Law No. 2011-1843 of December 8, 2011](#)

Applications for new plant variety certificates, acts including the issuance of such certificates and all acts transferring or amending the rights attached to an application for a certificate or to an issued certificate shall only be valid with respect to third parties if they have been published on a regular basis under the conditions set out by order of the *Conseil d'Etat*.

Article L. 623(15)

Amended by art. 11 of [Law No. 2011-1843 of December 8, 2011](#)

The certificate shall designate the new plant variety by a denomination enabling it to be identified without confusion or ambiguity in any State party to the International Convention for the Protection of Plant Varieties.

The breeder shall be required to conserve a permanent plant collection of the protected variety.

A description of the new variety shall be included as an annex to the new plant variety certificate.

The certificate shall be effective against third parties upon its publication. The denomination indicated on the certificate shall become compulsory upon its publication for all commercial transactions even after the term of the certificate has expired.

The denomination of the said new variety may not be used to deposit a title of a trademark or a trade name in a State Party to the International Convention for the Protection of Plant Varieties.

However, such deposit may be carried out as a safeguard measure without impeding the issuance of a new plant variety certificate, provided the proof of waiver of the effects of this deposit in the States party to the UPOV Convention is furnished prior to the issuance of the said certificate.

The stipulations of the preceding paragraph shall not impede the adding of a trademark or trade name to the denomination of the variety for the new plant variety.

Article L. 623(16)

Amended by art. 1 of [Law No. 2011-1843 of December 8, 2011](#)

Prior examination, the issuance of a certificate and all acts of registration or cancellation shall entail the payment of fees for services rendered.

A fee shall be paid each year during the entire period of validity of the certificate.

The scale of fees shall be fixed by regulation.

The proceeds of these fees shall be included in the revenues of the public benefit corporation mentioned in article [L. 412\(1\)](#).

Article L. 623(17)

Set forth in [Law No. 92-597 of July 1, 1992 – see annex to JORF of July 3, 1992](#)

A variety which is essential to human or animal life may be subject to the automatic licensing regime by decree of the *Conseil d'Etat* or, when it is of interest to public health, by joint order of the Minister of Agriculture and the Minister of Public Health.

Article L. 623(18)

Set forth in [Law No. 92-597 of July 1, 1992 – see annex to JORF of July 3, 1992](#)

From the day of publication of the order subjecting new plant variety certificates to the automatic licensing regime, any person providing technical and professional guarantees may apply to the Minister of Agriculture for a license for their exploitation.

Such license may only be non-exclusive. It shall be granted by the Minister of Agriculture under special conditions with respect to its duration and scope, but excluding the fees arising therefrom.

It shall come into effect on the day of notification of the order to the parties.

In the absence of mutual agreement, the amount of these fees shall be fixed by the judicial authority, determined in accordance with [article L. 623\(31\)](#).

Article L. 623(19)

Amended by art. 1 of [Law No. 2011-1843 of December 8, 2011](#)

If the holder of an automatic license does not meet the required conditions, the Minister of Agriculture may declare the license forfeit after seeking the opinion of the Authority mentioned in article [L. 412\(1\)](#).

Article L. 623(20)

Set forth in [Law 92-597 July 1, 1992 see annex to JORF of July 3, 1992](#)

For national defense purposes, the State may at any time automatically obtain a license for the exploitation of a new plant variety for which an application has been filed or a certificate has been issued, where such exploitation is carried out by the State itself or on its behalf.

The automatic license shall be granted upon request of the Minister of Defense by order of the Minister of Agriculture. Such order shall set out the licensing conditions, excluding the relevant fees. The license shall come into effect on the date of the application for the automatic license. In the absence of agreement, the amount of the fees shall be fixed by the judicial authority and shall be fixed in accordance with article L. 623(31).

Article L. 623(21)

Set forth in [Law 92-597 July 1, 1992 see annex to JORF of July 3, 1992](#)

The rights attached to an automatic license may not be sold or transferred.

