

# Intellectual protection for plant varieties. Open innovation or industrial property rights?

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IPACST project





*The greatest service that can be rendered to any country is to add a useful plant to its culture*

Thomas Jefferson





# FREE ACCESS TO SEED

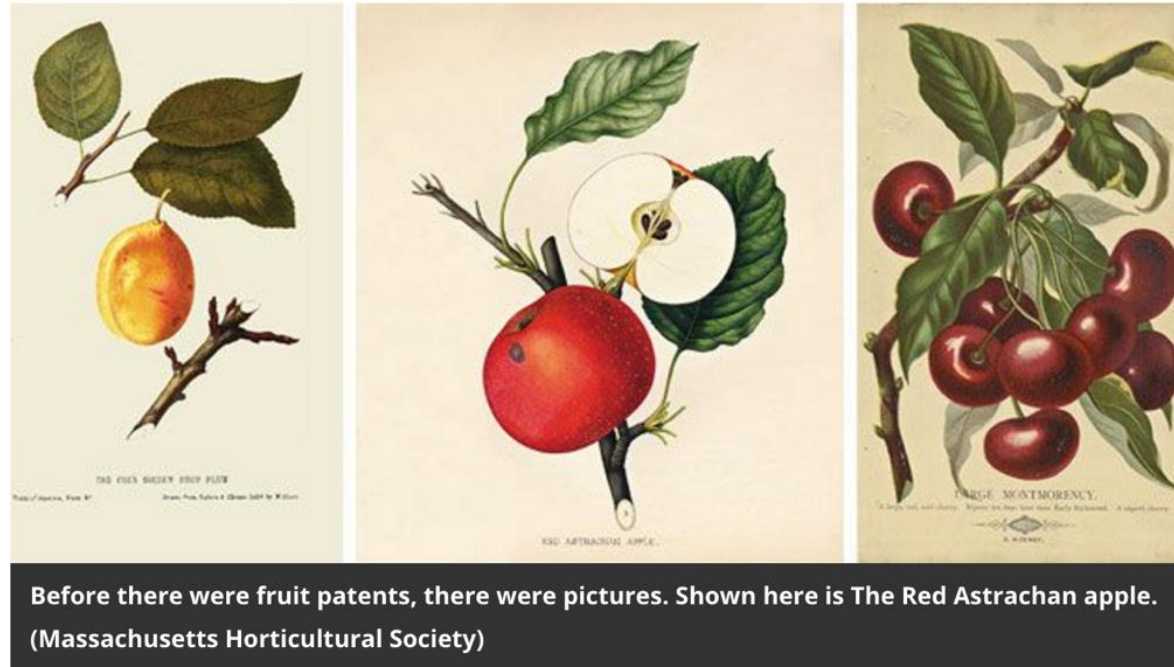


○ Centers of agricultural development      ■ ■ ■ ■ ■ biodiversity hotspot

1-8 = Vavilov's centers of diversity: China (1); Indian subcontinent (2); Southeast Asia (2a); Central Asia (3); Turkey-Iran, fertile half moon (4); Mediterranean area (5); Ethiopia (6); Mexico (7), Andes (8); the Chilean (8a) and Brazilian/ Paraguayan (8b) non-centers



# RESTRICTED ACCESS TO SEED



Kevles, D. J. (2011). Cultivating art and property in American fruits.  
Smithsonian Magazine,  
42 (July/August 2011)



# WHY PROTECT PLANT VARIETIES?

## WHAT FORM OF PROTECTION?

- Neoclassical economic theory  
(intellectual property rights → innovation)
- New institutional economics  
(transaction costs, cooperation)



