

与中国花卉产业、经济林木有关农民特权制度的案例解读

Case studies of farmer's right in China's flower industry and cash trees



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大纲 (OUTLINE)



- 1 个人介绍 / Personal Introduction
- 2 中国的现状 / Current Situation of China
- 3 案例解读 / Discussion of Cases
- 4 策略选择 / Tactic Selection
- 5 总结 / Summary

个人介绍/personal introduction





















个人介绍/personal introduction



















★ News

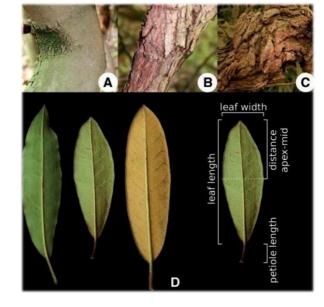
- . The database v1.1 is online.07/05/2021, The Enrichment Analysis is online!
- . The database v1.0 is online.04/01/2021
- The database v0.9 is online.23/07/2020
- · You can browse the database information about all kind of data.05/10/2019
- You can search ssr genetic marker by id of scaffold and the loci of ssr.26/09/2019
- · The tool of primer3 is available!25/09/2019
- · Initiated the database20/07/2019

Welcome to RPGD (Rhododendron Plant Genome Database)!

About

Rhododendron L. species are plants of great ornamental and medicinal value, and have long been cultivated, bred and used by humans for ages. With advances in sequencing technology, genomes and transcriptomes of the Rhododendron genus have been sequenced and published by different laboratories around the world. With such an enormous amount of data, it becomes a dilemma for Rhododendron researchers to effectively use and analysis these data.

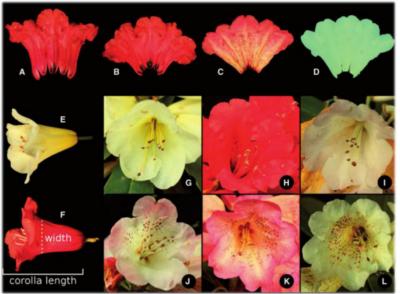
Hence, we construct RPGD (Rhododendron Plant Genome Database), the first comprehensive database for Rhododendron genus. It integrates large amounts of omics data, including genome sequences assemblies for Rhododendron delavayi(wiki), Rhododendron Williamsianum(wiki) and Rhododendron simsii(wiki), gene expression profiles derived from published RNA-Seq data, functional annotation, gene family, transcription factor, homolog gene information, simple sequence repeat and chloroplast genome assemblies for R.delavayi and Rhododendron Pulchrum. Meanwhile, a lot of useful tools, including BLAST, JBrowse, Orthologous Groups, Genome Synteny Browser, Flanking Sequence Finder, Heatmap and Batch Download, are also integrated in RPGD. We truly believe RPGD will keep providing users of researching Rhododendron genus a comprehensive and helpful platform.













中国是发展中国家 / China is developing quickly but she is a developing country













- 发展不平衡,城乡二元结构尤其明显/ Unbalanced development, especially between the urban and rural
- 2. 人均收入水平仍低于世界平均水平 / The per capita income is still lower than the world average
- 3. 原有发展模式不可持续 / The original development model is not sustainable

部静,2019,为什么说中国还是发 展中国家,中国报道



中国是发展中国家 / China is developing quickly but she is a developing country

2017年部分国家农村和城镇人口比率 / the ratio of rural to urban population				
Country	rural	urban		
中国 / China	42%	58%		
印度 / India	66%	34%		
日本 / Japan	6%	94%		
澳大利亚 / Australia	10%	90%		
英国 / Britain	17%	83%		
德国 / Germany	24%	76%		
法国 / France	20%	80%		
美国 / America	18%	82%		
加拿大 / Canada	18%	82%		



国家统计局/National Bureau of Statistics

2018年, 5.6亿农村人口, 而农业占GDP比重仅为7.6% / in 2018, 560 million rural population, agriculture accounting for 7.6% of GDP



中国是发展中国家 / China is developing quickly but she is a developing country

	大学生人数(万人) Number of College Students	每10万人中大学文化程 度人数(人) Number of people with higher education per 100, 000 people	15岁以上人口平均受教育 年限(年) Average years of education for people over 15 years old (years)	文盲率 (15岁以上 不识字) literacy rates (%)
2010	11964	8930	9.08	4.08
2020	21836	15467	9.91	2.67

Age	Number of people —	Percentage
年龄	人口数	比重
总计	1411778724	100.00
0-14岁	253383938	17.95
15-59岁	894376020	63.35
60岁及以上	264018766	18.70
其中:65岁及以上	190635280	13.50