Article L. 623(22)

Set forth in [Law 92-597 of July 1, 1992 – see annex to JORF of July 3, 1992](#)

For national defense purposes, the State may, at any time by decree, wholly or partially expropriate new plant varieties for which applications for certificates have been filed or certificates issued.

In the absence of mutual agreement the expropriation indemnity shall be fixed by the *tribunal de*

grande instance.

Article L. 623(22)(1)

Set forth in article 8 of [Law No. 2004-1338 of December 8, 2004 – see JORF of December 9, 2004](#)

When the holder of a patent on a biotechnological invention is unable to exploit said patent without violating upon an earlier plant breeder's right, he may request the granting of a license to exploit the protected variety as long as this invention represents significant technical progress with regard to the plant variety and is of considerable economic value. The applicant must justify that he was able only to obtain a license from the rightholder for the exploitation of the variety and that he is exploiting the variety diligently and effectively.

Article L. 623(22)(2)

Set forth in art. 8 of [Law No. 2004-1338 of December 8, 2004 – see JORF of December 9, 2004](#)

Applications for a license provided for in article L. 623(22)(1) shall be filed at the *tribunal de grande instance*.

Licenses shall be non-exclusive. The court shall determine their duration, scope and the amount of fees arising therefrom. These conditions may be amended by decision of the court at the request of the holder of the right or license.

The rights conferred by the license may only be transferred with the company or part of the company or goodwill to which they are attached.

If such a license is granted, the rightholder shall obtain a reciprocal license in fair conditions in order to use the protected invention, upon application to the court.

If the holder of a license does not meet the conditions under which the license was granted, the holder of the new plant variety certificate and, where applicable, the other licensees may obtain the withdrawal of this license by the court.

Article L. 623(22)(3)

Set forth in art. 12 of [Law No. 2011-1843 of December 8, 2011](#)

Any individual or corporate body may obtain a compulsory license according to the conditions set forth in the present article and article L. 623(22)(4).

An application for a compulsory license shall be filed with the *tribunal de grande instance* where the rights holder is located. It must be accompanied by documentation showing that:

1. the applicant was unable to obtain a license during a period of one year with effect from the date of his application to the holder of the certificate;
2. the applicant is exploiting the variety diligently and effectively;
3. the license is in the public interest, particularly with regard to acute shortages in the agricultural market concerned by this variety.

The application for a compulsory license may be filed pursuant to paragraphs 2-5 hereof by the holder of the certificate for an essentially derived variety of a protected variety who was not able to obtain the authorizations required for the exploitation of his own variety from the holder of the initial variety certificate.

Similarly, the holder of the certificate protecting the initial variety may obtain a license arising from the certificate protecting the essentially derived variety. The compulsory license shall be non-exclusive. The court shall determine its duration, scope and the amount of the relevant fees.

These conditions may be amended by the court at the request of the rightholder or the licensee. If the holder of a compulsory license does not meet the conditions for holding the license, the holder of the plant variety certificate, and where applicable, the other licensees may obtain the withdrawal of this license by the court.

Note:

Art. 19(I) of Law No. 2011-1843 of December 8, 2011: New provisions of this article shall be applied to plant variety certificates issued before December 11, 2011. These provisions shall also

be applied to plant variety certificates issued for applications registered before this date.

Article L. 623(22)(4)

Set forth in art. 12 of [Law No. 2011-1843 of December 8, 2011](#)

The rights deriving from a compulsory license may not be sold or transferred, save with the company or the part of the company to which they are attached.

Such sale or transfer shall be subject to the authorization of the court, on pain of nullity.

Note:

Art. 19(I) of Law No. 2011-1843 of December 8, 2011: The new provisions of this article shall apply to breeder's certificates issued before 11 December 2011. These provisions shall also apply to certificates issued following an application recorded before that date.

