



Since 1994, brown-bag sales of PVP-protected seed has been illegal in the United States

In 1970

Congress passed the Plant Variety Protection Act (PVPA) for protection of plant breeder's right

Provided legal intellectual property rights protection to breeders of new varieties of plants which are sexually reproduced (by seed).

1994 Supreme Court decision

Asgrow Seed C. v. Winterboer

(Argued on Nov 7, 1994; decided Jan 18, 1995)

Allowed for the farmer to save and resell seed to other farmers (Continue *brown-bag seed sales*) but only in the amount the seller would need to replant in his own fields. Court of Appeals reversed, allowing farmer to sell up to half of every crop he produces.

1994

US Congress Public Law No: 103-349 Oct 6, 1994

“Removes a provision that declares that it is not an infringement for a person whose primary farming occupation is the growing of crops for sale other than reproductive purposes to sell saved seed for reproductive purposes”

In the past, growers of legally purchased seed were able to replant seed and sell seed to their neighbor (known as *brown-bag seed sales*).

This 1994 Supreme Court decision was only good for this case because Congress was working on a law that would ban *brown-bag seed sales*. The PVP Act was amended in 1994 to reflect the ban.

Growers of PVP protected seed can no longer conduct *brown-bag seed sales*.

Brown-bag seed sales of PVP Title V seed violate both certificate owner rights, and the federal and state seed laws. Fines can be extended to the conditioner, seller, buyer or anyone who assists in the unauthorized sale of protected varieties.

Farmer is restricted to only replanting seed in his/her own fields.

Time limit on damages for PVP protected seed: “No recovery shall be had for that part of any infringement committed more than six years (or known to the owner more than one year) prior to the filing of the complaint or counterclaim for infringement in the action”. (US Code, Title 7, Chapter 57, Sec. 2566)

www.uidaho.edu/research/about/ott ■ 208-885-4550 ■ ott@uidaho.edu



When is it illegal to replant PVP protected seed?

When the PVP seed contains other intellectual property (IP) protection.

And the owner of that additional protection has not provided you with legal permission to replant seed.

When the grower has signed an agreement with the seed owner.

And the agreement specifically prohibits replanting seed.

An example of additional IP protection is the BASF utility patents for the Clearfield wheat varieties that make these cultivars tolerant to imi herbicides. These patented genetics are bred into stable plant varieties by university breeders, yet the traits are still owned by BASF.

Not knowing that there is a signed agreement is not defensible. Legal obligations extend to sub-contractors for growers, and any other agent or employee.

If you are unsure of the legal obligations, contact the grower who has signed the agreement with the seed owner.

The owner of the IP can seek damages from an infringer throughout the lifetime of the patent.