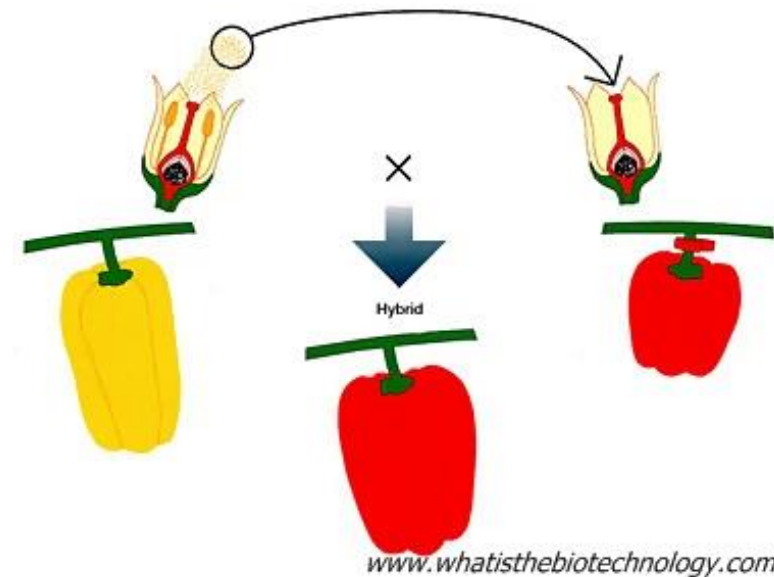


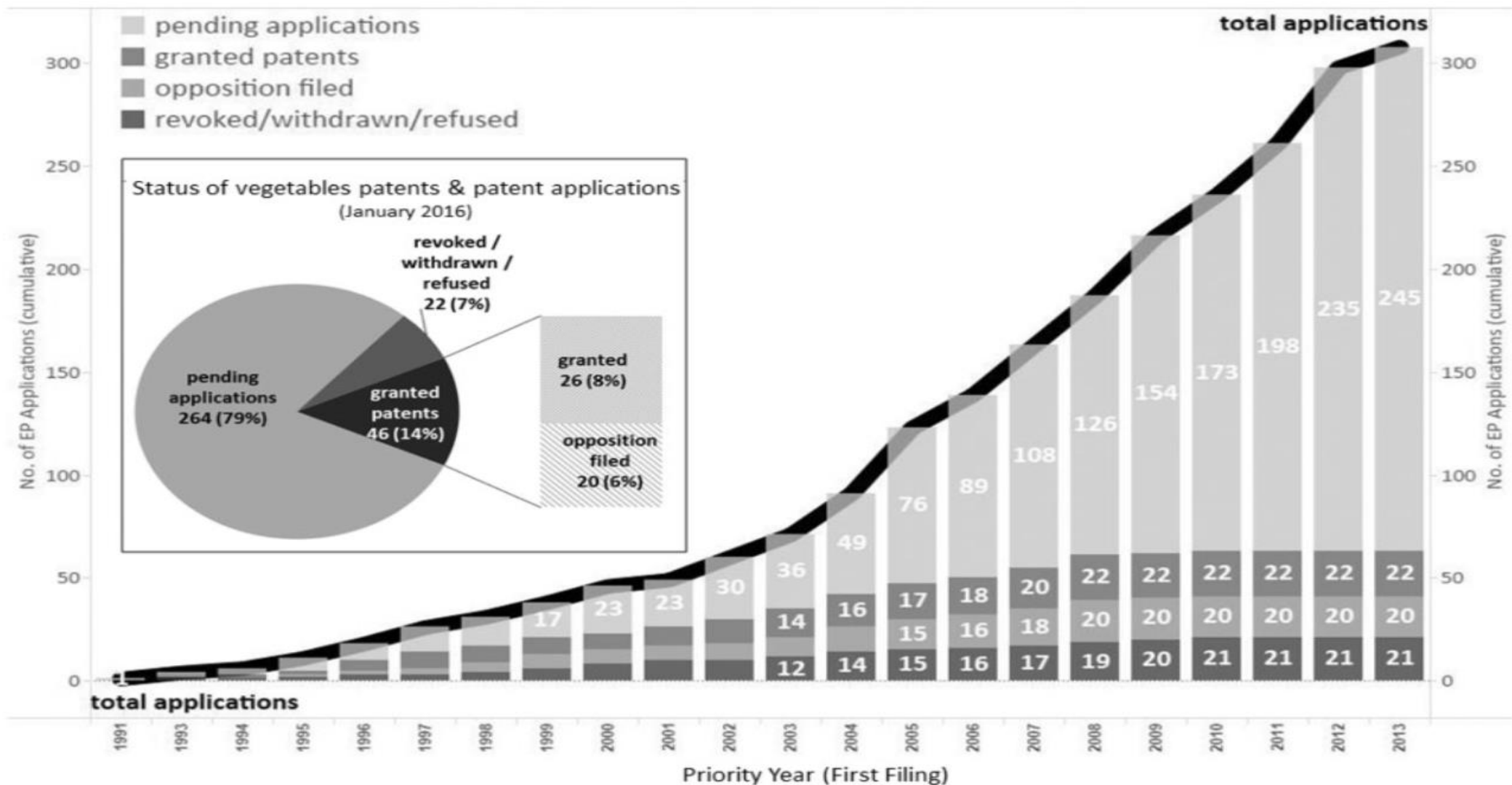
# WHAT ARE INTELLECTUAL PROPERTY RIGHTS FOR PLANT VARIETIES?

