

# Course: Intellectual Property Law-Cambodia

Lecture 10: Trade Secrets, Integrated Circuits, and Plant Varieties

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ការសម្ងាត់ពាណិជ្ជកម្ម

# What is a trade secret?

- Any information that is deliberately not disclosed and that:
  - Economically benefits its owner for as long as it remains secret
  - May economically harm its owner, or benefit competitors, if disclosed against its owner's wishes
- Not enough to call it a secret. It must **be actively kept a secret**

# Summary – trade secret

## **Scope**

Can be any information that is genuinely kept secret

## **Access**

Must be strictly limited and controlled by contract –  
for example NDAs

## **Benefit**

Can be of substantial long-term commercial value to its owner

# know-how

# What is know-how?

- Any secret or restricted information or knowledge that improves its owner's **ability** to produce a desired outcome
- May enable a business to:
  - source materials more cheaply than a competitor
  - manufacture more efficiently than a competitor even when both use the same equipment and processes
- Can be **tangible**: blueprints, formulae, instructions, specifications
- Or **intangible**: process management skills, market intelligence, quality control techniques

## Common features of trade secrets and know-how

- There is **no official register**, and so no statutory protection
- Protection depends **entirely on keeping information secret**
- There is **no geographical limitation**
- As long as secrecy is maintained, **protection can last indefinitely**

## It must not just BE secret – it must be KEPT secret

- Protection depends entirely on the IP owner's ability to keep information secret. It is no one else's responsibility
- The owner must make a positive effort to keep trade secrets or know-how confidential and beyond the reach of competitors
- This may not be easy!

# What is confidential information?

- First, it must be Information that actually is confidential
- **Second, it is information that if shared with a third party must be disclosed only in conditions of strict mutual confidentiality**

# What in law is NOT confidential?

- Information already in the public domain
- Information already known to the receiving party
- Information disclosed to a third party without restrictions
- Information whose public disclosure is required by law or statutory regulation

# How to disclose information confidentially

- Legally binding contracts
  - **Restrictive covenants** for employees, suppliers, subcontractors etc.
  - **Non-disclosure agreements** (NDAs – also known as confidential disclosure agreements or CDAs) for less ‘tied’ parties such as potential licensees, technical advisers, ad-hoc project contributors
- Disclosures should be kept to an absolute minimum

# Contracts are EVERYTHING

- Private agreements between two or more parties:
  - define the exact scope of protection
  - put everything in writing
  - are legally enforceable
  
- Types of contract include:
  - restrictive covenants
  - non-disclosure agreements (NDAs)

# Enforceability – reliance on contracts

- The law of contracts applies to both restrictive covenants and NDAs. They are **private** agreements that are **legally binding** on both parties
- If a breach of confidentiality is alleged, any legal judgment may depend entirely on the exact wording of the contract
- It is therefore vital to ensure that the contract (covenant or NDA) is of sufficient quality to meet legal requirements

# Know your IP rights

- Article 39 of the World Trade Organisation (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) covers **proprietary information**
- Proprietary information is confidential information not protected by patent, registered design or copyright
- While Article 39 does not specifically mention trade secrets and know-how, their inclusion can be inferred

## Law on Trade Secrets and Undisclosed Information

there is no specific timeline for its enactment

The Law on Commercial Enterprises (2005) prohibits the unauthorized publication of a firm's financial statements. It also requires the Ministry of Commerce to maintain the confidentiality of most company documents in its record.

The Law on Banking and Financial Institutions (1999) prohibits certain people from disclosing any confidential information in accounting or administrative document

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16 March 2011

# Integrated Circuits

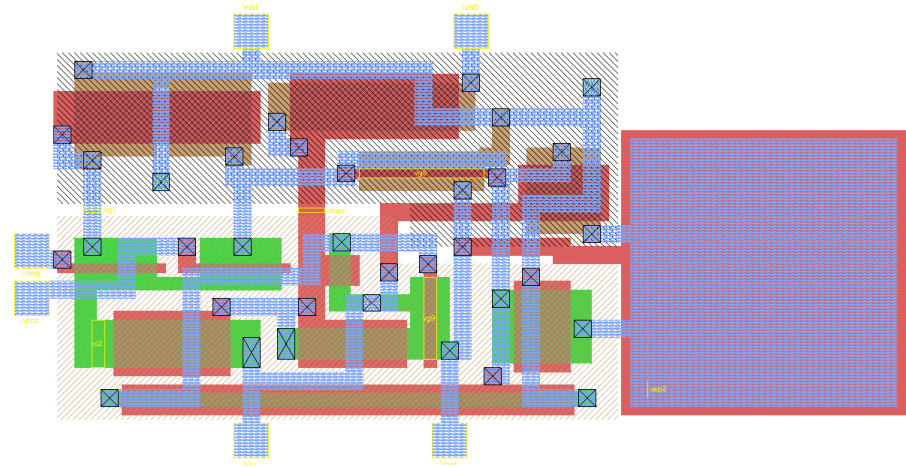
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Integrated circuits ( known as microchips) - essential parts of any digital equipment