Article L. 623(23)

Amended by art. 1 of [Law No. 2011-1843 of December 8, 2011](#)

Amended by art. 13 of [Law No. 2011-1843 of December 8, 2011](#)

The holder of a plant breeder's certificate shall lose his rights if:

1. He is unable at any time to show the authorities the plant propagating material enabling reproduction of the protected variety with the morphological and physiological characteristics identified in the breeder's certificate;
2. He refuses to undergo the inspections conducted with a view to ascertaining the steps he has taken for the conservation of the variety; and
3. He fails to pay the annual fee provided for in article [L. 623-16\(2\)](#) within the prescribe time limit.

The loss of rights shall be noted by the agency mentioned in article L. 412(1). Where rights are lost under the terms of paragraph 3 above, the rightholder may, within six months of the expiry of the prescribed time limit, lodge an appeal for his rights to be reinstated if he can advance a legitimate reason for the failure to pay the fee. Such appeal may not, however, violate the rights of third parties where applicable. The final decision noting the loss of rights shall be made public. <http://www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000006069414&idArticle=LEGIARTI000006279282&dateTexte=&categorieLien=cid>

Set forth in art. 14 of [Law No. 2011-1843 of December 8, 2011](#)

The plant breeder's certificate shall be declared null by a court decision if it is found:

1. that the breeder's right has been granted to a person who is not entitled to it, unless it is transferred to the person who is so entitled; or
2. that on the date on which it was issued, the variety did not satisfy the conditions set forth in article L. 623(2).

Article L. 623(23)(1)

Amended by art. 1 of [Law No. 2011-1843 of December 8, 2011](#)

Amended by art 15 of [Law No. 2011-1843 of December 8, 2011](#)

The provisions of article L. 613(8) and L. 613(29) to L. 613(32) shall apply to applications for plant variety certificates and breeder's certificates.

The same shall hold true for article L. 613(9), L. 613(21) and 613(24), the agency mentioned in article [L. 412\(1\)](#) replacing the National Industrial Property Institute.

Article L. 611(7) shall also apply to plant breeder's certificates, since inventions are understood to be the varieties, patents to be the plant breeder's certificates and the arbitration commission as being that instituted by a specific decree in the particular area of plant varieties.

Article L. 623(24)(1)

Set forth in art. 16 of [Law No. 2011-1843 of December 8, 2011](#)

By exception to article L. 623(4), for the species listed in Council of Europe Regulation (EC) No. 2100/94 of July 27, 1994 on Community plant variety rights and for other species which may be

listed by decree in the *Conseil d'Etat*, farmers may use on their own holding, without the authorization of the breeder for propagation purposes the product of the harvest which they have obtained by planting a protected variety.

Note:

Article 19(II) of Law No. 2011-1843 of December 8, 2011: These provisions shall apply to plant breeder's certificates issued before December 11, 2011.

Article L. 623-24(2)

Set forth in art. 16 of [Law No. 2011-1843 of December 8, 2011](#)

Save for small farmers within the meaning of the aforementioned Regulation (CE) No. 2100/94, the farmer shall pay the rightholder a fee for using his varieties.

Note:

Article 19(II) of Law No. 2011-1843 of December 8, 2011: These provisions shall apply to plant breeder's certificates issued before December 11, 2011.

Article L. 623-24(3)

Set forth in art. 16 of [Law No. 2011-1843 of December 8, 2011](#)

Where no contract exists between the rightholder and the farmer, or between several rightholders and a specific group of farmers, or no inter-professional agreement has been reached according to the stipulations of Part II, Title III of Book IV of the Rural and Maritime Fisheries Code, the application of the exemption set forth in article L. 623-24(1) herein, including the procedure for fixing the amount of the compensation referred to in article L. 623-24(2), whose amount is substantially lower than the amount received for the production under license of the propagation material of the same variety, shall be fixed by decree of the *Conseil d'Etat* as provided for in article L. 623-24(1).

Note:

Article 19(II) of Law No. 2011-1843 of December 8, 2011: These provisions shall apply to plant breeder's certificates issued before December 11, 2011.