国家统计局/National Bureau of Statistics

绝大部分的文盲、低学历人群,已经年事较高、在从事农业/
Most of the illiterate and low educated people are older and engaged in agriculture



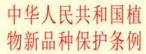
Seed Law of the people's Republic of China; Regulations of the People's Republic of China on the Protection of New Plant Varieties



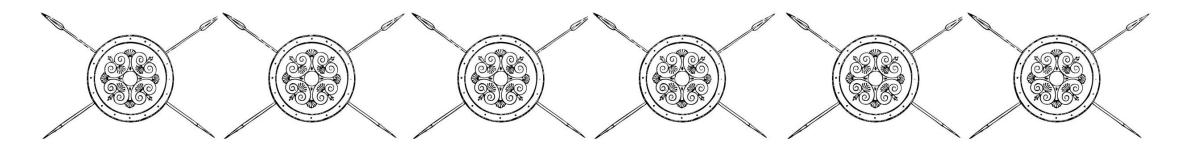
Union for the Protection of New Varieties of Plants (UPOV)























opinion

- 作为该法律条款的被监管对象,极大部分普通农民并不知晓有这样一些法律条文 / As the regulated population of the legal provisions, most farmers are not aware of such rules
- 当开展培训的时候,科普的时候,交流沟通成本又非常高昂/
 When carrying out training and popularizing the legal provisions,
 the cost of communication is very high
- 当强制、高标准的执行植物新品种保护相关条款时,可能会站在 舆论的对立面 / When enforcing the relevant provisions of new plant variety protection with high standards, we may stand on the opposite side of public



不知者無罪

No Blame attaches to the unconscious doer of wrong!



Dialogue of the deaf!





种子类新品种保护压力小 / It's a little easier to protect the new varieties which sell seeds





无性繁殖类新品种保护压力大 / It's much harder to protect the asexual reproduction varieties















谁才是UPOV体系保护的特权者? / Who is the one have the farmer's right in UPOV system?













中华人民共和国商务部



尺中国保护知识产权网

UPOV公约1978年文本与1991年文本的区别

UPOV公约1991年文本比1978年文本更严格地保护育种者的权利。如1978年的文本允许农民保留种子再次播种,自繁自种和自由交换(虽没有明确写明),1991年的文本却严格地限制农民这种特权,将育种者的权利延伸至收获的材料。1991年文本还将育种者的权利扩大到禁止侵权品种进口。在强调保护育种者权利的同时,UPOV公约对育种者的权利也有所限制,如出于公共利益考虑或者为了推广新品种,可以不经过育种者同意而使用、繁殖其新品种。

1978 年文本

1991 年文本

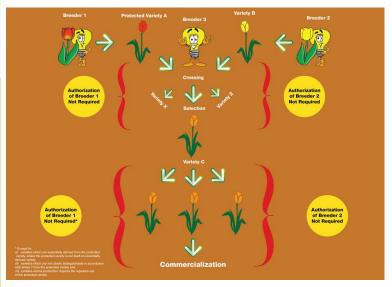
3、受保护的权利及保护的范围

授予育种者权利的作用是在对受保护品种的诸如有性或无性繁殖材料之类的进行下列处理时,应事先征得育种者同意:

- (1) 以商业销售为目的之生产;
- (2) 提供出售;
- (3) 市场销售。

除了例外情况,涉及受保护品种繁殖材料的下列活动需要育种 者授权:

- (1) 生产或繁殖;
- (2) 为繁殖而进行的种子处理;
- (3) 提供销售;
- (4) 售出或其他市场销售;
- (5) 出口;
- (6) 进口;
- (7) 用于上述 (1) 至 (6) 项目的的原种制作。





夏日红绒 / Xiari Hongrong



◆夏日红绒 棕榈生态城镇发展股份有限公司

Name of variety: Xiari Hongrong

Breeder: Palm Eco-Town Development Co., Ltd

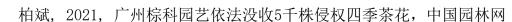
Date of issue: 2017

◆陈某,未经授权许可,私自繁殖、生产、销售'夏日红绒'

Mr. Chen, breeding, producing and selling 'Xiari Hongrong' without authorization

◆陈某深刻认识到错误,态度诚恳,积极配合,承诺不再种植 该品种,同时将所有产品无条件交由"棕科园艺"处置

Mr. Chen was deeply aware of the mistake, with a sincere attitude and active cooperation, he promised not to plant this variety any more, and at the same time, he handed over all the products to company