Developing innovative layout designs of integrated circuits is essential for the production of ever-smaller digital devices with more functions.



Spekking, Raimond. *English: SEG DVD 430 - Hynix HY29LV800BT-70 - 8 Mbit (1M x 8/512K x 16) Low Voltage Flash Memory.* November 3, 2016. Own work. <https://commons.wikimedia.org/wiki/File:SEG DVD 430 - Hynix HY29LV800BT-70-4279.jpg>.



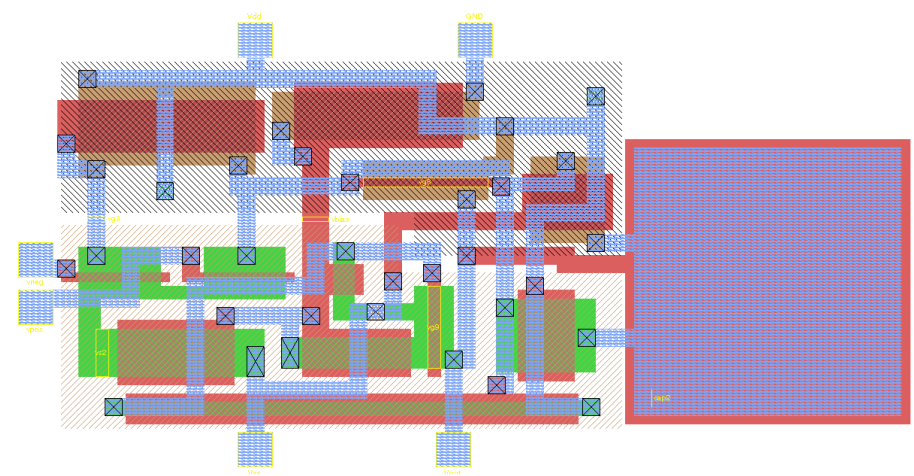
Wikipedia, The original uploader was Atropos235 at English. *English: CMOS Op-Amp (Dual-Stage).* January 14, 2007. Transferred from en.wikipedia to Commons by Wdwd using CommonsHelper. <https://commons.wikimedia.org/wiki/File:Vlsiopamp2.gif>.

# គំនូរបង្ហាញនៃសៀគ្វីបង្កើត Layout-Design of Integrated Circuit

# Following the obligations as a member of WIPO and WTO, Cambodia-Ministry of Industry, Mines, and Energy => January 31, 2011, a **Prakas** regarding the registration of layout-design of integrated circuits



Spekking, Raimond. *English: SEG DVD 430 - Hynix HY29LV800BT-70 - 8 Mbit (1M x 8/512K x 16) Low Voltage Flash Memory.* November 3, 2016. Own work. <https://commons.wikimedia.org/wiki/File:SEG DVD 430 - Hynix HY29LV800BT-70-4279.jpg>.



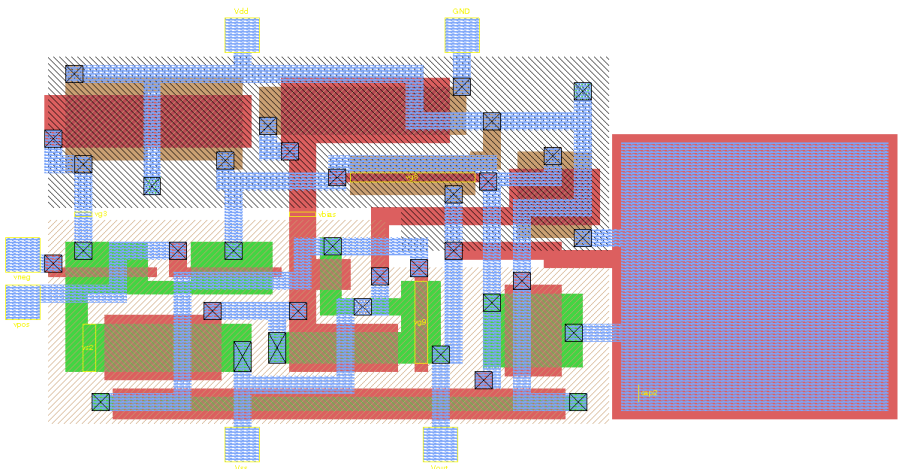
Wikipedia, The original uploader was Atropos235 at English. *English: CMOS Op-Amp (Dual-Stage).* January 14, 2007. Transferred from en.wikipedia to Commons by Wdwd using CommonsHelper. <https://commons.wikimedia.org/wiki/File:Vlsiopamp2.gif>.

