Farmers, Income, and Intellectual Property Rights

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Assertions

• Farmers’ net income from the markets are at record lows;
• Agribusiness profits are at record highs;
• Farmers’ net incomes have not benefited from enhanced seed performance; and
• Farmers will not benefit from additional IPR measures and new Plant Breeders’ Rights legislation.
Outline

1. Net farm income and agribusiness profit in 2004
2. The effects of enhanced seed performance on net income
3. The IPR scene from the farmers’ point of view
4. Farmers’ privilege: The implications of Plant Breeders Rights based on UPOV ‘91
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Per farm, Realized Net Income from the markets (adjusted for inflation): 1926-2005
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Net income and wheat and canola yield

Yield (bushels per acre)

Net farm income (millions) adjusted for inflation

Spring Wheat (bushels per acre)

Canola (bushels per acre)

Realized Net Income from the markets (adj. for infl.)

Canola yield trendline

Wheat yield trendline
Net income and availability of canola varieties

![Graph showing net income and canola varieties over years from 1993 to 2004.]

- **Net income (millions)**
  - $4,000
  - $3,000
  - $2,000
  - $1,000
  - $0
  - -$1,000
  - -$2,000
  - -$3,000
  - -$4,000
  - -$5,000

- **Canola varieties**
  - 300
  - 250
  - 200
  - 150
  - 100
  - 50
  - 0

- **Legend**
  - **Realized Net Income from the markets (adj. for infl.)**
  - **Number of registered canola varieties**
• It’s not that the seeds aren’t better; it’s that others are taking 110% of the benefits.

• Policy makers are failing to distinguish between the effects of new technologies on farmers’ gross revenues vs. effects on net incomes.

• While gross farm revenue may be dependant on seed performance or yield, net income is determined by market power—who has the power to capture and hold the benefits.
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IPR on several fronts

Existing
- Patenting
- Contracting
- Plant Breeders’ Rights

Future
- PBR amendments based on UPOV ‘91?
- Terminator?
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Amending Canada’s PBR Act to make it compliant with UPOV 1991 would give seed companies the power to pursue and punish alleged PBR violators with exactly the same tools and with the same legal powers that these companies now possess to pursue and punish patent infringers.
The NFU has repeatedly asked legal experts and officials at the CFIA and Canadian Plant Technology Agency the following question: How would the powers to investigate and prosecute farmers under a UPOV-’91 based PBR Act differ from the powers that companies currently have under the *Patent Act*?

Not one single difference has been noted.
UPOV ’91-based PBR #1

• Multiply potential liabilities

• Extend the time in which seed companies can claim damages

• Extend royalty collection periods, probably to 25 years

• Permit rights-holders to collect royalties from grain companies, processors, and other customers

• Force farmers to reveal names of seed suppliers and customers
UPOV ’91-based PBR #2

• Give seed companies the power to seize crops

• Create a reverse onus

• “Criminalize” possession

• Make commercial seed cleaning illegal, except in co-operation with seed companies

• Force seed cleaners into an enforcement role
Farmers’ privilege #1

1. Farmers currently have the right to save and re-use seed.
2. Currently, PBR legislation assigns only rights to sell seed.
3. UPOV ’91-based PBR would assign the right to save and reuse seed to seed companies and other rights-holders.
Farmers’ privilege #2

4. Canadian farmers would get a limited “privilege” to transgress rights newly-assigned to Monsanto and other foreign-based corporations.

5. Farmers’ privilege is essentially meaningless because the ultimate arbiter is the courts.
Farmers’ privilege #3

6. If a rights-holder accuses a farmer of infringing, the onus is on the farmer to convince the rights-holder otherwise.

7. If the rights-holder refuses to be convinced, the alternative is court.

8. Court costs would range from tens-of-thousands to hundreds-of-thousands even if the farmer won.
Farmers’ privilege #4

9. Our experience in the justice system is that the innocent are often accused: Milgaard, Morin, Martinsville, Carter.

10. UPOV ’91-based PBR will give seed rights holders the power to sue for farm-destroying amounts of money.
Farmers’ privilege #5

11. Farmers have the option to spend tens-of-thousands to defend themselves.

12. Instead, most farmers will settle out of court, in secret.

13. In these circumstances, farmers’ privilege is essentially meaningless.
Conclusion

UPOV ’91-based PBR legislation would amount to a seed-company wish list of new powers to collect royalties.

Farmers would gain no offsetting benefits.

Farmers’ privilege is effectively meaningless because farmers lack the ability to protect/ enforce that privilege.