Z

有预谋的链条式侵权 / Premeditated infringement

◆生活在某研究所周边的农民(Group A),他们可能知道(也可能不知道)该研究所选育的某个新品种,具有很好的口感/抗性/产量等特点

Farmers (Group A) living near by a research institute, they may (not) know that a new variety bred by breeder has the characteristics of good taste / resistance / yield

◆有一些不法商贩(Group B),知晓该品种后,出较 高的价格请周边农民剪几根枝条卖给自己

Some dishonest traders (Group B) who know the variety, ask the farmers (Group A) to cut a few branches to sell to them with a higher price









有预谋的链条式侵权 / Premeditated infringement

◆ 不法商贩请别的地方的农民(Group C)代为繁育该枝 条至一定的数量,约定按照某一价格来进行回收

The dishonest traders asked the farmers in other places (Group C) to breed the branch to a certain amount, and promised to buy-back with a good price

不法商贩对繁育的枝条进行销售

The dishonest traders sell the branches



是道听途说的案例,但可能真实 存在 / It's a hearsay case, but it may be happened in reality



有预谋的链条式侵权 / Premeditated infringement



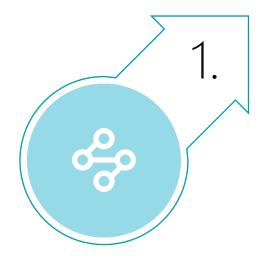
图片源自网络,与本案例无关 / The picture comes from the Internet and has nothing to do with this case

对A和C的行为,该如何判定? / How to judge the behavior of A and C?



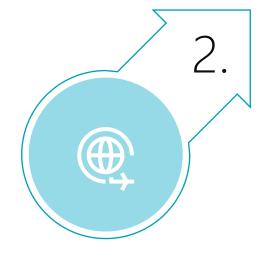
策略选择 / Tactic Selection





尊重客观规律

Follow the objective laws



聚焦迫切领域

Focus on urgent areas



打击恶意侵权

Cracks down on malicious infringement



推动行业自律

Promote industry self-regulation

策略选择 / Tactic Selection

规范管理农产品经纪人/organize agricultural agent

- 品种权所有者/Breeder
 - 科研院所、龙头企业/Institute, enterprises
- 品种的生产者/Producer
 - 底层的从业人员/farmers
 - 学历偏低、年龄偏大/low skills and low qualifications, elder
- 品种的销售者/Seller
 - · 中间商、经纪人/agent
 - 年轻、有知识、有技能/well educated, have knowledge and skills, younger



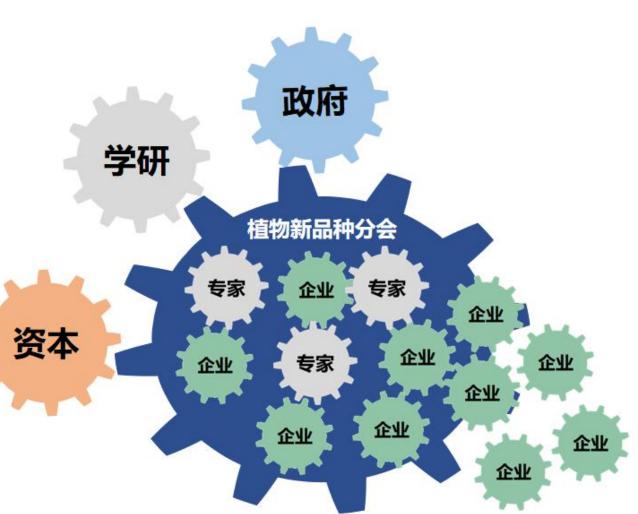


策略选择 / Tactic Selection

推动行业协会建设 / Promote the construction of associations



- 让行业协会成为桥梁/Let the association become the bridge
- 让行业协会,成为企业利益的代言人/Let the association become the agent of enterprise interests
- 让行业协会,协助政府规范企业的行为/Let the association assist the government to regulate the behavior of enterprises
- 通过行业协会,让资本认识到行业的前景
 /Through the association, let the capital
 realize the prospect of the variety industry



总结/Summary



- 尊重客观规律/Follow the objective laws
 - 中国是发展中国家 / China is developing quickly but she is a developing country
 - 从事农业的群体,绝大部分学历低,年事高/the population engaged in agriculture, most are low educated people and are elders
 - · 法律普及工作还需要长期坚持/it still needs more time to popularizate of law
- 无性繁殖品类案例介绍/Case introduction of asexual reproduction varieties
- 高效维权两点建议/Two suggestions on efficient protection









图片源自网络,如有不妥,请及时反馈!









Thanks for you attention!