## គំនូររចនាសម្រាប់ស្រោចស្រាវជ្រាវ Layout-Design of Integrated Circuit

# Protectable Subject Matters

## គំនូររូបភ្នាក់ងារ

**Layout Design (topographies):** a **three dimensional disposition of the elements**, at least one of which is **an active element**, and of some or all of the **interconnections of an integrated circuit**, or such a three dimensional disposition prepared for an integrated circuit intended for manufacture.

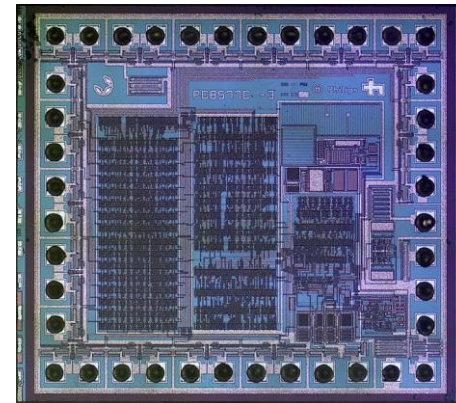


Wikipedia, The original uploader was Atropos235 at English. *English: CMOS Op-Amp (Dual-Stage)*. January 14, 2007. Transferred from en.wikipedia to Commons by Wdwd using CommonsHelper. <https://commons.wikimedia.org/wiki/File:Vlsiopamp2.gif>.

# Protectable Subject Matters

## សៀវភៅបង្កើត

**Integrated Circuit: a product**, in its final form or an intermediate form, in which the elements, at least one of which is an active element, and some or all of the interconnections are integrally formed in or on a piece of material, and which is intended to perform an electronic function.



cole8888. English: This Is an LCD Direct/Duplex Driver with an Onboard I<sup>2</sup>C-Bus Interface Made by NXP Semiconductors. May 15, 2020.  
<https://www.flickr.com/photos/187597251@N05/49899342293/>.  
[https://commons.wikimedia.org/wiki/File:NXP\\_PCF8577C\\_LCD\\_driver\\_with\\_I%C2%B2C\\_\(Colour\\_Corrected\).jpg](https://commons.wikimedia.org/wiki/File:NXP_PCF8577C_LCD_driver_with_I%C2%B2C_(Colour_Corrected).jpg).

# Registration

## Article 2

The **layout-design of integrated circuits** is registered with the Department of Industrial Property of the Ministry of Industry, ~~Mines and Energy~~.

## Article 5

The Prakas specifies that certain types of layout-design of integrated circuits can be registered if the design **has not been commercially exploited before or was subject of commercial exploitation for a period not exceeding two years in any part of the world.**

# Registration

## **Article 6 and 7**

The layout-design must be **new (original)**.

Meaning that it is a result of its creator's own **intellectual effort**, and is **not commonplace among creators** of designs and manufacturers of **integrated circuits** at the time of its creation.

# Exclusive Rights

## Article 8

**The owner** of the layout-design of the integrated circuits is **the inventor or their assignee**.

This right can be **conferred or transferred to a third party**.

If several persons were involved in the invention, all the inventors shall be granted the rights collectively.

# Exclusive Rights

## Article 9

The owner of the layout-design of the integrated circuits certificate has the right to exclude others from:

- **reproducing in its entirety or any part thereof**, except the act of reproducing any part that does not comply with the requirement of originality, and
- **importing, selling or otherwise distributing for commercial purposes** a protected layout-design or any material in which a protected layout-design is incorporated except by authorization from the owner.

# Exceptions

## Article 10

- **Reproduction:** private purposes or for the sole purpose of evaluation, analysis, research or teaching
- Right holder cannot prevent others from developing other original topographies which have the same functions as those of protected topographies
- An integrated circuit in which such a layout-design is incorporated, which has been put on the market by or with the consent of the right holder

# Protection Duration

## Article 11

The term of a layout-design of the integrated circuits certificate is **ten years from the date of protection commencement, which is either:**

- the date of filing if the layout-design has not been commercially exploited anywhere in the world; or
- the date of the initial commercial exploitation if it has been commercially exploited anywhere in the world by the owner or with the authorization from the owner.