## Patents



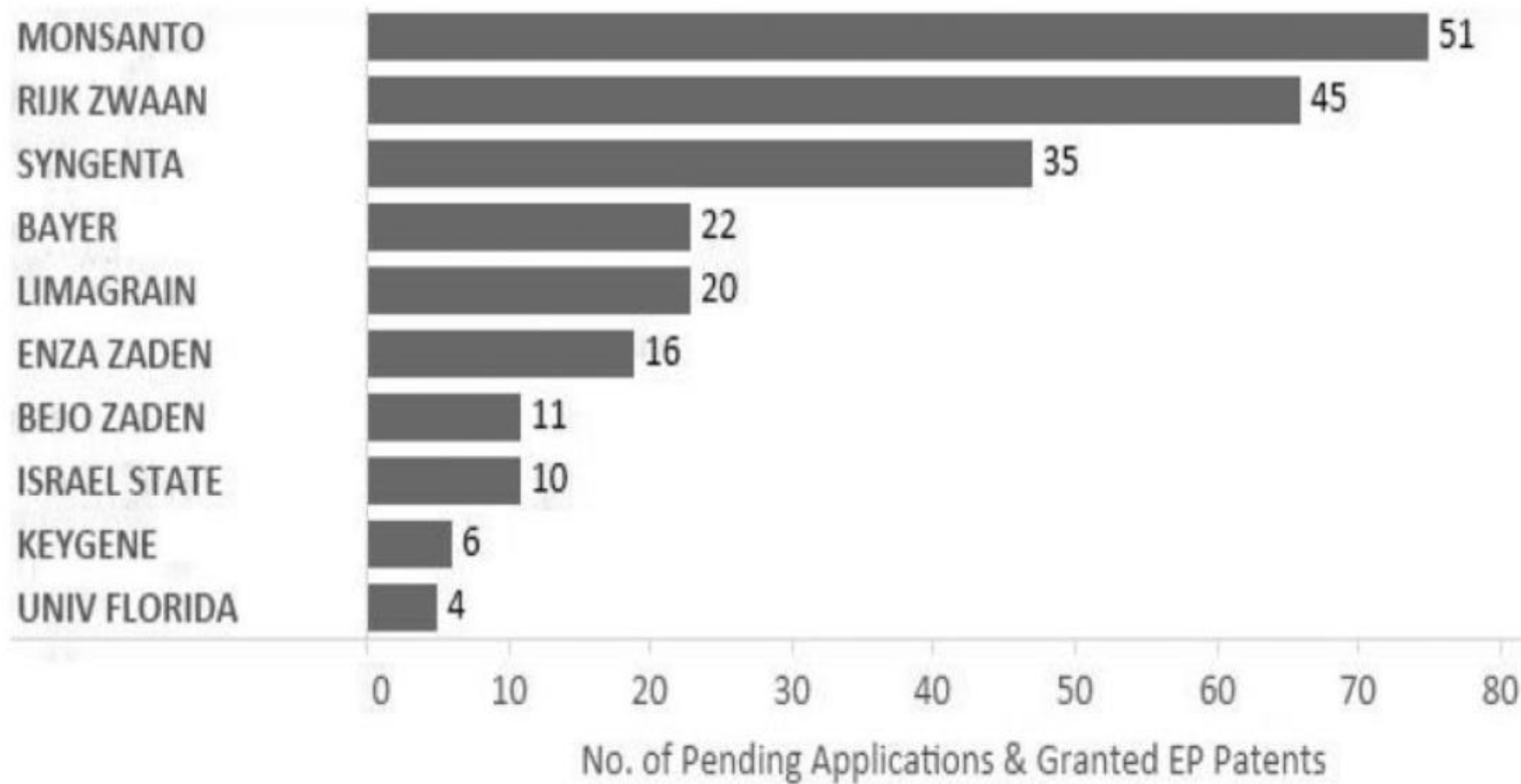
## Plant breeder's rights





**Figure 1.** Patents and patent applications under the European Patent Convention (EPC) relating to vegetables. Kock & Have, JIPLP (2016), 502





**Figure 2.** Ownership of patents and patent applications with EU impact relating to vegetables.

Kock & Have, JIPLP  
(2016), 502





# WHAT IS THE SOLUTION?

- Limited breeder's exemption?
- Full breeder's exemption?
- Plants as genetic datasets?
- Copyleft principles?
- Licensing platforms?



# PLANT DATASET PROTECTION

*Based on unfair competition principles ([Janis & Smith](#), Chicago Kent Law Review, 2007)*