Article L. 623-24(4)

Set forth in art. 16 of [Law No. 2011-1843 of December 8, 2011](#)

Where farmers contract service providers to sort their seeds, such sorting must be conducted in conditions which make it possible to guarantee the traceability of the products of protected varieties. In the event of failure to respect these conditions, the seeds shall be considered to have been sold and shall be judged to be counterfeits within the meaning of article L. 623(25).

Note:

Article 19(II) of Law No. 2011-1843 of December 8, 2011: These provisions shall apply to plant breeder's certificates issued before December 11, 2011.

Article L. 623-24(5)

Set forth in art 16 of [Law No. 2011-1843 of December 8, 2011](#)

Should the farmer fail to comply with the conditions for exemption set forth in article L. 623(24)(1), he shall lose the benefit of the provisions of the present section.

Note:

Article 19(II) of Law No. 2011-1843 of December 8, 2011: These provisions shall apply to plant breeder's certificates issued before 11 December 2011.

Article L. 623-25

Amended by art. 17 of [Law No. 2011-1843 of December 8, 2011](#)

Subject to the provisions of article L. 623(24)(1), any deliberate violation of the rights of the rightholder as defined in article L. 623(4) shall constitute counterfeiting which entails the civil liability of the counterfeiter. Within the meaning of this article, incorrect use or misuse of the

denomination of the protected variety shall also constitute violation of a breeder's right.

The holder of an *ex officio* license referred to in article L. 623(17) and L. 623(20), the holder of a compulsory license referred to in article L. 623(22)(3) and, unless otherwise provided, the holder of an exclusive right of exploitation may take the action provided for in paragraph 1 hereof if, following a warning, the rightholder does not take such action.

The rightholder may join the proceedings instituted by the licensee in accordance with the preceding paragraph.

Any licensee may join the proceedings instituted by the rightholder in order to secure reparation for his own damages.

Note:

Article 19(I) of Law No. 2011-1843 of December 8, 2011: These old or new provisions shall apply to plant breeder's certificates issued before December 11, 2011. These provisions shall also apply to certificates issued for applications recorded before that date.

Article L. 623(26)

Set forth in Law No. 92-597 of July 7, 1992 – see annex to JORF of July 3, 1992

Acts predating the publication of the issuance of the certificate shall not be considered to have violated the rights conferred by the certificate. Nonetheless, acts following the notification to the presumed person responsible of a certified true copy of the application for a certificate may be investigated and prosecuted.

Article L. 623(27)

Amended by art. 20 of [Law No. 2007-1544 of October 29, 2007](#) –see JORF of October 30, 2007

Any person empowered to deal with counterfeiting may refer a matter to the civil court with jurisdiction, if necessary under fine, against the alleged counterfeiter or the intermediaries whose services he uses, to secure an order for any measure intended to prevent the imminent violation of the rights conferred by the right or to prevent the continuation of alleged acts of counterfeit. The civil court with jurisdiction may also order any urgent measures upon application where the circumstances require that these measures not be taken adversarially, in particular where any delay may be irreparably prejudicial to the applicant. Whether seize by application or by referral, the court may only order the measures being sought if evidence reasonably accessible to the applicant contains serious indicia that the applicant's rights are being violated or that such violation is imminent.

The court may prohibit the continuation of the alleged counterfeiting, subject it to the issuance of guarantees intended to ensure the compensation, as the case may be, of the applicant, or order the seizure or custody by third parties of the products suspected of violating the rights vested by virtue of the title, to prevent their introduction or circulation in commercial channels. If the applicant can support his allegation of circumstances likely to jeopardize the preventive seizure of movable and immovable property belonging to the alleged counterfeiter, including the freezing of his bank accounts and non-personal assets, may be ordered in accordance with ordinary law. To determine the property likely to be seized, the court may order the disclosure of banking, financial accounting or commercial documents or access to the relevant information.