# Invalidation

## Article 16

Any interested person may request a court to invalidate a protected layout-design after its issuance. The following are the sole grounds for invalidation:

- **The layout-design of the integrated circuit has been commercially exploited before in any part of the world and the exploitation exceeds two years, or is not original.**
- **The owner is not the protected person under the Prakas.**

If the invalidation concerns only one part of the layout-design, only the affected part shall be considered invalid.

All registered layout-design that are considered invalid in its entirety or any part thereof shall lose their validity from the date of protection commencement.

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## Plant Variety/Breeder's rights

Law on Seed Management  
and  
Plant Breeder's Rights

Promulgated 13 May 2008

<https://www.upov.int/overview/en/upov.html>

## 84 Articles split into 9 Chapters

- Chapter 1: General Provisions (Art. 1-5)
- Chapter 2: Protection of New Varieties of Plants (Art. 6-38)
- Chapter 3: Seed Management (Art. 39-50)
- Chapter 4: Seed Import, Export, and Transit (Art. 51-60)
- Chapter 5: The National Fund for Seed Development (Art. 61-63)
- Chapter 6: Seed Inspectors (Art. 64-68)
- Chapter 7: Legal Penalty (Art. 69-81)
- Chapter 8: Transitional Provisions (Art.82)
- Chapter 9: Final Provision (Art. 83-84)

# Objectives of the Law

## Chapter1: Articles 1-5

### ព្រះរាជាណាចក្រកម្ពុជា ព្រះរាជក្រឹត្យ

- to encourage the development of **new varieties of plants**, for the benefit of society.
- to provide incentive and sustainable development of **seed** for benefits of society, economy and environment.
- to stimulate and promotion internal and external commerce.
- to provide protection for Plant Breeder's Right and to combat the infringement thereof, as well as illegal business practices.

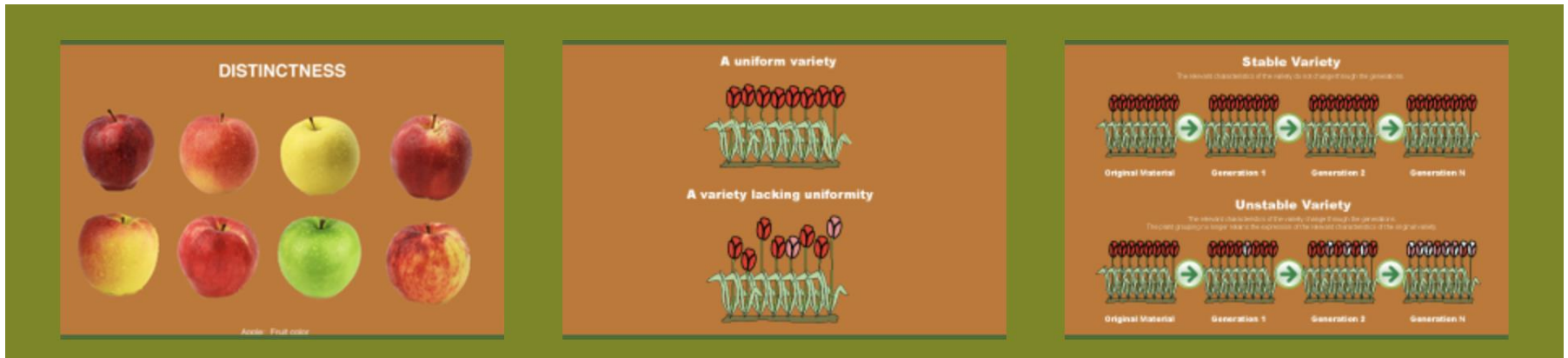
### ព្រះរាជក្រឹត្យ

# Conditions for the Grant

## Article 6

Conditions of Protection: to protect all general and species Criteria to be satisfied Under the 1991 Act of the UPOV Convention (the International Convention for the Protection of New Varieties of Plants) the variety should be:

- 1- NOVELTY នាពថ្មី
- 2- DISTINCTNESS នាពខុសប្លែក
- 3- UNIFORMITY ឯកសណ្ឋាននាព
- 4- STABILITY ស្ថេរនាព