- It is relational: reflects a relationship between contesting parties rather than rights against the rest of the world
- Case by case *ex post* adjudication, alternative dispute resolution mechanisms, codes of conduct
- Eligible subject matter is typically defined loosely, no clear protection criteria
- Liability generally depends on the competitive harm



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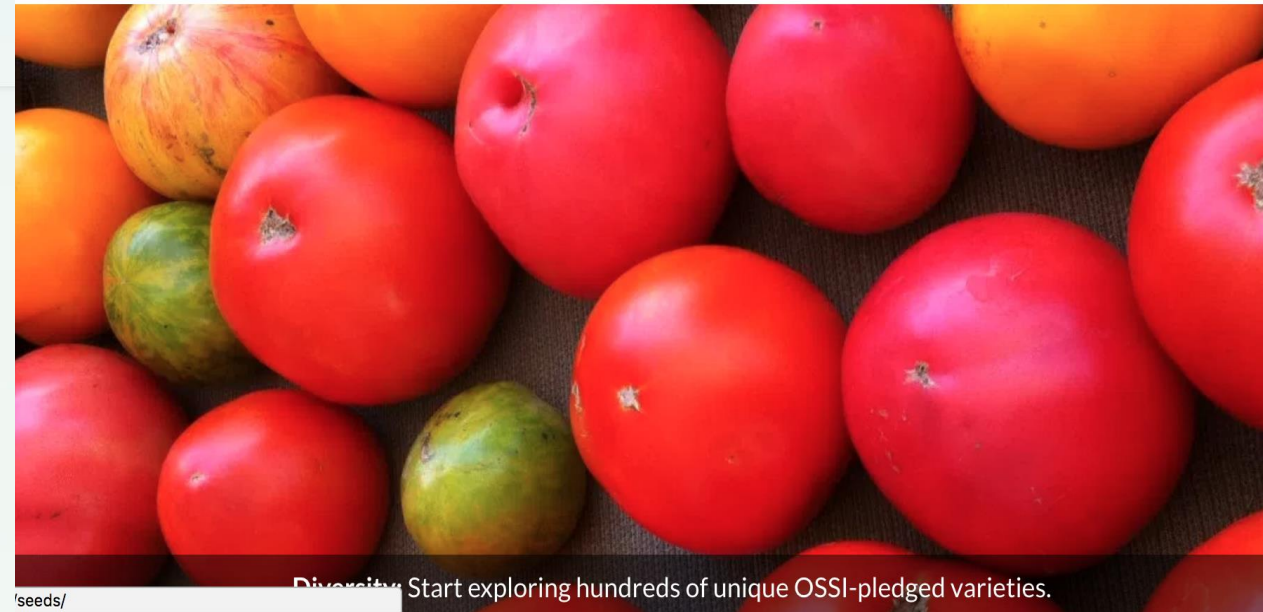
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## Unusually for a licence, the open-source seed licence allows almost everything:

- Anyone may freely use open-source seed - that is, grow, propagate, develop it further and use it for breeding. In addition, the seed and its developments may be transferred under existing laws, whether sold, exchanged or given away.
- No one, however, may privatize the seed and its developments - the licence excludes patent and plant variety protection.
- Each recipient assigns the same rights and obligations to prospective users of seed and its further developments.

**The OSSI Pledge**    *You have the freedom to use these OSSI- Pledged seeds in any way you choose. In return, you pledge not to restrict others' use of these seeds or their derivatives by patents or other means, and to include this Pledge with any transfer of these seeds or their derivatives.*

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# OPEN SOURCE MODELS

- Copyleft (AGRECOL, 2015)

General public license:

- (1) The freedom to run the program as you wish, for any purpose.
- (2) The freedom to study how the program works, and change it so it does your computing as you wish. Access to the source code is a precondition for this.
- (3) The freedom to redistribute copies so you can help your neighbour.
- (4) The freedom to distribute copies of your modified versions to others. By doing this you can give the whole community a chance to benefit from your changes. Access to the source code is a precondition for this.



# OPEN SOURCE MODELS

- Copyleft in seeds

(1) Plant genetic material covered by an open source license may be used for any purpose and by anyone.

(2) Seeds and derived plants must be documented so that users can understand a given variety's characteristics and developmental history.

(3) The user may reproduce the variety and pass it on to others.

(4) The user may use the variety for further breeding and make it accessible to the general public.

(5) All future plant breeders attach to their newly bred varieties the same rights as those they themselves enjoyed.





# OPEN SOURCE MODELS

- Copyleft in seeds

Is it compliant with the breeder's exemption? Is it a full exemption?

In German law, it is considered under General Business Terms and Conditions (Allgemeine Geschäftsbedingungen, AGB)





WELCOME TO ILP VEGETABLE

# The International Licensing Platform for vegetable plant breeding

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### WHAT IS ILP VEGETABLE?

ILP Vegetable's main objective is to guarantee worldwide access to patents that cover biological material for vegetable breeding.



### ORGANISATION

Eleven breeding companies were the founding fathers of the ILP Vegetable. The association is open for all other interested parties to join.



### PATENT REGISTER

The ILP Vegetable provides a straightforward, easy way for vegetable breeders to license the traits they need.



### LICENSING SYSTEM

The ILP Vegetable Licensing System is innovative, simple, transparent and cost-effective.





### Bejo Zaden B.V.

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1749 CZ Warmenhuizen  
The Netherlands



### East-West International B.V.

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The Netherlands



### Sakata

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### Limgroup B.V.

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### Rijk Zwaan Zaadteelt en Zaadhandel B.V.

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TAKII SEED

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# CONCLUSIONS

**How can different systems of protection  
co-exist?**





Questions?

Doubts?

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