It may also grant the applicant an allowance where the existence of the damages he has suffered is not reasonably in doubt.

If seize by referral or application, the court may subject the execution of the measures it orders to the issuance by the applicant of guarantees intended to ensure the compensation, if necessary, of the defendant of the proceedings for counterfeiting if the action for counterfeit is subsequently found to be unsubstantiated or the measures are reversed.

Where measures taken to stop a violation of rights are ordered before the institution of substantive proceedings, the applicant must take action before a civil or criminal court within a time limit fixed by regulations. Barring that, upon application by the defendant, which need not advance any grounds, the measures ordered shall be reversed without prejudice to any damages which may be

claimed.

Article L. 623(27)(1)

Set forth in art. 20 of [Law No. 2007-1544 of October 29, 2007 – see JORF of October 30, 2007](#)

Counterfeiting may be established by any means.

Thus, any person empowered to proceed against counterfeiting may, in any location, direct any bailiffs, assisted by experts designated by the applicant, following an order rendered in response to an application before the civil court with jurisdiction, secure either the detailed description, with or without the taking of samples, or the actual seizure of the alleged counterfeits and any document related thereto.

For the same evidentiary purposes, the court may order, the actual seizure of materials and instruments used to produce or distribute the alleged counterfeits.

The court may make the measures it orders conditional upon provision by the applicant of guarantees intended to ensure the compensation, if necessary, of the defendant if the action for counterfeiting is subsequently found to be unsubstantiated or the seizure reversed.

Should the applicant fail to make substantive allegations either before a civil or a criminal court within the prescribed time limit, the entirety of the seizure, including the description thereof, shall be cancelled at the request of the party subject to the seizure, without such party being required to adduce reasons and without prejudice to any damages which may be claimed.

Article L. 623(27)(2)

Set forth in art. 20 of [Law No. 2007-1544 of October 29, 2007 – see JORF of October 30, 2007](#)

Upon request, the court seized of an application in civil proceedings provided for herein may order, if necessary under fine, for the purposes of determining the origin and distribution network of the counterfeit products which violate the rights of the application, the disclosure of all documents or information held by the defendant or by any other person found in possession of the counterfeit products or who provides services used in the counterfeiting or who has been reported as participating in the production Article L. 623(22)(4), manufacture or distribution of the products or the provisions of these services.

The disclosure of documents or information may be ordered if there is no legal impediment.

The documents or information sought shall concern:

- (a) the name and address of producers, manufacturers, distributors, supplies and non-personal prior holders of the products or services, as well as receiving wholesalers and retailers;
- (b) the quantities produced, marketed, delivered received or ordered, as well as the price of the products or services in question.

Article L. 623(28)

Amended by art. 21 of [Law No. 2007-1544 of October 29, 2007 – see JORF of October 30, 2007](#)

To determine damages, the court shall take into consideration the adverse economic effects, including loss, suffered by the injured party, the profits made by the counterfeiter and the moral prejudice caused to the rightholder as a result of the infringement.

Nonetheless, as an alternative and upon request by the injured party, the court may award by way of damages a lump sum which may not be less than the amount of the fees or rights which would have been payable if the counterfeiter had sought the authorization to avail himself of the rights he has usurped.

Article L. 623(28)(1)

Set forth in art. 21 of [Law No. 2007-1544 of October 29, 2007 – see JORF of October 30, 2007](#)

In case of a finding of guilt for counterfeiting, the court may order, at the request of the injured party, that the products found to be counterfeits and the materials and instruments which mainly served in their creation or manufacture be withdrawn from commercial channels, permanently removed from such channels, destroyed or confiscated to the benefit of the injured party.

The court may also order any measures it considers appropriate for the publicity of the judgment, in particular its posting or publication *in extenso* in the newspapers or the online public communication services it selects, according to the arrangements it orders.
The measures stipulated above shall be at the expense of the counterfeiter.