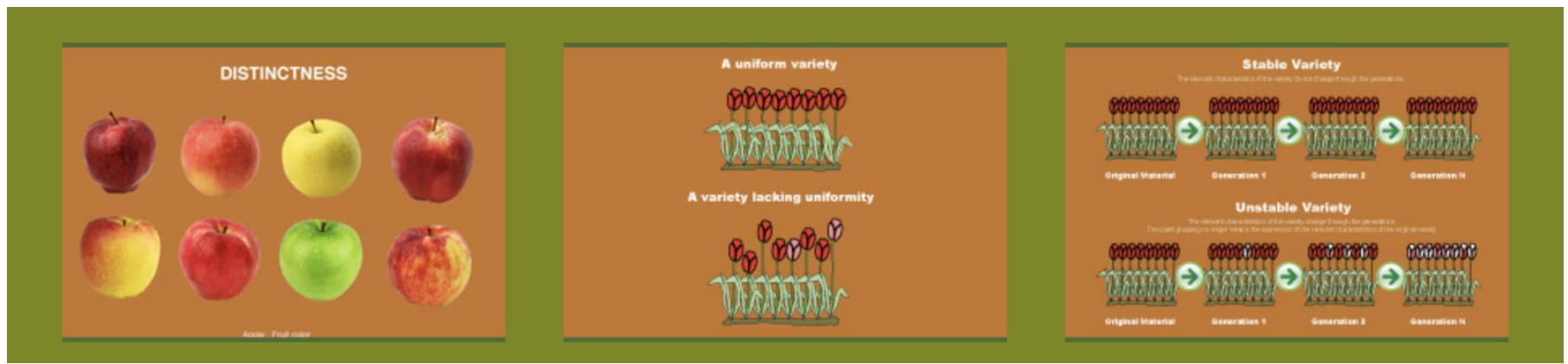
# Conditions for the Grant

Other conditions for granting Plant breeder's right

a - Variety Denomination ពូជថ្មីនៃដំណាំ

b - Formalities

c - Payment of fees



UPOV. "Conditions Web Presentation - UPOV." Accessed October 28, 2023. <https://www.upov.int/overview/en/conditions.html>.

# Novelty

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## Article 7

Novelty: **Varieties are considered to be new** as long as they have not been sold or circulated in the market.

With the agreement of the breeder, **new varieties** may be sold or circulated in the market:

- In the Kingdom of Cambodia in which the application has been filed earlier than one year before **the date of filing of the application** and
- Outside the Kingdom of Cambodia in which the application has been filed earlier than four years or, in the case of tree and vines, earlier than six years before **the date of filing of the application.**

# Distinctness

## Article 8

### ខុសប្លែកគ្នាជាចម្រុះ

**DISTINCTNESS:** Must be clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of filing of the application or from the priority right date.

A variety may be considered to be **clearly distinguishable** if the difference in characteristics is:

- (a) consistent, and
- (b) clear



UPOV. "Conditions Web Presentation - UPOV."  
 Accessed October 28, 2023.  
<https://www.upov.int/overview/en/conditions.html>.

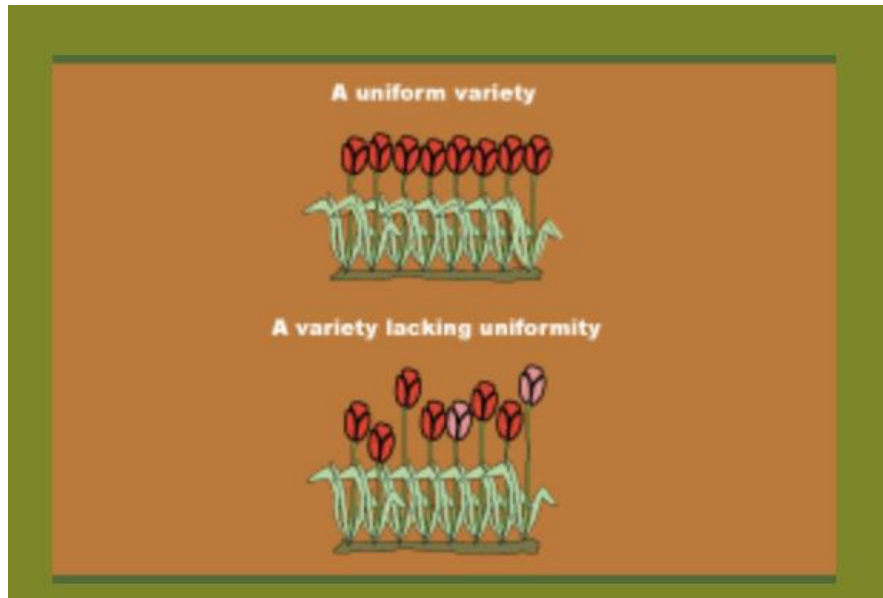
# Uniformity

## ឯកសណ្ឋានភាព

### Article 9

**Uniformity:** Varieties are considered to be **uniform** if they show sufficient **uniformity in the relevant characteristics**, whether those varieties are reproduced sexually or asexually

