



## Newsletter

Dear reader,

Marburg, 2nd January 2018

An exciting year 2017 lies behind us. Since the new organisation OpenSourceSeeds was introduced last April, both the service provider and the licence have been given considerable attention in the media and we were barely able to manage the many requests for further information. Our work has also raised great interest at international level, and we presented the open-source seed (OSS) licence at conferences in Belgium, France, India and Spain. In the meantime, a wide variety of seed has been proposed to us for licensing. We are currently reviewing this material and filling in any missing information. Two other types of wheat and two more tomato varieties have already been licensed and will now be made public on the OSS website.

Looking at the public debate, it is interesting how different the responses of individual groups have been. The committed public is enthusiastic; many people want to plant Sunviva tomatoes in their gardens and produce their own seed. Scientists see a rewarding new field of research in OSS licensing. The seed trade is getting wind of new business models, and plant breeders are engaging in lively, sometimes fierce debates about whether or not they should abandon intellectual property rights through plant variety protection and instead use the OSS licence. We will go into some of these questions and arguments in more detail in the second part of this newsletter.

Meanwhile, a change in the legal framework for seed supply is imminent. The revision of the EU Regulation on Organic Production, which has been negotiated for many years, has now overcome the major hurdles and will most likely come into effect on 1 January 2021. This revision

regulates also the market for organic seed in a completely new way and creates changes that are conducive for introducing the OSS licence.

Until now, only approved varieties can be put on the market, after having undergone a multi-year and expensive review process in order to be registered. With the new regulation, also “heterogeneous organic plant reproductive material” – for example, a genetically diverse population – may be put on the market after a short, three-month process of testing and notification by the German Federal Office of Plant Varieties. The often very strictly interpreted and much criticised DUS (distinctness, uniformity and stability) criteria cease to apply, and crop genetic diversity can return to the fields. Also the drawn-out and costly approval process becomes obsolete.

This is a quantum leap towards achieving the goal of nationwide supply of organic seed for organic farms. Plant breeders could already now start propagating their material so they could offer their “varieties” when the new regulation comes into effect in 2021. With this much more heterogeneous seed, the question of how to protect them arises. Since they are not registered varieties in the conventional sense, they cannot rely on plant variety protection. Instead, the OSS licence offers a promising alternative, as it allows the material to be protected against privatisation and to be traded freely. Completely new business models can be used. Consumers regard the “open-source” attribute as innovative and good. This gives the seed producer an advantage. More information about new business models will be coming in our next newsletter.

# Questions & Answers

The continued intensive debate among professionals about the OSS licence shows that this approach is being taken seriously. We would like to share with you the most important questions and arguments that have recently been raised.

## **1 “We need plant variety protection – therefore a licence is needed only against patents”**

Plant variety protection is not open-source, and individual elements that you could describe as open-source are disappearing more and more. The farmer’s privilege has been abolished and the so-called breeder’s exemption has become increasingly narrow over the years. However, variety protection has been losing importance, and only a portion of the registered varieties are protected. Patents, by contrast, are gaining ground. An OSS licence that allows variety protection but prohibits patents would be inconsistent and not easily understood.

## **2 “How can organic plant breeding be financed without variety protection?”**

It is clear already now that organic plant breeding cannot be financed with royalties from plant variety protection. Currently, such revenues cover on average about 8% and, at best, 15% of the breeding costs. That’s the price of pro-

moting diversity and foregoing the widespread dissemination of a few varieties and monocultures.

We therefore have to be creative in developing models for financing plant breeding that do not depend on plant variety protection. In principle, we see organic plant breeding as a societal task for which the breeders must be rewarded. In contrast, seed production is an economic activity. This also applies to OSS-licensed seed. Our initial experience with the Sunviva tomato shows that the demand for open-source seed is high. Some of the proceeds from sales can be fed back into plant breeding.

## **3 “No open-source material will come into my breeding garden – I can be held liable for cross-breeding into my breeding lines that I would like to register for variety protection.”**

The problem of cross-breeding, if there is one at all, arises for every origin of plant genetic material – for OSS-licensed material as well as for material with patents – and also for material purchased through a Standard Material Transfer Agreement (SMTA). Breeders always have to check whether they have the rights required to use a given material, but it does not exclude coexistence in breeding gardens. The breeder’s exemption applies at most for varieties with plant variety protection. But the breeder’s exemption does



Foto: ARGHE NOAH

*Crop diversity and varietal abundance need many independent breeders*

not apply to varieties that are registered but not protected, not to breeding lines and not to wild plants. Basically, for any plant material, the rights apply that were reserved for that material. These may be rights of indigenous communities, rights of companies, rights of individual countries, and may be an OSS licence. This has to be considered.

#### **4 “I would like to cross the Sunviva tomato variety with a variety under plant variety protection. Is this allowed?”**

Yes, as the breeder’s exemption applies: the option for breeders to use existing protected varieties to develop new varieties. But this privilege has been restricted. If the result is an “essentially derived variety” (meaning that it is very similar to the original one), the original breeder still has significant rights. For example, he or she can prevent the registration or can charge plant variety protection fees for new varieties created by third parties.

#### **5 “I want to obtain an open-source licence for my cultivars. How do I best find partners who can help me with propagation and marketing?”**

Breeders often have good, marketable varieties, populations or breeding lines that, according to the Seed Marke-

ting Act, have to be registered if they are to be marketed. However, registering them at the Federal Office of Plant Varieties is often not an option, for several reasons. The material may be too heterogeneous and therefore would not be recognised as a variety, because the costs for testing and registering them would not be worth it or because a three-year approval process is too long. With the new Regulation on Organic Production, alternatives have been created that will strongly impact the seed market (see above). Until then, in individual EU countries there are exceptions to the rules that can be used even now. In Austria, for example, non-registered seed may be propagated and sold to a limited extent, and breeders could already now sell their seed. We would be happy to help find cooperation partners for propagation and marketing in Austria.

Marketing valuable plant material – cultivars, populations and breeding lines – and protecting it with the OSS licence as a common good is an interesting future perspective for breeders.

Happy reading and best wishes from the team of  
*OpenSourceSeeds*



*Anne Siegmeier*



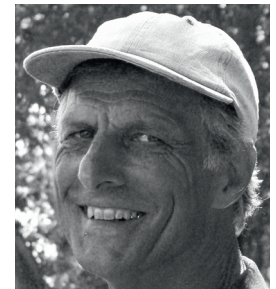
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