Article L. 623(29)

Set forth in Law No. 92-597 of July 1, 1992 – see annex to JORF of July 3, 1992

The civil and criminal proceedings provided for in this chapter must be instituted no later than three years after the acts triggering them.

If civil proceedings are instituted, they shall have suspensive effect over the time limit of criminal proceedings.

Article L. 623(30)

Amended by art. 21 of [Law No. 2007-1544 of October 29, 2007 – see JORF of October 30, 2007](#)

Where a variety which is the subject of an application for a breeder's certificate is exploited for the purposes of national defense by the State or its suppliers, subcontractors and subsidiary suppliers without a license, the court seized of the matter may not order the cessation or suspension of such exploitation, or the confiscation provided for in article L. 623(28)(1).

If the presiding judge of the court seized of the matter orders an expert opinion or a description with or without actual seizure, the representative of the public official in charge of the matter must suspend the seizure, description and any search in the company concerned if the research or propagation contract bears a defense security classification.

The same shall apply if the research or propagation is conducted in an army facility.

The presiding judge of the court seized of the matter may, if so requested by the rightholder, order an expert opinion which may be produced by two persons accredited by the Ministry of Defense, in the presence of its representatives.

The provisions of article L. 623(26) shall not apply to applications for plant breeder's certificate exploited in the conditions defined herein so long as such applications are subject to the prohibitions provided for in article L. 623(9) and L. 623(10).

The authors of such exploitation shall be fully liable in accordance with the present article.

Article L. 623(31)

Amended by art. 1 of [Law No. 2011-1843 of December 8, 2011](#)

Civil action and applications relating to plant varieties, including where they also concern a related matter of unfair competition, shall be exclusively heard by a *tribunal de grande instance*, whose number may not be less than 10, save for appeals against administrative action by a ministry, which shall fall under the jurisdiction of an administrative court.

The Paris Court of Appeal shall be directly seized of appeals against decisions of the organ mentioned in article L. 412(1) rendered in accordance with the present chapter.

The preceding provisions shall not impede the use of arbitration in the conditions provided for by article 2059 and 2060 of the Civil Code.

Article L. 623(32)

Amended by art. 3 of [Law No. 2011-267 of March 14, 2011](#)

Any deliberate violation of the rights of the holder of a plant breeder's certificate, as defined in [article L. 623\(4\)](#), shall constitute an offence punishable by a fine of 10,000 euros. If in the previous five years, the defendant has been found guilty of the same offense or, in case of the commission of the offence by an organized enterprise or on an online public communication network, a term of imprisonment of six months may also be ordered.

Article L. 623 (32)(1)

Set forth in art. 22 of [Law No. 2007-1544 of October 29, 2007 – see JORF of October 30, 2007](#)

Individuals found guilty of the offence provided for in article L. 623(32) may also be ordered, at their expense, to withdraw from commercial channels any counterfeit objects and any item which served or was intended to serve in the commission of the offence.

The court may order the destruction, at the cost of the guilty party, or the transfer to the injured party of objects and items withdrawn from commercial channels or confiscated, without prejudice to any award for damages.

The court may also order, at the expense of the guilty party, the posting of the judgment or its broadcast within the meaning of article 131(35) of the Criminal Code.

Article L. 623(32)(2)

Amended by art. 125 of [Law No. 2009-526 of May 12, 2009](#)

Corporate bodies found to be criminally responsible within the meaning of article 121(2) of the Criminal Code, for the offense defined in article L. 623(32) shall, in addition to the fine stipulated in article 131(38) of the Criminal Code, be liable for the punishment provided for in article 131(39) of the Criminal Code.

The prohibition mentioned in article 131(39)(2) of the Criminal Code concerns acts performed in the course of or as a result of the activity during which the offense was committed.

Corporate bodies found to be criminally responsible may moreover be ordered, at their expense, to withdraw from commercial channels the objects found to be counterfeit and any item which served or was intended to serve in the commission of the crime.

The court may order the destruction at the expense of the guilty party or the transfer to the injured part of the objects and items withdrawn from commercial channels or confiscated, without prejudice to any award for damages.