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UPOV. "Conditions Web Presentation - UPOV." Accessed October 28, 2023. <https://www.upov.int/overview/en/conditions.html>.

# Stability

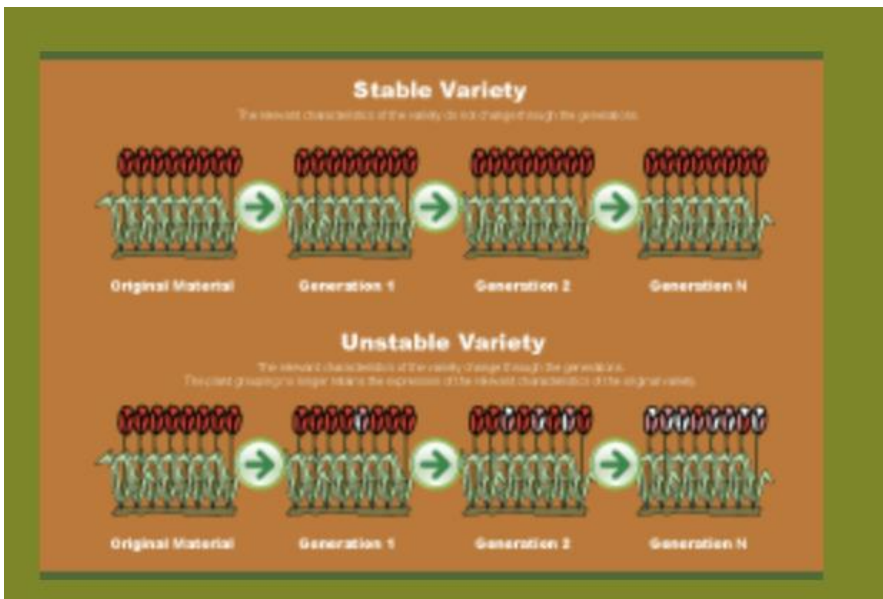
## Article 10

## ស្ថេរភាព

**Stability:** considered to be **stable** if their **necessary relevant characteristics** remain **unchanged** in **all stages of the growth cycle** and in successive **generations of multiplication**

វដ្តរដ្ឋបាល

ជំនាន់ដើម្បីមួយៗ



UPOV. "Conditions Web Presentation - UPOV." Accessed October 28, 2023. <https://www.upov.int/overview/en/conditions.html>.

# Applicants

## **Article 13:**

The applicant for Plant Variety protection must be:

- (a) have **Cambodian nationality**; or have **foreign nationality** but shall be resident in the Kingdom of Cambodia, or
  
- (b) live in any State which, being a **Contracting Party, of UPOV** convention or live in any State which, grants reciprocity of treatment to the Kingdom of Cambodia.

# Applicants

The minimum requirement for applying application of the protection of new variety of plant:

- 1- Application form
- 2- Any necessary information, document relevant New Variety
- 3- Material (seed)
- 4- Payment of fees.

Right of Priority

12 months from the date of filing of the earliest application

} Received the filing date

# Duration of Protection

## Article 19

The minimum length of protection is:

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- 25 years for **trees and vines** after the grant of the PBR
  
- 20 years for other plants after the grant of the PBR

# Exclusive Rights/Authorization

## Article 15

- Production or reproduction (multiplication)
- Conditioning for the purpose of propagation Offering for sale
- Selling or marketing
- Exporting
- Importing
- Stocking for any of the above purposes

# Exceptions

## **Article 16**

The breeder's right shall not extend to

- ▶ Acts done privately and for non-commercial purposes
- ▶ Acts done for experimental purposes breeding other varieties

# References

EPO, and EUIPO. *Intellectual Property Teaching Kit: IP Advanced Part II: Trade Secrets and Know-How*. 2nd Edition. EPO Munich: EPO, 2018.

Law on Seed Management and Plant Breeder's Rights, 2008. (Cambodia)

Prakas on Integrated Circuits, 2011. (Cambodia)