Article L. 623(33)

Set forth in Law No. 92-597 July 1, 1992 – see annex to JORF of July 3, 1992

Action by the public prosecutor for the application of the punishment provided for in the previous article may only be taken by the public prosecutor following a complaint by the injured party.

The magistrate's court seized of the matter may only rule after the civil court has established the actuality of the offense by a decision which is *res judicata*. Challenges by the defendant alleging the nullity of the breeder's certificate or questions relating to the propriety of the said certificate may only be raised before the civil court.

Article L. 623(35)

Amended by art. 3(V) of [Order No. 2000-916 of September 19, 2000 – see JORF of September 22, 2000, in force as from January 1, 2002](#)

Without prejudice, if more serious sentences provided for in case of offences against the security of the State are applicable, any person who knowingly acts outwith any of the prohibitions provided for in articles L. 623(9) and L. 623(10) shall be punishable by a fine of 4,500 euros. If the violation has been detrimental to national defense, a term of imprisonment of five years may also be imposed.

2) Relevant article of the regulatory part of the Intellectual Property Code relating to the scope of the protection

Article R. 623(55)

Amended by art. 1 of [Decree No. 95-1407 of December 28, 1995 – see JORF of January 4, 1996](#)

1. Plant breeder's certificates may be issued in the conditions provided for in article L. 623(1) to L. 623(35) and article R. 623(1) to R. 623(54) for any variety belonging to a species of the plant kingdom.

Any foreigner who is a national of a State Party to the International Convention for the Protection of New Varieties of Plants of 2 December 1961, as revised on November 10, 1972, or has his residence, headquarters or business in one of these Member States may obtain a plant breeder's certificate for the varieties belonging to the genus or species falling under the same protection and enumerated in the annex to this convention or on a supplementary list prepared in accordance with its provisions.

Any foreigner who is a national of a State Party to the International Convention for the Protection of New Varieties of Plants in the modified text of October 23, 1978 or has his residence, headquarters or premises in a State Party may obtain a plant breeder's certificate under the same conditions as French nationals.

2. Foreigners who hold neither the nationality of one of the States Parties and who do not have their residence, headquarters or premises in a State Party may not obtain plant breeder's certificates unless French nationals benefit from reciprocal protection on the part of the State of which the foreigner is a national or where he has his residence, headquarters or premises. Orders made by the Minister of Foreign Affairs and the Minister of Agriculture upon proposal of the commission for the protection of plant varieties shall prepare a list of States whose legislation satisfies the criterion of reciprocity. Such orders may include an exhaustive list of plant varieties for which the criterion of reciprocity has been satisfied.

Article R. 623(56)

Amended by art. 1 of [Decree No. 95-1407 of December 28, 1995 – see JORF of January 4, 1996](#)

The term of protection shall be twenty years.

For forest, fruit or ornamental trees, vine and grains and perennial fodder legumes, potatoes and inbred lines used for the production of hybrid varieties, the duration of the protection shall be twenty-five years.

Article 9 *bis*(57)

Amended by art. 1 of [Decree No. 95-1407 of December 28, 1995 – see JORF of January 4, 1996](#)

The breeder's right shall concern all the parts of any plant propagating material of the variety under consideration together with part or all of the plant of that variety.

Article 9 *bis*(58)

Amended by art. 1 of [Decree No. 95-1407 of December 28, 1995 – see JORF of January 4, 1996](#)

Any person who, during all the acts of transfer or concession or sale of the varieties referred to in the preceding articles, wishes to make use of the facility afforded by article L. 623(15) to attach to the variety denomination a trade or manufacture mark, whether he owns the mark or holds it by way of concession, must take the necessary precautions, in particular in correspondence, advertising, the preparation of commercial brochures, on packaging or labels, to ensure that such denomination is sufficiently apparent in its context that no confusion is likely to arise in the mind of the buyer as to the identity of the variety.